

**Prepared Testimony by C. Stewart Verdery, Jr.
Principal, Mehlman Vogel Castagnetti, Inc.
Adjunct Fellow, Center for Strategic and International Studies**

**U.S. Senate Committee on the Judiciary
Subcommittee on Terrorism, Technology and Homeland Security and
Subcommittee on Immigration, Border Security and Citizenship**

**“The Southern Border in Crisis: Resources and
Strategies to Improve National Security”**

**Washington, D.C.
June 7, 2005**

INTRODUCTION

Chairman Kyl, Chairman Cornyn, Ranking Member Feinstein, and Ranking Member Kennedy, thank you for the opportunity to return to your committee to discuss critical issues related to securing our nation’s borders. I am currently a principal at the consulting firm Mehlman Vogel Castagnetti, Inc. I also serve as an Adjunct Fellow at the Center for Strategic and International Studies, although the views in this testimony are my own and do not represent CSIS which does not take policy positions. I am also a member of the Independent Task Force on Immigration Reform and America’s Future which is chaired by former Senator Spencer Abraham and former Congressman Lee Hamilton and managed by the Migration Policy Institute.

As you know, following confirmation by the Senate in 2003, I served as Assistant Secretary for Border and Transportation Security Policy and Planning until my resignation from the Department of Homeland Security in March of this year. In this capacity, I was responsible for policy development within the Border and Transportation Security Directorate, reporting to Under Secretary Asa Hutchinson and Secretary Tom Ridge. BTS was created to coordinate policy development and operational activities in the fields of immigration and visas, transportation security, law enforcement, and cargo security which largely were carried out in the field by BTS agencies – U.S. Customs and Border Protection, U.S. Immigration and Customs Enforcement, and the Transportation Security Administration.

Before discussing the specific topics which are the subject of this important hearing, I would be remiss if I did not thank this Committee for its extremely important efforts to support DHS during my tenure at the Department. Among other accomplishments in this regard were the intelligence reform bill enacted last year, which included significant sections on border security, and day-to-day oversight of our activities which helped focus our priorities and responsiveness to the American people.

In addition, I am pleased to be participating in this hearing with my former colleagues from U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs

Enforcement (ICE). During my tenure at DHS, the BTS Directorate established very effective relationships with CBP and the Border Patrol and with ICE and the Office of Detention and Removal. The accomplishments noted herein would not have been possible without the leadership at CBP – Commissioner Robert Bonner, Deputy Commissioner Deb Spero, former Deputy Commissioner Doug Browning, Chief David Aguilar, former Border Patrol Chief Gus De La Vina, and many others – and at ICE – Assistant Secretary Mike Garcia, Deputy Assistant Secretary John Clark, former Directors of Detention and Removal David Venturella and Victor Cerda, and many others. Perhaps even more importantly, the frontline personnel of CBP and ICE who risk their lives each day, and unfortunately sacrifice those lives on rare but all-too-often occasions, deserve all of our support as they struggle to control the unique border that connects the United States and Mexico.

As a last introductory point, to the extent that legitimate analysis finds fault with the border security measures implemented by DHS over the past two years, I accept my share of responsibility for those shortcomings. I am proud of the efforts the first leadership of the Department under Secretary Tom Ridge. I strongly believe our initiatives have reduced the vulnerability of our country to terrorist attacks, but I also recognize that the country is still at the front end of a lengthy effort to craft policies and develop operational capabilities before we might be able to declare victory in this fight.

Immigration, as it has been throughout the American experience, remains a vexing problem for policymakers. An already combustible mix of business needs, ethnic group politics, budget and social impacts, and law enforcement concerns is now superheated by the terrorism threat we face from abroad. While today's setting is not an appropriate one to survey the entire landscape of immigration policy, I am confident that the dissolution of the Immigration and Naturalization Service (INS) and assumption of INS' responsibilities by the Department of Homeland Security two years ago has yielded great progress in fixing our broken immigration systems. This testimony details some of the achievements DHS has achieved over the past two years. While there is obviously more, much more, to be done, through a combination of resolve, technology, cooperation, and leadership, we can now see the light at the end of the tunnel.

As discussion of a new temporary worker program has intensified since President Bush's 2004 request that Congress enact such a program in line with his immigration principles, some commentators have presented the issue as a choice between a new worker program and enhanced border security. Such analysis is wrong. It is the passage of a properly developed guest worker program that will bring massive improvements in border security and thus homeland security. Following the footsteps of millions before them, hundreds of thousands of undocumented aliens each year cross the border illegally in search of work who present no risk of terrorism or organized criminal activity. Border Patrol agents in the field, however, have no way to differentiate between the individuals that make up this flood of human migration and the small but crucial number of potential terrorists or criminals that attempt to blend into the masses. Providing those who want to work and have no prior criminal or terrorist record a means to enter the country legally through ports of entry will make it much more likely that the Border Patrol will be able to

locate and arrest the criminals and terrorists who will lose their cloak of invisibility that the current situation offers.

Focusing on the Southern border, this testimony will first highlight the key problems that DHS inherited from the Department of Justice and INS that INS did not have the design or the ability to resolve and explain how DHS is working to solve each of those problems, and then make recommendations on new policies, including recommendations for key components of any new guest worker program should include, to better secure the border and facilitate robust international travel and commerce.

IMMIGRATION ENFORCEMENT AT DHS

During my tenure at DHS, I was responsible for developing policy initiatives to ensure that the DHS agencies are able to fulfill their responsibilities, including immigration enforcement. Any effective immigration system must provide government officials with the tools to evaluate the eligibility of potential visitors both at the time of the issuance of a visa and upon admission, must encourage and allow qualified visitors to enter the country legally with minimal delay, and must deter and detect those who attempt to enter the country illegally. I had an inside look at how DHS has gone about the business of correcting some of the chronic problems that dogged the old INS. I can tell you with great confidence that DHS, working with other agencies and the White House, has made tremendous progress in bringing integrity back to the immigration system. In fact, the 9/11 Commission report, and the bill that Congress passed subsequently to enact the recommendations, agreed largely with our programs, urging only that we speed them up.

PROBLEMS AT INS AND THE DHS RESPONSE

Problem 1: Incompatible Missions and Poor Command Structure

The first problem with INS was that it was responsible for performing two disparate and incompatible tasks: it was expected to both enforce the immigration laws in the role of police officer, and at the same time to distribute immigration benefits as a service provider.

On the enforcement side, INS' efforts were reactive, slow-moving, and inconsistent. The agency lacked a clearly defined chain of command from headquarters to the field. Without leadership, the isolated efforts of field offices to combat serious and emerging problems, such as alien smuggling, were disjointed and ineffective. Some senior law enforcement officers were obliged to report to intermediary directors, some of whom had no law enforcement background.

In its role as provider of immigration services and benefits, INS faced severe criticism from immigrants and employers seeking to hire foreign labor. Processing of applications for citizenship, for work authorization, and for changes of status was extremely slow: it often took 3 or more years for INS to complete applications. Individuals seeking even simple information, such as the progress of their applications, were obliged to wait in

long lines outside of INS offices or wait futilely on INS telephone service centers. By 2002, some 4 million applications were backlogged at INS. Worse, INS did little to combat fraudulent applications for asylum and for adjustment of status. Allegations of unprofessional conduct, and a number of scandals – including the hurried naturalization of thousands of criminal aliens before the 1996 elections – added to the public perception that INS was a dysfunctional federal agency.

The agency's troubled history and the terrorist attacks of September 11, 2001 prompted Congress to transfer INS' functions to DHS. On March 1, 2003, DHS replaced INS as the immigration authority in the United States. Ever since that day, when people complain to me about the INS, I start my response by reminding them, there is no such thing anymore.

The long-awaited split in INS' functions was achieved in the new DHS between ICE, CBP and U.S. Citizenship and Immigration Services (CIS). The DHS bureaus responsible for immigration are able to operate in a semi-autonomous fashion, which allows them to better focus on their areas of expertise and to develop and achieve their own goals. The new command structure provides a direct line of authority to the Department's headquarters and given homeland security employees clear missions. It is worth noting that the division of authority has created some difficulties in crafting immigration policies that cross between services and enforcement areas, necessitating the robust policy office discussed later in this testimony.

Problem 2: Screening and Tracking Visitors

Visa Policy

The second problem that INS was unable to resolve was the screening and tracking of visitors to the United States. Like any host, we require some basic information about our guests. Who are they? When are they coming? And when will they depart? Our ability to accurately answer these questions says a lot about our national security and the integrity of the immigration system.

Prior to the September 11 attacks, obtaining a visa for travel to the United States was altogether too informal a process. Intending visitors were usually able to get their visas from the State Department through the mail, and without making a personal appearance before a consular officer. The Administration moved quickly after 9/11 to change the process. The Homeland Security Act assigned DHS lead responsibility for visa policy and oversight, and my office negotiated the memorandum of understanding with State Department effecting that transfer. New regulations were put in place to require the majority of visitors to appear at a consular office for a personal interview. The new screening process requires visa applicants to submit two fingerscans along with their biographic data. Their identities are then screened directly against terrorist-related databases. DHS has stationed employees in high-risk areas to assist consular officers in evaluating visas, and we have increased the number of special security checks performed

by State and the Department of Justice for visa applicants from certain countries and high-risk fields.

Visa policy at DHS is principally developed in my former office and the CIS' Office of Policy and Strategy. I met with interested businesses, school administrators, researchers, and students about how we can continue to bring the best and brightest, clients, and tourists to the United States, with the appropriate security checks we absolutely must do. Throughout 2004 we were able to speed up processing times and minimize delays, and have gotten praise from top universities, research institutions, tourism industries, international businesses and their associations for our efforts.

US-VISIT

And even as INS celebrated the millennium, we lacked an automated entry and exit system that would allow us to know when foreign visitors arrived and when they departed. Following the bombing of the first World Trade Center in 1993, Congress demanded that an entry and exit system be installed at our ports of entry, but it did not happen, and none was in place on 9/11. Remarkably, on that date INS continued to rely on a paper system, and employees literally hand-keyed in departure information into a database weeks after the fact. With no exit system, and only a minimal, unreliable entry system, our entry and exit data was spotty at best, and criminals were able to come and go across our border, some of them dozens of times under different aliases, without detection.

But in 2004, DHS rolled out the entry-exit system known as "US-VISIT". We improved on the Congressional plan by adding a biometric requirement to the system. To capture biometrics, US-VISIT electronically scans a visitor's index fingers and takes a digital photograph at a kiosk – all in the space of seconds. The biometrics captured by US-VISIT allow consular and immigration officials to confidently tie travelers to the visas and passports they are carrying, and permit the development of an internationally uniform standard for identifying travelers.

As of May 31, 2005, DHS has enrolled 28,169,895 travelers in US-VISIT, with each watchlist check taking an average of 6 seconds. US-VISIT has allowed DHS to unravel the assumed identities of hundreds of foreign nationals attempting to unlawfully enter the United States. For example, an individual sought admission after flying into Newark International Airport. Everything appeared normal until his fingerprints were scanned. It turns out that the man was traveling under an alias and was in fact a convicted rapist. He had previously been deported from the United States, and had a traveled here before, using 9 different aliases and 4 dates of birth. US-VISIT has helped us to identify and to reject approximately 632 other undesirable individuals. It's not possible to know how many terrorists or criminals have been frightened away from attempting to enter our country because of US-VISIT, but I have no doubt that the number is substantial.

The application of our general visa policy to our relationship to Mexico is often overlooked because many people do not equate the Border Crossing Card that most

Mexicans use to travel to the U.S. with a visa, but in fact the BCC is essentially a visa with more limited visitation privileges than a normal visa. US-VISIT was recently deployed to secondary processing areas of the 50 busiest ports of entry on our land borders. Thus, for Mexicans traveling to the U.S. with a normal visa or utilizing the BCC as a visa, the benefits of the broader visa policy are now applicable to Mexican visitors as well. As discussed later in this testimony, as US-VISIT is deployed to the primary lanes of our Southern border ports of entry, beginning with pilots this year, those same benefits will apply to the millions of entries by BCC holders as well.

Since the expansion of US-VISIT to our land ports of entry is a key element of securing the country against illegal entry and facilitating the transit of legitimate travelers, the success of the program to date and the plans for expansion must be evaluated carefully. However, certain analyses of the program, including a major piece in May 23's *Washington Post*, have misunderstood the program and the decisions that led to its staged deployment.

The article insinuates that key decisions made concerning US-VISIT were made by a handful of program officials and government contractors. In contrast, nearly all aspects of the program have undergone exacting scrutiny from the White House Office of Management and Budget and the Homeland Security Council, following robust debate and interaction with other key departments including Justice, State, and Commerce. During my tenure at DHS, Secretary Tom Ridge, Under Secretary Asa Hutchinson, Customs and Border Protection Commissioner Robert Bonner, and many others were intimately involved in developing policy guidance, interacting with other federal agencies and foreign governments, and supervising operations. The US-VISIT program team, led by Director Jim Williams, deserves great credit for effectively managing the program but they have done so under tight direction from the DHS leadership.

Perhaps the most confusing part of the *Post* story relates to the decision by DHS to rely on the IDENT fingerprint database. DHS was able to structure the capture of foreign visitors' biometrics at ports of entry so that a positive or negative response could be provided to the border inspector within seconds, avoiding a massive disruption of international travel. The inspector can also compare pictures and biometrics against those provided to the State Department when the person applied for a visa. The FBI's IAFIS system, in contrast, was not designed to run on a real-time basis, meaning it could not serve as the platform for an entry-exit system. DHS requested fingerprints held in IAFIS to load into IDENT and has received slow but significant cooperation from DOJ in this regard, but it is critical to remember that the overwhelming majority of IAFIS prints are of U.S. citizens who do not register with US-VISIT. In short, it is no exaggeration to state that if the government had relied on IAFIS to support a biometric entry-exit system, it would not exist today. It is also important to remember that when it announced the initial reliance on two-print fingerprint collection, DHS also announced it would move to a system of reviewing a full ten-print slate when such collection was feasible at consular posts and ports of entry.

The deployment of US-VISIT to the vehicle lanes at our hundreds of land ports of entry and exit represents an immense technical challenge. The country currently operates only with the prior generation Border Crossing Cards which are not designed to provide a biometric check of an individual entering across the Mexican border. It will take the best technological and systems expertise that the private sector has to offer to allow for the millions of Mexican BCC holders to be vetted without creating unacceptable delays for cross-border traffic, and pilots are due to begin later this summer. However, DHS and other government officials will have the final say in how the program will be structured to facilitate free trade, identify criminals and terrorists, and interact with any new temporary worker program Congress might enact.

The 9/11 Commission took a hard look at the US-VISIT and basically said that DHS was on the right track, just to deploy the system more quickly. As the program tackles difficult increments ahead, the public should know that its public servants have, despite immense technological and political challenges, deployed a system that truly has enhanced our security without destroying the attractiveness of the United States as a place to study, conduct research or business, or see friends or family. In short, US-VISIT is a government program that actually works.

SEVIS

Among the millions of travelers who arrive in the United States each year are nearly 1 million students and exchange visitors who come to attend school and to experience the American way of life. INS traditionally did very little to track them. Data on foreign students was not automated or centralized, and remained in paper form with the schools. INS had little idea whether those entering on student visas actually attended school or remained in status. When Congress learned following the 1993 bombing of the World Trade Center that one of the bombers had legal status as a student – a pattern that would unfortunately be repeated with several of the 9/11 terrorists – it directed that INS develop an automated system, but it took 9/11 and the creation of DHS to fully realize development of the Student and Exchange Visitor Information System, known as “SEVIS.” DHS put SEVIS to work for the first time in 2003. It has enhanced homeland security by allowing ICE real-time access to data on all foreign students and exchange visitors in the country, including those from Mexico and other Central American countries. It has permitted ICE to ensure that only legitimate students are admitted, and to better track their entry and exit. In addition, ICE has made some 560 arrests of foreigners who violated their student immigration status.

Problem 3: Securing the Border

The third problem that DHS inherited from the old INS was a porous and increasingly violent southern border, which thousands of aliens from all over the world illegally cross each week. INS made great progress in deterring illegal border crossings in distinct metropolitan areas like San Diego, El Paso, and Nogales, but that also pushed illegal migrants out into more remote regions where enforcement was not as thorough. DHS has

designed a variety of initiatives and policy changes to try to restore order on the southern border.

Arizona Border Control Initiative

In the spring of 2004, DHS announced the Arizona Border Control (ABC) Initiative. We initiated the ABC because we were concerned about the amount of violent crime and illegal migration in Arizona, and wanted to intercept terrorists, smugglers, and drug traffickers. The Initiative represents a departure from the old mode of going it alone in border enforcement efforts and instead relied on an unprecedented number of partnerships with other federal agencies, and State, local, and tribal authorities to accomplish the mission.

The ABC Initiative was well timed and successful in terms of apprehensions, deportations and arrests. For the first time, we relied on Unmanned Aerial Vehicles (UAVs) to quickly investigate ground sensors activated by passing groups of aliens. ABC has hit the drug trade very hard: CBP has captured record-setting amounts of marijuana, cocaine, and heroin destined for the United States' interior. A key part of the initiative is Operation ICE Storm, which has successfully targeted alien smuggling operations in Phoenix, and dramatically reduced the number of homicides and kidnappings in that area. ICE Storm is a good example of how DHS is better equipped than INS was to carry out complex law enforcement operations, where we are able to go after the money in a way that INS could not, and we rapidly take apart the financial infrastructure of smuggling groups by seizing vehicles, safe houses, and bank accounts.

Expedited Removal

DHS has also not been shy in using the legal tools at their disposal. For example, in September of 2004 DHS expanded its authority to place illegal migrants into expedited removal proceedings in two Border Patrol sectors in Laredo and Tucson. When an alien is caught illegally crossing the border, the alien is detained until travel documents are secured, and then promptly deported to his country of origin. This is a commonsense means of removing migrants who have no legal right to enter the United States, and in deterring others from making the journey. For a variety of reasons, INS never took full advantage of the expedited removal powers granted it by Congress, and limited its use to the official ports of entry on the border. Migrants apprehended crossing between the ports who could not be immediately removed were placed into regular deportation proceedings, including a hearing before an Immigration Judge, an opportunity to appeal that decision to the Board of Immigration Appeals, and a further right of appeal to the federal courts, a process that could take years. It was not possible to detain tens of thousands of aliens as they went through the process, and most were served with orders directing them to appear for their immigration hearings at a later date, and then released into the interior of the United States. Not surprisingly, a large percentage of them failed to appear for their hearings, and vanished into our country. DHS' goal in expanding expedited removal is to end this "catch and release" practice, and to help bring the border back under control.

I will discuss the need to expand expedited removal later in this testimony.

Problem 4: Removing Threats, Criminals, and Absconders

The fourth problem with INS was that it was unable or unwilling to dedicate adequate resources to enforce the immigration laws in the interior of the United States. Under Assistant Secretary Michael Garcia's leadership, ICE has engaged in variety of critical law enforcement operations since the creation of DHS.

National Fugitive Operations Program

ICE has dedicated significant resources to the National Fugitive Operations Program. The Program is part of a 10-year strategic national initiative aimed at locating aliens who have been ordered removed from the United States, but who have failed to surrender or to comply with their removal orders. It is estimated that there are well over 400,000 aliens in the United States who have never complied with their removal orders. These are rather astonishing numbers. They not only demonstrate an historic failure on the part of the immigration authorities to enforce the law: they have also conveyed a message to the American public, and to the world, that the immigration system in the United States was not to be taken seriously. It is worth noting that each of these 400,000 aliens was offered a significant measure of administrative and judicial due process, but failed to depart when ordered to do so. The remarkably elaborate and expensive immigration system failed to deliver on its implied promise that individuals who had no right to remain in the United States would be sent home. We essentially had an honor system applied in an environment where a little more skepticism was probably in order.

ICE has made the removal of such aliens a priority and reported that it had removed over 157,000 criminal and other illegal aliens from the United States in fiscal year 2004, the highest number in our history, including over 85,000 criminal aliens. Another troubling criminal statistic is the number of foreign national pedophiles and human traffickers who prey on children in the United States. ICE has specifically targeted these predators, and arrested more than 4,900 of them nationwide.

CBP Access to IAFIS

Even systems designed to help sometimes were the problem. Even though they were both DOJ agencies, DOJ allowed inoperable fingerprint systems to be built in the 1990's. Thus, Border Patrol agents enrolling aliens in the IDENT database were unable to determine an illegal migrant's true identity or whether he or she had a prior criminal record in the FBI's IAFIS system. Under DHS leadership, this loophole is closing. CBP officers patrolling the land borders recently obtained access to IAFIS which allows them to quickly search criminal fingerprint databases maintained by the FBI. Like their counterparts at the airports, CBP officers on the border are reaping enormous benefits from biometrics. In just the first months of this capability, CBP officers have learned

from IAFIS that over 13,000 of the aliens they captured crossing the border were criminals, including 138 homicide suspects and 236 sexual assault suspects.

Problem 5: Improving Immigration Services

Under the leadership of Director Eduardo Aguirre, USCIS is making great strides in reducing the backlog for processing immigration benefits like naturalization, permanent residency, and work authorization. This is extremely important for legal immigrants to the United States, some of whom have been waiting for years to have their status normalized. Such delays prove not only unnerving to immigrants, but slow their assimilation into our culture.

CIS has dramatically reduced its backlog, which was at a high of almost 4 million cases in early 2004 and now stands at less than 1.5 million. CIS has also worked to improve its customer service. It has created an internet website where applicants can complete a number of the most common forms online, and may also visit the site to check on the status of their applications. In addition, CIS has introduced an internet-based appointment system known as InfoPass in 4 large cities. Unless we make it convenient for people to try to follow the rules, we can't be surprised that many are unwilling to even try.

NEXT STEPS TO SECURE THE SOUTHERN BORDER

As outlined above, it is the passage of a properly developed guest worker program that will bring massive improvements in border security and thus homeland security. However, those who are skeptical of this argument have understandable reasons for this view. For decades, enforcement tools to combat illegal immigration went underutilized, underfunded, or unsupported by the employer community. While DHS has made substantial progress in enforcing the current regime, deploying a new guest worker program will require significant new resources for border and employer enforcement and for port of entry operations and facilities, development and issuance of tamper-proof identification documents, streamlining of the legal regimes that adjudicate the status of border crossers and undocumented aliens, and new avenues of cooperation between the U.S. and Mexican government.

All of these enhancements to our current enforcement posture should support a basic motto of any new legislation: "deter and reward." Those who are seeking to enter our country to work must be faced with a reality that crossing our borders illegally or attempting to work without proper certifications will be detected and punished with long-term consequences for violations. In contrast, those that follow the rules on applying for work, passing a security check, and crossing the border legally should be rewarded with employment and retirement and travel privileges.

The presence of millions of undocumented aliens in the U.S. presents very difficult transition problems but the first test of any temporary worker program is whether future

workers truly will chose to use the program and be deterred from illegal entry and employment.

Ten specific recommendations I would like to provide the Committee concerning the proposed temporary worker program are the following:

- ▶ Interview and Criminal History Background Checks: Any new applicant should be required to submit ten fingerprints for a IDENT and IAFIS review to demonstrate, in addition to any employment criteria designed to ensure that the entrant's employment is not likely to be filled by a U.S. worker, that he or she has no ties to terrorism or history of prior criminal behavior other than non-violent illegal entry to the U.S.;
- ▶ Use of Biometrically-Enhanced Identification Documents: Any new entrant should be required to obtain a unique, biometrically-enhanced identification document that can serve as a document for entry under US-VISIT at a port of entry and as an employment verification document;
- ▶ Access to U.S. Legal System: For new entrants, any rejection of a visa application or application for entry to the U.S. should be non-reviewable in the U.S. and the burden of contesting any revocation of a visa or equivalent travel privileges due to evidence of fraud or other disqualifying information should fall on the entrant;
- ▶ Zero Tolerance for Accomplices to Fraud: New and tough penalties, including debarment from further involvement in the program or future applications, should be applied to employers, attorneys, agents, or others who are found to have supplied false application information, assisted with developing or procuring fake identification documents, or other methods to subvert the program;
- ▶ Confidentiality: Enforcement agencies should have full access to all application information, and no applicant should have a right to any confidentiality in that process;
- ▶ Employment "Insta-check": Employers should only be able to hire new temporary workers from outside the U.S. after DHS and fellow agencies have developed and deployed a "insta-check" system pulling biometric information off travel documents to verify eligibility for employment and reviewing Social Security and driver's license numbers from new workers asserting U.S. citizenship;
- ▶ Expedited Removal: This policy should be expanded to cover the entire Southern Border as described below.
- ▶ US-VISIT: Congress should aggressively fund US-VISIT and especially money designed to conduct a biometric entry-exit system at primary lanes of entry and exit at land ports of entry;
- ▶ America's Shield Initiative: Congress should aggressively fund the ASI, a combination of force-multiplier technologies such as UAV's, sensors, video, interoperable communications, lighting, and similar capabilities to leverage the enhanced number of Border Patrol agents appropriated funding by the Congress;
- ▶ Bilateral relationship with the Mexican government: Building on a strong record of achievement under the 2002 Smart Border Accord and commitments made during the announcement of the Security and Prosperity Partnership of North America in March of this year, the Administration should seek to obtain commitments from the Mexican government to redouble efforts in a number of areas: securing their southern border; assisting with anti-smuggling and document fraud investigations and operations;

harmonizing visa and asylum policies; continuing assistance with interior repatriation operations; developing robust information-sharing agreements; developing of common standards for vetting of incoming foreign visitors and cargo; and discouraging illegal entries to the U.S. These topics are often complex and may require difficult negotiations, and the provision of U.S. technical assistance. It should also be noted that while the focus of this issue is on our relationship with Mexico, other countries whose nationals will benefit from a new guest worker program should be approached by the U.S. Government to develop enhanced security and facilitation measures as well.

These proposals address the machinery by which new entrants, legal and illegal, should be handled. Of course, any new temporary worker program also must be structured to allow existing undocumented workers to apply for employment. The security imperative for this class of aliens is that they undergo a vetting for ties to terrorism and criminal behavior before they are authorized for further employment in the U.S. Understanding that a principal reason for the program is to continue an adequate supply of workers for current jobs, there is no reason that this security review cannot be conducted while the worker remains in the U.S. However, just as one of our bedrock principals of our overseas visa process is collection of biometrics by a trained U.S. government official to ensure that the applicant is not an imposter, consideration should be given to requiring provision of biometrics by this population to a U.S. government official, especially if the resulting document will be utilized for international travel.

EXPEDITED REMOVAL

One absolutely critical tool for building public confidence in any new guest worker program and steering potential job-seekers to the program is sure and swift response to illegal border crossing. The expedited removal (ER) tool in use today in several border sectors is exactly the program that the public expects and that is necessary to stretch enforcement resources.

Statistics compiled by CBP show a striking increase in the number of nationals from countries other than Mexico (so-called OTM's) apprehended on the Southern border, with FY05 figures running nearly double FY04's record number. With national OTM apprehensions totaling over 75,000 in FY04, this population represents a massive new wave in migrants that brings significant concern that nationals from countries with more terrorism activity than Mexico may be utilizing the Southern border to enter the U.S. At the same time, the President's Temporary Worker principals apply to nationals from any country, not just Mexico, meaning that qualified applicants would have an approved alternative route to legitimate employment.

By utilizing ER to hold all OTM's in ICE detention facilities until a repatriation flight home can be arranged, usually within a matter of weeks, communities in sectors where ER is operational are spared the risk of having OTM's released into the community on the hope, often unrealized, that they will appear for their deportation proceedings. Cutting the average length of detention from approximately 90 days to approximately 26 days represents the type of real reform we need.

It is worth noting that precision with which DHS has applied ER in that it is only approved for use on aliens with no valid travel documents present in the U.S. for less than two weeks who are apprehended within 100 miles of the border. It is time for ER to be expanded to all Southern Border sectors under the same terms, and I encourage the Administration and the Congress to identify resources to allow this common sense program to be deployed as broadly as possible.

The supply of Detention and Removal beds within ICE is not inexhaustible, however. As more and more beds are occupied by ER cases or by aliens with criminal records or with final orders of removal, even with skillful use of bedspace by ICE there are less beds available for Mexican nationals to go through formal deportation proceedings. ICE has been at or above 100% of their bed capacity for the past two years. A universal and well-publicized use of ER should both deter a significant portion of would-be entrants, especially with a legal work entry alternative, and allow for a much enhanced use of existing bed resources.

One aspect of an ER proceeding is a five-year bar against legal re-entry to the U.S. This provision must be well publicized during the kickoff of a new worker program as one of the main reasons to utilize the new procedures.

In a last point concerning ER, normally the sole exception to a swift return to one's home country is demonstrating a credible asylum fear. Allowing this avenue for relief is a necessary requirement under our international treaty obligations and as a humane country. Providing proper training to Border Patrol agents and CIS adjudicators were key parts of the ER deployment, and I am heartened to see that internal and external reviews of the asylum process largely have concluded that DHS has handled this subset of cases appropriately.

In short, a broad expansion of expedited removal is necessary and the type of proven enforcement that will both bring substantive enhancements in security and demonstrate to skeptics that the government is serious in deterring illegal entry into the United States.

POLICY-MAKING AT DHS

The breakup of INS has in the main been a positive, but it is resulted in immigration agencies whose equities often collide due to their differing missions and budgets. For the first two years of DHS, these situations were managed on a somewhat ad hoc basis with engagement from DHS leadership and good personal relationships between CIS and BTS and its components. However, over the long haul, DHS needs a robust entity able to weigh immigration issues that have both an enforcement and service side, as most do. When dealing with external bodies, such as executive branch interagency policy meetings, the department should have a single policy to advocate, and not be placed in the position of having to send two dueling agendas to the same meeting.

The need for a department-level office for formulate department-wide immigration and visa policy is one of the most significant reasons I hope and expect that DHS will establish a robust policy and planning office that will be the heart of long term strategic thinking about homeland security issues. The current structure of DHS has only a small and non-publicized policy arm reporting to the Secretary, although it has been staffed by many excellent public servants. My former policy office situated in BTS has more staff, visibility and official responsibilities but lacked authority to force coordination between BTS agencies and other parts of the department such as CIS, the Coast Guard and the Science and Technology Directorate. And very little policy development has been incorporated into long-term budgeting or strategic planning.

The obvious solution to this shortcoming is a robust policy and planning office operating under expansive authority of the Secretary to resolve disputes between parts of the department, to identify departmental budget and policy priorities, and to integrate interaction with foreign governments and international organizations into policy development. Many commentators have associated this concept with the “DHS 2.0” paper authored by the Heritage Foundation and CSIS in 2004, but for those of us who labored under difficult resource and structural limitations after the creation of DHS, this office was a “no-brainer” from the start. I believe I speak for the entire former leadership team – including Secretary Ridge and Deputy Secretary Loy – in this regard and am extremely hopeful that this new office will emerge soon from Secretary Chertoff’s “Second Stage Review” underway to develop improved structures and clear priorities for DHS.

CONCLUSION

As you can see, DHS has both the structure and the will necessary to effect significant positive changes to the immigration system. We have made a great deal of progress in a span of less than two years, and I firmly believe that we are well on the way to “fixing” a broken immigration system. Building an immigration system based on the principals of “deter and reward” will bring us the secure and effective border our economy needs and security demands.

I congratulate the Committee and Subcommittee for its continued cooperation with and oversight of DHS and its component agencies. I thank you for the opportunity to appear before you today and look forward to your questions.