

# IMMIGRATION POLICY: AN OVERVIEW

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HEARING  
BEFORE THE  
SUBCOMMITTEE ON IMMIGRATION  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE  
11  
ONE HUNDRED SEVENTH CONGRESS

FIRST SESSION

APRIL 4, 2001

**Serial No. J-107-12**

Printed for the use of the Committee on the Judiciary



U.S. GOVERNMENT PRINTING OFFICE

77-276 DTP

WASHINGTON : 2002

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For sale by the Superintendent of Documents, U.S. Government Printing Office  
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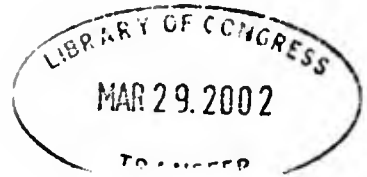
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# **IMMIGRATION POLICY: AN OVERVIEW**

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**WEDNESDAY, APRIL 4, 2001**

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

The Subcommittee met, pursuant to notice, at 2:04 p.m., in room SD-226, Dirksen Senate Office Building, Hon. Sam Brownback, Chairman of the Subcommittee, presiding.

## **OPENING STATEMENT OF HON. SAM BROWNBACK, A U.S. SENATOR FROM THE STATE OF KANSAS**

Present: Senators Brownback and Durbin.

Chairman BROWNBACK. I will call the hearing to order. Thank you all for being here today. I want to welcome all of you to this hearing on Immigration Policy: An Overview.

This will be, I hope, an informative hearing for members of the Subcommittee and members of the Senate, in general, for information, a number of whom I hope will be coming to the hearing today.

I would like to make a few opening remarks. Then if any members show up before we go into the panel discussion, I will turn to them for opening remarks, and if not we will proceed on to the panel. I understand one of our panel witnesses is still in transit from the airport, but will be here shortly.

America is a nation of immigrants. That is what Ronald Reagan reminded us of in his first address to the Nation. President Reagan saw a vision and always envisioned America as a shining city on a hill, and in his mind it was a city that teemed with people of all kinds living in peace and in harmony. Then he said, "And if this city has walls, the walls have doors, and the doors are open to those with the energy and the will and the heart to get in. That is the way I saw it, that is the way I see it." And that is the way I see it, too.

America's greatest strength remains in its openness to new ideas and new people. That openness explains why the United States is powerful, influential, and growing. Nicolas Eberstadt, a demographer at the American Enterprise Institute, wrote recently that "America's demographic prospects would seem to support, or even enhance, U.S. global influence in the years ahead." The reason? Immigration. He points out that while other developed countries will, on balance, shrink by 15 percent between now and 2050, the United States will grow by 40 percent, remaining the third largest country in the world, behind India and China.

But more than numbers, legal immigration brings energy, vitality and innovation. An Alexis de Tocqueville Institution study by Phil Peters showed that immigrants create or co-invent one in five U.S. patents. Twelve percent of the Inc. 500, America's fastest growing private companies, were started by immigrant entrepreneurs.

To harness the energy and vitality of immigrants, we need to improve our current immigration system. As the new Chairman of this Subcommittee, I look forward to working with my distinguished ranking member, Senator Kennedy, with Senator Durbin and others, many of whom have had years of experience on these important issues, as well as all of my colleagues on both sides of the aisle on this important topic.

As chairman, I will work with the administration and my colleagues on legislation to produce fundamental reform of the Immigration and Naturalization Service, the INS. Such reform is sorely needed. I want to thank, in particular, Senator Feinstein for her leadership on addressing immigration processing backlogs in last year's H-1B legislation.

I might just note parenthetically that in my own State office work, constituent services work back home, the INS is the second leading problem set of cases that I deal with, and not in a pleasant way frequently. It is very difficult, time-consuming, problematic issues that they raise and that we have to deal with. So I am looking forward to that change in the way INS does work.

I think all of us realize that there is more work ahead. To address the inordinate delays at INS, I support President Bush's proposal to require INS to process immigration and naturalization applications within 180 days and temporary visas within 30 days. I hope that once those deadlines are achieved we can work to get the Department of Labor and INS process applications in even less time.

There is work to do in other areas as well. Some estimate that nearly half of the labor in American agriculture may not be working legally in the United States. If that is indeed the case, then something is broken. Growers, farm workers, Republicans and Democrats have been working, and should keep working toward legislation that meets the needs of farmers, farm workers, and the American economy.

In an area of particular interest to me, we must also look at the need to attract more people to rural areas of our country, particularly in rural areas that are depopulating, and to help residents of rural areas find the medical personnel that they need to receive proper health care.

I plan to work closely with the administration in three important foreign policy areas. First, I am heartened by the recent meeting between President Bush and Mexican President Vicente Fox. This morning, Senator Kennedy and I met with the Foreign Minister of Mexico on the issue of establishing a more orderly migration process between the United States and Mexico.

Second, under the prior administration, U.S. refugee admissions fell by 40 percent from the last year of President George Bush's administration. I will press the new administration to reverse that unfortunate trend to ensure that America is providing a safe haven

for victims of persecution in line with our tradition as a generous, compassionate nation.

Third, I look forward to working with the administration to implement fully the sex trafficking bill that Congress passed last year to deal with the victimization of women around the world.

At the turn of the century, critics said that Italians and East Europeans would never become Americans. Today, the same arguments are made against Latinos, Asians, and other immigrants. Behind the rhetoric, the critics' arguments boil down to this: Immigrants aren't good enough to join us and America is not strong enough to absorb them. History teaches us that nothing could be more wrong.

When the Pilgrims set out for America, they sought a land where they could work hard, pray in peace, and enjoy the fruits of their labors. Nearly 400 years later, the same can be said of today's immigrants. America will prosper with policies that encourage legal and orderly migration, and provide timely service to those who play by the rules and seek to join us as fellow Americans. America is best when we appeal to the hope in men's hearts rather than the fear in men's eyes.

These are the sorts of policy tones and issues that I hope to raise in this Subcommittee during the 2 years chairing this Subcommittee, and possibly more in the future. This is the first of many hearings that we will hold on topics regarding immigration as we hope to move major legislation, some of which I have identified here.

I look forward to working with many of you who are here today and interested in this topic, and certainly with the panelists who are here and certainly with the members who are on the dais or are soon to be here.

Let me, before we proceed to the panel, ask Senator Durbin if he has any opening comments that he would like to make.

**STATEMENT OF HON. RICHARD J. DURBIN, A U.S. SENATOR  
FROM THE STATE OF ILLINOIS**

Senator DURBIN. Thank you very much, Mr. Chairman. I am glad to be with you at the first meeting of this important Subcommittee. I think immigration has always been a timely topic in America. It is certainly timely in the year 2001.

A few steps away from this hearing room is my office in the Dirksen Building and I have on display there a number of things that mean a lot to me personally, but I think one of the most valued objects in that office is my mother's naturalization certificate. She came to this country at the age of 2 from Lithuania. Her mother brought her over with her brother and sister.

It is interesting to note that my grandmother only spoke a few words of English and never really learned the language. My mother spoke Lithuanian and English, and I can't speak very many words in Lithuanian. I think that is the story of American immigration and what happens to successive generations.

It always has meant a lot to me that at one time in the history of the United States that my family had an opportunity to come here, and I like to think that our family, my brothers and I and all of our kids and grandkids, have paid back that favor from a Nation that opened its arms to people to come from overseas.

In my office in Chicago, I would say that 75 percent of our case work relates to immigration; it is overwhelming. There are times when I am on the phone to the INS calling every possible level to try to get them to blast through and either make a decision or make the right decision, and some of these cases are heart-breaking. The laws that we have written out here are not in touch with reality in terms of many of the people who are here in the United States who are making a great contribution and can make a great contribution.

In the last session of Congress, I was the sponsor of something known as the NACARA Parity Act—some of you who know this subject are familiar with it—to create an equal opportunity for Central American and Haitian nationals in the United States to adjust their status. We give that opportunity to some, to those who come from Cuba and Nicaragua. We don't offer it to others. We ought to have a consistent ethic when it comes to this question.

If we are going to have compassion for victims of totalitarianism, does it make that much of a difference whether their oppressor is Cuban or Nicaraguan or Haitian or Guatemalan? Think of it in terms of the victims who are coming here and asking for a chance to be part of America.

The defeat of our legislation last year does not discourage me. I think there is a lot more that we can do. I think we need to address questions or due process in immigration, and I know the panel will address them. Two laws we enacted in 1996 have had serious negative consequences for a lot of innocent people.

The Illegal Immigration Reform and Immigrant Responsibility Act and the Antiterrorism and Effective Death Penalty Act certainly have high-sounding names, and I think that is why a number of people voted for them, but unfortunately their consequences are not that inspiring—mandatory detention of people when detention makes absolutely no sense at all, retroactive application of grounds of removal, an overly broad definition of aggravated felony, the effective elimination of administrative and judicial review for immigrants in removal proceedings.

Last year, the House of Representatives passed bipartisan legislation that started to undo some of the inequities in this law, but it never moved in the Senate. I hope that with the help of this Subcommittee, Chairman Brownback, Senator Kennedy, and others, we can make a change.

I also have to tell you that the backlogs in adjudication at INS are just heart-breaking when you look at the actual consequences on a lot of families. We just can't allow these cases to stack up and ignore the pain that we are causing to a lot of people who are doing their best to follow the laws in our country. I-know Senator Feinstein is proposing to spend some more money in this area, in INS services, and I certainly support her on the appropriations committees.

Another area of difficulty is the inadequacy of immigration preference systems to meet the needs of our constituents and their loved ones. Too few numbers are available in the family preference system to permit U.S. citizens and permanent residents to reunite with their loved ones in a timely manner. I think we should address that.



Finally, Mr. Chairman, I have been deeply troubled by reports I have received of children, some of them high school valedictorians, who were brought to the United States by their parents or others through no choice of their own as babies and infants, have lived all of their lives in the United States, but who are undocumented and cannot continue their lives or education once they graduate from high school. Indeed, instead of being able to continue their education, they face deportation.

I know this one personally: a young lady who is a high school senior in the city of Chicago who is considered a musical prodigy who wanted an opportunity to apply to Juilliard and was offered a scholarship so long as she completed the application, and came to realize for the first time in her life she was not a legal citizen in the United States. Her recourse: go to Korea, where she has never been, and live her life there. I believe our Nation can do better than this.

I hope the Subcommittee will work with me to address these questions, and I hope that we will have a positive attitude toward immigration. I believe we should say with pride that America is a Nation of immigrants. As I travel across my State, and certainly in the city of Chicago I meet some of the most inspiring stories you can imagine, particularly when I talk to cab drivers.

I always ask cab drivers in Chicago, "where are you from?" Well, most of them are from Nigeria, but those who are not are from all over the world, people with medical degrees and engineering degrees who are hacking cabs for a chance to be part of America, who listen to Public Radio night and day just like they did back home, who really know more about politics than most people who can vote, and many of them can't, who just want a part of this dream. That is what this Subcommittee is all about.

Thanks, Mr. Chairman.

Chairman BROWNBACK. Thank you for the eloquent statement.

Our first panel consists of Warren Leiden and Stephen Moore. Warren is a partner in a San Francisco law firm that does corporate immigration law. He has been involved in the immigration field since 1980. Mr. Leiden is a member of the Board of Governors of the American Immigration Lawyers Association and is a recognized expert on employment-based and other immigration matters.

Our next witness on this panel is Stephen Moore, an old friend of mine, a Senior Fellow at the Cato Institute. He is an economist with a special focus on immigration. He is the author of two recent studies on the fiscal impact of immigration, the most recent being "A Fiscal Portrait of the Newest American." He has coauthored a book on the same subject, called *Still an Open Door: U.S. Immigration Policy and the American Economy*.

Gentlemen, thank you for being here. This is the first hearing that I have hosted and chaired as Subcommittee chairman. It is a scene-setter hearing and I hope you will oblige us with your testimony of being kind of a scene-setter for what the immigration picture is in America and what you hope it will be.

Mr. Leiden?

**STATEMENT OF WARREN R. LEIDEN, BERRY, APPLEMAN AND LEIDEN, ON BEHALF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION, SAN FRANCISCO, CALIFORNIA**

Mr. LEIDEN. Thank you, Mr. Chairman and distinguished members of the Subcommittee. I want to thank you for the opportunity to participate today in this overview of immigration policy.

U.S. immigration policy is unique in that it is based on written law and statutory criteria, different than any other country in the world. It is highly regulated, it has strict numerical limits, and it has bright-line rules, some of which are very unforgiving.

There are three main types of immigration: family sponsored, employment-based, and refugee and asylum protection. While all three remain relevant as the main pillars of our immigration policy, the structure of each of these is out of date, and I would suggest overly restrictive.

We need modernization in our immigration policies, and I think you can see this in the fact that in every one of the three areas it is overly complicated, we have substantial backlogs, and they are subject to a patchwork of restrictions that were imposed over the last 20 years that sometimes are contradictory. All three areas will need a review of numerical limitations and they are ripe for streamlining and simplification.

Family sponsored immigration provides for the immigration of the spouses and minor children of U.S. citizens and lawful permanent residents, as well as the adult children and siblings of U.S. citizens only. Let me use an example of a situation very common in family immigration.

The spouse and minor child of the lawful permanent resident has a quota limit now. This is the spouse of a lawful permanent resident. The quota limit requires a wait of at least 4 years before they can file their adjustment application. So it poses so many families with the terrible choice of do you obey the immigration law or do you keep your family together?

Even after they finally reach the point where they can file their green card application, the adjustment process, the final stage to get the green card, is taking more than a year or more than 2 years. You get an employment authorization card at that point, but it is only granted for 1 year, so almost everyone has to file a renewal and then file a renewal. It is a good example of an area where we don't have a policy that is matching the reality.

By definition, these children are under 21, but if they are close to 21 there is a race for the approval because if they final approval isn't granted before the child turns 21, they drop out of that category and they go to a new category with a much longer wait. The INS has done a lot to try to expedite these cases, but they do slip through the cracks. I have seen them in my own office. Good intentions, but if you don't have the approval by the 21st birthday, you are just out of luck and there is no way to get around it. In each and every one of the family categories, there is a substantial backlog, ranging from as little as a year to as much as 10 years and more.

On the employment-based side, employment-based immigration covers persons of extraordinary ability who can actually petition for

themselves, as well as employer-sponsored cases for managers, executive, professionals, skilled workers, and other essential workers.

For professional-level people and above, they can come and begin work on a non-immigrant visa, such as an H-1 or an L-1 visa. However, skilled workers and other essential workers don't have any similar non-immigrant visa, other than very short-term visas for seasonal work or agricultural work. It is a big problem in employment-based law for skilled workers and their employers, and for other essential workers.

Labor certification has been substantially streamlined by the Labor Department. However, there are tens of thousands of cases that have been backlogged and awaiting adjudication for 3, 4 and 5 years. The employment-based petition, which is the second stage of an employment-based case, the petition to the Immigration Service, is not adjudicated on a first-in/first-out basis, so that you will have some cases that are approved in 90 days, some that have been sitting for 18 months unapproved.

Now, in most cases those two workers tend to be sitting right next to each other, so that they are very aware of the disparity between their cases. This causes, of course, anxiety. It lowers morale. And they also have the age-out problem. If they have minor children, again, who are approaching 21 years old, they could lose their ability of their child to stay with the family when they turn 21. There, the adjustment is the same as for the family side; it is taking more than a year or two, and the same problems with the employment authorization document.

We only see backlogs at present on the employment-based side in India and China; that is, persons born in India, persons born in China. And laws passed last year are beginning to alleviate that, at least temporarily, but this is somewhat of an illusion. If the Immigration Service were adjudicating cases at the rate that they are receiving them, our estimate is that they would run out of visas in all the employment-based categories and we would see backlogs for every single nationality in employment-based. So there is something waiting out there to happen.

In the asylum area, I just want to say a few words. We do need to come to grips with the 1996 restrictions. The expedited removal provisions that provide for exclusion without a hearing and the mandatory detention requirements do allow for special treatment for asylum seekers if they are properly identified.

Unfortunately, things being what they are, there have been numerous cases where individuals had to stay in detention for months, if not years, at a time before their case was approved and they are recognized as a bona fide refugee. You have to think that people were sent him to persecution, or worse, because of the failures of the expedited removal procedures.

There is also a 1-year time limit on asylum applications, meaning that no matter how good your claim, if you don't come forward within a year of admission to make your asylum claim, you won't get protection in the United States. This is particularly troubling for people who have experienced torture, who have seen grisly scenes or murder happen to their family members. Frankly, a lot of refugees don't want to revisit those issues for a long time, so it takes a lot to come forward. Putting that arbitrary 1-year limit on

it unfortunately again denies protection to people who really deserve it.

Finally, we only have 10,000 slots for permanent residents for asylum seekers who have been granted asylum. There is a growing backlog now because the Immigration Service and the immigration judges are approving more than 5,000 cases a year. So every year, the backlog gets longer, the backlog gets longer.

Again, these don't seem to be taken on a first-in/first-out basis either, so that persons granted asylum 4 or 5 years ago really don't know when they are going to get permanent residence. They have work authorizations, they can remain in the country lawfully, but they don't know when they can begin their citizenship track and they are subject to the other disabilities that persons who don't have lawful permanent residence yet are subject to.

There are just a myriad of restrictions, catches, and disqualifications that are contained in the law. I am not going to detail them, although I have attached to my testimony a series of administrative actions for improvements that the agencies could actually go forward with without statutory action, and I would think that your Subcommittee would do well to encourage the agencies to do so.

In concluding, I want to say that it appears that we are going to have forced on us a reexamination of the legal immigration limit, the levels, as well as the categories, because of the lengthy family quota backlogs, because employment-based immigration will soon run out of visas and start having backlogs, and finally because the H-1B cap which was increased last year will run out in 2003, only less than 3 years from now.

All those things put us on a course to review legal immigration. This will also be an opportunity to really look at how we can streamline and simplify the overall policy to really modernize it and make it worthy of America in the 21st century. The American Immigration Lawyers Association and others are eager to work with you and the Subcommittee to accomplish this and it will be very good work for us all.

Thank you for the opportunity to testify and I am happy to answer any questions.

[The prepared statement and an attachment of Mr. Leiden follow:]

STATEMENT OF WARREN R. LEIDEN, BERRY, APPLEMAN & LEIDEN LLP, ON BEHALF OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Mr. Chairman and Distinguished Members of the Subcommittee:

My name is Warren R. Leiden, and I am a partner in the San Francisco office of Berry, Appleman & Leiden LLP, a national law firm concentrating in corporate immigration law. I appear today as an observer and participant in the development of U.S. immigration policy for over twenty years and on behalf of the American Immigration Lawyers Association (AILA). AILA is the national bar association of over 6,000 attorneys and law professors who represent the entire spectrum of applicants for immigration adjudications.

I appreciate this opportunity to present our views on current U.S. immigration policy and I hope to provide some useful guidance on issues and concerns worthy of the committee's attention.

## OVERVIEW OF U.S. IMMIGRATION ADJUDICATIONS PROGRAMS

## VALUES EMBODIED IN U.S. IMMIGRATION POLICY

U.S. immigration policy is based on a number of values that relate to the core social and economic principles on which our nation was founded. These values are complementary and interweave to create the rich fabric that is beneficial to all Americans. Among the most important values are—

- The unification of American families;
- Employment related immigration to keep America strong in a global economy;
- Asylum protection for refugees fleeing persecution;
- Naturalization based on allegiance to the principles contained in our Constitution and laws;
- Immigration policy that is implemented through a well-regulated system based on law, with fair, uniform, and predictable requirements.

Based on these values, U.S. immigration policy is built of three main pillars—family-sponsored immigration, employment-based immigration, and protection for refugees and asylum seekers. These three areas continue to have primary relevance in the new century, but all three have policy structures that are overly restricted and out of date. Despite the significant efforts of many good people in government service, each of these three areas has become overly complicated, substantially back-logged, and unnecessarily hampered by a patchwork of rigid limitations and sometimes-contradictory restrictions.

The current situation calls out for change in the direction of modernizing our immigration policy, both in terms of numerical limits and in the direction of streamlining and simplifying, to the benefit of all Americans.

## FAMILY UNIFICATION THROUGH FAMILY-SPONSORED IMMIGRATION

The goal of family unification and re-unification has long been a primary value in U.S. immigration policy. Respect for “the family” is deeply embedded in our national character, and families are recognized as our most important and primary social unit.

Current law and policy gives special attention to the unification of the immediate relatives (spouses and minor children) of U.S. citizens. No fixed quota limits their numbers, and thus they are eligible for immediate immigration, although processing delays has made this much slower than “immediate immigration” might suggest.

Family-sponsored immigration also includes the spouses and children of lawful permanent residents (“green card” holders) and the adult children and siblings of U.S. citizens. However, each of these categories is subject to a preference quota that limits and delays immigration. All of the family-sponsored preference categories are back-logged at least two years, and some are back-logged ten years or more—these are not processing delays, this is the waiting time before processing can begin.

Most family-sponsored immigration is accomplished in two steps: first the U.S. citizen or permanent resident files a petition to qualify the spouse or child, and then (when the quota number is reached) the spouse or child files an application with the INS or an overseas U.S. consulate to obtain immigrant status.

U.S. citizen spouses and minor children are permitted to file the petition and application concurrently, since there is no wait for the quota, but the spouses and children of lawful permanent residents must wait for a quota number, with the current minimum wait of over four years. For the immediate families of lawful permanent residents this raises the terrible choice of whether to obey the immigration laws and separate their family for several years or keep their family intact in violation of the law. Adult children and siblings of U.S. citizens are also subject to quotas, which vary from two to well over ten years.

Preference quotas for family immigration haven’t been increased since 1990, although the demand for family unification has grown. Congress would do well to reconsider whether there should be a quota at all on the immediate family of lawful permanent residents and to consider generally right-sizing the family immigration quotas to better meet demand and promote unification.

These preference category quotas are complicated by additional “per-country” limits, which are based on the birthplace of the immigrant. A legacy of the “national origin” quotas that were abolished in 1965, the per-country limits extend some of the preference category quotas to twice as long a wait. While waiting for the quota to file their application for permanent residence, some minor child “age-out” when they turn 21 years old, which shifts them to preference categories with much longer waiting periods. For instance, if a child of lawful permanent resident ages-out of the minor child category, the quota wait increases by almost three years.

The age-out problem can also arise after the green card application has been filed. Approval of such adjustment of status applications can take two years or more due to processing delays, and if the minor child turns 21 before the application is approved, he or she loses out and has to get back in line in a different preference category. To its credit, the INS has instituted special handling procedures that catch many of these cases, but all it takes is one slip-up and the application becomes void. Furthermore, these special handling procedures take additional resources that can further delay the processing of other cases. A simple change in the law could eliminate this problem entirely, but the present situation is very unforgiving.

Yet another problem arises after the "green card" application is filed. This is because the Employment Authorization Document (EAD) is granted for only one year, despite the fact that the process will take more than one or two years. Moreover, there is no credit for timely filing of the renewal, if the immigrant doesn't have the new EAD in hand, they can't lawfully work. As a result, pending green card applicants must file to renew their employment authorization almost every six to nine months. The solution here is simple—grant EADs to adjustment applicants for the duration of their adjudication or at least two years, and provide a 240 day grace period if the renewal is filed on time. This would take all the time pressure off the INS and the applicants, and would relieve some real hardship.

Still another area needing review is the inability of immediate relatives to immigrate with their minor children. Although an adult U.S. citizen may sponsor his or her parents, their minor children (the siblings of the U.S. citizen) cannot immigrate with them, with the consequence that families may be separated for years. Such a situation suggests the need for a change in the law.

Other initiatives central to family reunification also call for legislative action. A key to family unification is the permanent restoration of Section 245(i). Section 245(i), which has been extended to April 30, 2001, allows certain groups of eligible people to obtain their immigrant visas in the United States, so long as eligibility criteria are satisfied. A permanent restoration would allow immigrants on the brink of becoming permanent residents to remain in the U.S. while the INS processes their applications. The restoration of Section 245(i) would allow families to stay together and provide revenue to the INS. Without 245(i), for example, people can face the possibility of up to a 10-year separation from their families due to the bars to reentry.

These bars to reentry were enacted in 1996. People who have been unlawfully present in the U.S. for six months or longer are barred from reentering the U.S. for three years or ten years. Now with five years of actual experience with the bars in effect, we can conclude the bars have not fulfilled their intended purpose of serving as a deterrent to people overstaying their visas. Rather they have become simply an unforgiving punishment that does not fit the violation and whose main result is to divide and separate families, and force people underground. The law provides only very limited waivers and exceptions to the three and ten year bars, and no waiver for the permanent bar until after ten years. Repeal or substantial revision of these bars should take place in addition to a permanent restoration of Section 245(i).

Under the 1996 laws, new grounds of inadmissibility were created and waivers were severely restricted. Some of the permanent bars to admission allow for no review and no waiver, regardless of any mitigating facts. The general policy of creating broad grounds of inadmissibility with no opportunity for relief needs to be reconsidered. The agencies need the authority to exercise discretion to take into account actual circumstances including innocent intent, family ties in the United States, or other humanitarian considerations.

The affidavit of support is another provision of the 1996 immigration laws that needs to be reformed to promote family reunification. All family members sponsoring relatives for immigration must complete a legally binding affidavit of support. In many cases, overly strict interpretations of the requirements have needlessly limited the ability of families to be reunited. It is important to restore broad discretion in affidavit of support requirements to INS and consular officials. The INS and consulates need the discretion to consider broader evidence in meeting the threshold public charge minimum requirements, including job offers of applicants. In addition, the INS needs to reconsider the age and residency requirement in the affidavit of support. Furthermore, the present requirements place an unfair burden on a widow-beneficiary of a restored spousal petition after the death of the petitioner. In such a case, the adjustment or immigrant visa application could be denied because the petitioner is no longer able to sign the affidavit of support. The law should be changed so that in a case involving the death or mental incapacity of the petitioner, an alternative affiant may be considered.

## EMPLOYMENT-BASED IMMIGRATION

Employment-based immigration has historically served several goals. In the increasingly global economy, it helps keep America competitive by attracting some of the best and the brightest, and international personnel are essential to developing products that will appeal to other countries and societies. Employment-based immigration also permits the supplementation of the U.S. workforce at many levels, with protections for the U.S. labor market, its opportunities, wages, and working conditions.

Employment-based immigration is comprised of two types—limited nonimmigrant stays and employment-based permanent residence.

## EMPLOYMENT-BASED NONIMMIGRANTS

For professionals, multinational managers and executives, and certain other occupations, there are a number of nonimmigrant categories that permit lawful stays and employment in the U.S. The H-1B program for "specialty occupations" is the most widely used and best known. The subject of legislation in 1998 and 2000, the H-1B program has the agencies struggling to keep it workable for employers in the real world.

The H-1B process begins with the submission of a Labor Condition Attestation (LCA) to the Labor Department, by which the employer promises to meet certain wage, working conditions, employment, and notice standards. The Labor Department is required by statute to "approve" the LCA within seven days. The employer then files a petition with the INS, which cannot be approved without the approved LCA. For employees new to the H-1B program, employment cannot begin until the petition is approved by INS.

Unfortunately, in attempting to comply with the new laws, the Labor Department doubled the length of the LCA form in January, and has had great difficulty making its automated receipt and approval process work. The regular time for routine LCA approval grew to three to four weeks in February, but for some weeks, up to eighty percent of the LCAs had to be re-filed due to government operations problems. Add to this the INS processing time of two to three months, and the entire H-1B processing time grows to three to four months. Needless to say, employers have great difficulty in keeping up with their business needs when new personnel cannot begin work for three or four months.

The H-1B program was also the subject of massive and controversial "interim final" regulations that were published in December 2000 and effective on January 19, 2001. Employers were dismayed that some of the most difficult new requirements for "non-dependent" employers were never published as proposed regulations for public comment before becoming effective, or appeared to far exceed the spirit and the letter of the statutory law. Equally troubling was the imposition of complicated new requirements that will require substantial changes in the way that business is done and records are kept, by large national corporations and small businesses alike, without any education period or guidance from the Labor Department to help employers come into compliance.

Similar problems with Labor Department H-1B regulations necessitated corrective legislation in 1991 and a federal court injunction in 1997. While many had hoped that these extreme remedies would not be necessary after the 2000 legislation, it does not appear that the lessons of the past have yet been learned. The public was granted an extension of the comment period to April 19, 2001, and it is hoped that the Department will now take measures that will obviate the need for litigation or corrective legislation.

The 2000 Act that increased H-1B nonimmigrant numbers will expire in 2003, in the middle of the next Congress. Unless extended, the expiration of 2000 Act will allow the H-1B cap to revert to its 1990 level, which is less than half of current usage. Thus, it will not be long before the committee will need to address a continuation of the H-1B program that was refined in 2000.

A common complaint of nonimmigrants and their employers is that nonimmigrant spouses are not granted work authorization as an incidence of their dependent visa. This is particularly true for intra-company transferees, many of whom have spouses who were employed prior to their transfer to the U.S., but who now cannot accept any type of employment unless they separately qualify for a principal nonimmigrant work visa. In the modern era, in which both spouses of a family often expect to work, this is a policy that needs to be rectified for each relevant nonimmigrant category.

Employees who qualify can stay lawfully in the U.S. and work as nonimmigrants while completing the employment-based permanent residence ("green card") process. At the professional and managerial level, almost all beneficiaries (employees) are in

fact lawfully employed as nonimmigrants by the petitioning employer during the green card process, because they can qualify for H, L, E, or other nonimmigrant visas. It is necessary to employ the nonimmigrant visas because the permanent residence process can take several years to accomplish. Unfortunately, there is no lawful nonimmigrant work status for skilled or other essential workers (other than for seasonal work such as at resorts), and thus they do not have a legitimate way of being employed in the U.S. during the lengthy green card process. This is a serious problem that undermines the integrity of the employment-based immigrant program and deserves close attention from the committee.

#### EMPLOYMENT-BASED IMMIGRATION FOR PERMANENT RESIDENCE

Current immigration laws provide for several categories of employment-based immigrants, including persons of "extraordinary ability" and those petitioned by a U.S. employer for employment as a researcher, manager, executive, professional, skilled or other essential worker.

In most cases, the employment-based immigrant process has three steps: labor certification, immigrant petition, and adjustment of status application (or immigrant visa application to a U.S. consulate overseas).

Labor certification is the Department of Labor's approval of the employer's labor market test as a condition to petitioning for an immigrant employee. The employer applies by precisely reporting the job, wages offered, job requirements, recruitment efforts, and the results of recruitment. Since the introduction of streamlined procedures in 1996, the labor certification program has seen tremendous improvements; petitions can take as little as two or three months for "historically certifiable" occupations. On the other hand, applications that are not eligible for the streamlined procedures remain unapproved for two years or more.

Critics of employment-based immigration deride the labor certification process, although they suggest no workable alternative. Supporters of the program would prefer a system that reflected employers' real world practices rather than the artificial, after-the-fact labor market test that is now required. In overhauling the labor certification program, it is possible that an attestation process could be the path to a more workable and effective approach.

Upon the approval of the labor certification, the employer files the employment-based immigrant petition with the INS. Although virtually pro forma in many cases, the INS has an uneven record on petition approvals. Among similar petitions, some are approved in two or three months, some remain unadjudicated 18 months later or more. The public has a very difficult time understanding these anomalies, and employers have urged the INS to adopt a "first in, first out" approach to processing immigrant petitions.

Once the immigrant petition is approved, the employee may file the adjustment application, assuming that the quota eligibility is reached. Adjudication of adjustment applications, the end of the green card process, has been a serious problem for the INS. After a virtual freeze on adjustment adjudications in 1999 and 2000, applications are once again being adjudicated. However, waits of two years for the decision are not uncommon.

Due to the low adjudication levels at INS, the number of employment-based immigrant visas issued has been far below the current quota levels set in 1990. At the same time, the immigration of persons born in China and India was delayed by up to two or three years due to the per-country limits, despite the fact that tens of thousands of employment-based visas were going unused. This particular problem was addressed in the 2000 Act, and we are already beginning to see some relief for China and India born applicants.

The availability of employment-based immigrant visas is not expected to last. The 1990 immigrant visa levels simply don't match the levels of employment-based non-immigrants and their dependents. Put simply, if INS were approving employment-based green cards at the rate that applications are being filed, we would have backlogs for all nationalities, not just India and China. Once the INS picks up the pace of adjudications, we will run out of employment-based immigrant numbers. This inevitability will need to be addressed in the near future, perhaps in this Congress, if the INS is able to improve its adjudication volume.

When the principal immigrant files the adjustment of status application, it is normally accompanied by concurrent applications for the EAD and travel permission (advance parole). The INS is required by regulation to provide the EAD within 90 days, and it is usually made available at just that point. Unfortunately, as with family-sponsored cases, the EAD is only granted for one year, although the adjustment process almost always takes longer. And since there is no grace period while INS adjudicates the renewal, applicants are obligated to file the renewal almost six



months before the expiration. As a result, applicants must file for renewal of their EAD only months after the first EAD is approved. As noted above, this situation could be remedied easily by changing the EAD duration or allowing for a grace period.

#### DIVERSITY VISA LOTTERY PROGRAM

Our immigration law also provides for a visa lottery that allots 55,000 visas per year to nationals of countries with low "sending" levels (of immigrants to the U.S.) that are located in "low sending" regions. The program is promoted to encourage diversity in legal immigration.

#### ASYLUM FROM PERSECUTION

America has long stood as a beacon and haven to refugees seeking protection from persecution in other countries. Americans have respected this principle since the earliest days of our nation, and the obligation to protect refugees has been codified in international law through treaties and protocols. Our current asylum laws were enacted in 1980, and substantially restricted in 1996.

Generally, persons fleeing persecution apply for asylum at a port of entry upon arrival or after they have been in the U.S. for a period of time. One year after a grant of asylum by the INS or an Immigration Judge, the individual is permitted to apply for adjustment to permanent residence. Numerous studies have examined and confirmed the difficulty that many refugees have coming forward to speak about their persecution, particularly if they have been subject to torture or witnessed grisly acts or killings.

When Congress enacted the provisions for "expedited removal" (exclusion without hearing) at the ports of entry and the requirement of mandatory detention, there was an attempt to permit asylum seekers to avoid expedited removal and detention. Regrettably, the well-intentioned protection procedures have not been adequate to prevent the incarceration of bona fide refugees who, sometimes after many months on incarceration, are finally recognized as worthy of asylum protection. For individuals who make it into the U.S. and are not incarcerated, there remains the new provision that requires that the asylum application must be filed within one year of entry, or it will not be entertained, regardless of the merits of the asylum claim.

The 1996 law also lowered the number of asylum grantees who could be granted permanent residence to 5000 persons per year. Since approvals of asylum applications are much higher than this, the backlog of asylees seeking permanent residence grows larger every year. Without permanent residence, these refugees have not yet really been accepted in American society, and they are not permitted to begin acquiring the required years of residence to qualify for naturalization.

The draconian provisions enacted in 1996 were a reflection of certain perceptions of the time, but experience has shown that these restrictions have caused more hardship to refugees and done more harm to our national principles than the perceived problems they were supposed to address. Now five years later, the committee would do well to review the effectiveness and the harm caused by these provisions and make recommendations for their amendment or elimination.

#### NATURALIZATION

Another value long held by Americans is that newcomers who subscribe to our principles and the U.S. Constitution should be able to become citizens without great difficulty. This approach is in sharp contrast to many other countries that look only to the parents to determine citizenship ("blood") or that have very lengthy, difficult and subjective naturalization procedures.

A major focus of the INS in the past decade, naturalization is very popular among permanent residents and the numbers of naturalized citizens has increased significantly. These increased numbers are in spite of the fact that naturalization is "hard to get started" (according to many would-be applicants) and takes a significant amount of time to complete.

#### AGENCIES ADJUDICATING IMMIGRATION PETITIONS AND APPLICATIONS

In its ideal form, the U.S. immigration process is a system of laws and objective requirements, in contrast to so many countries where immigration procedures are unwritten and qualifying criteria are uncertain or largely subjective.

Unfortunately, the actual practice can lag far behind these important ideals. Although great strides have been made in some areas, the responsible government agencies have not yet achieved the uniformity, predictability, or timeliness that the public expects and deserves in the adjudication of applications and petitions. The

adjudication of immigration benefits is ultimately a "service" enterprise, but not all levels of agency management understand this. All too often, the outcome of an the application hinges on the particular region it is filed in and the particular examiner who processes the case. This is particularly noticeable to national employers who petition for similar cases around the country and are forced daily to comply with "special" rules for each jurisdiction, although nation-wide law is being applied. Similarly, employers and their attorneys are too often dismayed by approvals and denials of almost identical petitions without an explanation.

Last year's legislation set out a number of guidelines for processing times that, if followed, would bring great improvements. In addition, the legislation authorized appropriations to supplement the funds already received from application fees of the examinations fee account. As the committee knows, immigration enforcement activities are supported by appropriations, while all INS adjudications are funded solely by user fees. Some appropriations for the adjudications function, if targeted and properly monitored, could provide the resources to the INS to develop the infrastructure needed to make substantial productivity gains in the future.

It is also likely that the committee will address the separation of the enforcement and adjudication functions of the INS. While all sides appear to agree that the functions need to be separated, it is important to recognize that the separation functions will need coordination and need to be accountable to a high level, single office with the authority to make decisions that are binding on both functions. While considering INS reorganization, Congress needs to ensure that adequate congressional appropriations are made available to adjudications to improve customer service and to offset the costs of those adjudications for which no fee is charged or from which funds are diverted.

There are several different proposals on this subject, and the language of the bill introduced last Congress in the Senate by the former chairman and ranking member of the subcommittee would make a good starting point for consideration.

Attached at the end is a brief list of recommended INS administration actions that would accomplish significant improvements for family and business petitioners and their immigrant beneficiaries, that could take place prior to any reorganization and that, in fact, would help ensure that any reorganization of the INS is successful.

#### CONCLUSION

U.S. immigration policy based admissions on three main pillars: family unification, employment, and protection of refugees. Our policies and laws in all three areas have become out of date as to numbers and purposes, and overly restricted by patchwork of accumulated amendments and rigid rules. The fact that all three areas are needlessly complicated and substantially backlogged points clearly to the need for streamlining and simplification to produce modern policies and procedures that will work long into the 21st Century.

Interested members of the public and their organizations are eager to work with the committee to develop up-to-date and smarter immigration policy and practices. Through its oversight responsibility, the committee needs to help guide the agencies to succeed in providing timely, predictable, affordable, and accurate adjudications. Through legislation, the committee will need to review our out-of-date quota limits for immigrant and nonimmigrant categories and raise them to meet America's interests in the 21st Century. In addition, the committee will need to look to new solutions and new categories to provide for lawful regulation of entry and work authorization for those our country needs.

Thank you again for this opportunity to testify on this important subject.

WARREN R. LEIDEN

Attachment

#### RECOMMENDED INS ADMINISTRATIVE ACTIONS

The following actions can be taken by INS without statutory change, and would provide significant improvements to both efficiency for the agency and outcomes for the public.

- *Re-institute concurrent filings of employment-based immigrant petitions and adjustments of status.* Prior to the advent of the INS Service Centers, all adjustment of status applications and immigrant visas petitions were filed at local district offices. When INS instituted the Service Centers, the agency initially transferred all processing of immigrant visa petitions to the service centers, but continued to require that adjustment of status applications be filed at the local offices. This requirement meant that employment-based immigrants had to wait until the Service Center had approved their immigrant visa petition until they

could file for adjustment of status at the local office, adding many months to the process, and delaying the time when they could file for employment authorization. For individuals whose nonimmigrant status was expiring, or children of applicants who were approaching 21, this delay often meant losing eligibility for adjustment and work authorization. Now that the INS has moved adjustment of status processing to the Service Centers as well, there is no need to continue to require separate filing of the petition and adjustment applications. Concurrent filing would eliminate the hardship caused to immigrants and their families from the delays and backlogs in processing immigrant visa petitions, preserve their work authorization and the eligibility of dependent children who might otherwise "age out."

- *Lengthen the validity period of Employment Authorization Documents and combine them with Advance Parole.* Current INS regulations allow applicants for adjustment of status to apply for work authorization. Regulations also prohibit adjustment applicants from traveling abroad without first obtaining permission from the INS (called Advance Parole). The vast majority of adjustment applicants apply for both of these documents concurrently with their adjustment applications. INS policy is to issue work authorization and advance parole only for one year. If the adjustment applications take longer than one year to process (which is the normal case), the applicant must reapply for both documents and pay additional fees. These applications further aggravate the INS workload, and are a nuisance for applicants. INS should provide work authorization and advance parole through the anticipated duration of the adjustment processing, and should combine these documents into one to minimize processing and backlog.
- *Allow individuals to travel outside the U.S. while extension or changes of status requests are pending.* Current INS policy and regulations are extremely ambiguous with regard to the status of applications for extension or change of status if the individual must travel abroad while the case is pending. In some circumstances the INS considers the petition "abandoned" and in others will process the case to conclusion, but require the individual to wait outside of the U.S. until the approval is issued, or file an additional application after entry to have the decision "apply" in their case. To avoid unnecessarily duplicative filings upon return to the U.S. of these individuals, INS should determine that such cases may continue while the beneficiary is temporarily abroad, and should state categorically that any decision reached after the return of the individual to change or extend their status is binding, regardless of any intervening departure.
- *Reduce the proliferation of resource-intensive Requests for Evidence (RFEs).* INS adjudicators are given wide latitude in interpreting the eligibility standards for immigrant and nonimmigrant visa categories, resulting in an increasing number of requests for evidence. INS customers receive wildly inconsistent adjudications and RFEs requesting documentation unrelated to any known standards in statute or regulation. In addition, each of these RFEs requires the examiner to take extra time to articulate the request, a supervisor's review, and resources to print and mail. It also requires additional time and resources to process and review the responses from the applicants/petitioners, a waste of valuable resources. By developing and publicizing clearly articulated standards for eligibility, the Service would improve consistency and reduce its workload.
- *Enforce a policy of not revisiting decisions already made in the absence of fraud or changed law or facts.* Currently, INS adjudicators are issuing RFEs and denials on such matters as extensions of status where there has been no change in the previously approved circumstances, wasting INS and public resources.
- *Provide for the issuance of EADs to fiancées with approval of the fiancée petition.* INS regulations provide that K-1 fiancées of U.S. citizens who enter the U.S. to get married are authorized to work incident to their status. However, the Service requires these individuals to file a separate application for an Employment Authorization Document after they arrive, and wait up to 90 days for issuance of the card (K-1 status requires the couple to be married within 90 days of entry). To avoid needless duplication of adjudications, the INS should automatically issue an employment authorization document with the petition approval, so the individual may commence work immediately upon entry.
- *Enable foreign student advisors to authorize optional practical training.* Foreign students in F-1 status are eligible for two primary types of "practical training" work authorization: curricular practical training (which involves an established training program that is part of the curriculum) and optional practical training (which is not directly part of the curriculum and which can be undertaken during studies or for one year after graduation). Currently, the foreign student advisor at the institution may authorize curricular practical training by endorsing

the student's documents. However, the student must apply to INS for an Employment Authorization Document to engage in optional practical training. Enabling foreign student advisors to authorize optional practical training would avoid the needless processing of routinely approved applications.

- Develop standardized and accurate processing time reports and make them available on the web. Currently, each of the four INS Service Centers has its own format for reporting its processing times for different petitions and applications, and this information is not generally available to the public on the INS web site. In addition, the processing times do not reflect the actual time between the date the Center receives a case and the date the applicant/petitioner receives a decision. The Centers do not report their "front log," the delay between the date a case is physically received and the date it is entered into their computer database, nor the delays between the date a decision is made and the date that decision is actually mailed. In addition, the Centers do not report the oldest date of any cases pending, rather the average date that the "majority" of cases pending were filed.

Chairman BROWNBACK. Thank you, Mr. Leiden, and I apologize for mispronouncing your name at the outset. I look forward to some questions and discussion, and thank you for sharing your expertise. You have been involved in this field for a long time. As I dig into it, I notice the complexity of it is great, so I appreciate your simplifying some of it for us.

Mr. Moore, it is delightful to have you here in the Committee room ready to testify, and we look forward to hearing your comments.

**STATEMENT OF STEPHEN MOORE, SENIOR FELLOW, CATO INSTITUTE, WASHINGTON, D.C.**

Mr. MOORE. Thank you, Senator Brownback. It is a pleasure and a privilege to testify on this important subject. I am an economist and I thought I would talk a little bit about the economic consequences of immigration.

I apologize for being late. My immigrant cab driver got lost. I am only joking, actually, but I did have an immigrant cab driver.

Senator Durbin, I am a fellow Chicagoan, so I know what you speak of when you talk about the immigrant neighborhoods in Chicago. It is one of the real rich traditions of that great city.

I think that what is going on in this issue is that what has really emerged over the last 15 or 20 years is a consensus among economists on immigration that you don't see on most other issues that you all deal with everyday. On budget and tax issues, there is so much contradictory evidence from economists about what is good for our economy, and on labor issues, and so on.

I don't think that is so on immigration. I think today we really do have a pretty solid consensus now that immigrants are, on balance, good for the economy. Now, that is not to say there aren't some costs associated with immigration, but I think that if you look at the studies by groups ranging from the Cato Institute, to the Urban Institute, to Hoover, to the National Research Council, all of these groups are coming out with the same kinds of direction, which is that the impact is positive, not negative. That is the big picture.

Now, you asked, Senator, since this is your first hearing, for just a bit of a scene-setting, and I thought I would just spend my few minutes doing that. And if I may, I would just ask if my written testimony could be submitted for the record and then I thought I would just talk about some of the highlights.

Chairman BROWNBACK. It will be in the record.

Mr. MOORE. What I thought would be most helpful, because I really believe a picture is worth a thousand words, is if you have a copy of my testimony, I thought I would just go through some of the charts that we have at the back of the testimony. There are 9 or 10 charts, and if you have that, I thought I would just quickly go through some of the demographic and economic impact data.

Chart 1 shows you basically something that is just the total number of immigrants that come to this country throughout history, starting in the early 1800's. As this chart shows, we are now in what I call the third great wave of immigration to this country. The first great wave was in the middle of the 19th century. The second great wave was the Ellis Island immigrants who came around 1900, and as you can see, there is a big spike in that period between about 1900 and 1920.

Since around the mid-1970's, we have been experiencing a third great wave, and the number of immigrants who are coming in today in absolute numbers is roughly the same numbers that came in around 1900. So this is a fairly high number in terms of absolute numbers.

If you try to look at both legal and illegal immigration together, the estimates are that we let about 1 million foreign-born into the country per year. That is the absolute number, but if you look at Graph 2, what you will see is that really the best way of measuring the impact of immigration on our society and our economy is how many immigrants are we letting in relative to how many people are already in the country.

There, you can see that actually we are fairly low with respect to immigration today. We let about 4 immigrants in per year, per 1,000 native residents of the country. That is substantially lower than many previous periods in history, although it is true that since around 1950 that number has been rising to some extent.

Finally, on Figure 3, this just shows you what percentage of Americans here today are foreign-born, how much of a country of immigrants are we today. This number has also been rising since about 1970. We are now, I think, according to the 2000 Census data, at about 9 to 10 percent of Americans now being foreign-born. That is substantially higher than, for example, in 1970, but the historical average is about 10 to 11 percent. So we are actually slightly lower a Nation of foreign-born today than we have been throughout our history.

So the point here is just that I don't think the numbers are out of control. They are higher than they have been in some of the past decades, but in terms of an historical perspective, we are not really very high with respect to our numbers.

Now, if you look at the last 20 years, as I said before, the numbers have been rising. We have allowed somewhere in the neighborhood of 15 million immigrants into the United States over the last 20 years, and that is a fairly large number of people.

The interesting thing is that that period of fairly high levels of immigration have also corresponded with a period of fairly high economic prosperity. These have been prosperous times, except for the last 3 or 4 months, for Americans. In fact, if you look at the statistics of what people thought would be the impact of immigra-

tion, people were concerned, for example, that if we let in a lot of immigrants, it would increase poverty, it would increase unemployment of natives, and so on.

The next series of chart just show that actually over this period, for example, poverty rates especially for black Americans have fallen, even though immigration has been relatively high. If you look at Figures 5 and 6, it shows that real median family income has continued to rise even as immigration has been relatively high. Interestingly enough, a lot of the immigrant opponents argue that immigration is bad for black Americans. But the truth is that this period has actually been a period of relative income growth for African-Americans. The unemployment rate in this era has fallen dramatically, even though we have had a number of immigrants come in. In fact, for black Americans the unemployment rate has fallen by half in the last 20 years.

If you look at Figure 8, this is one of the most important points of our study, and that is that the impact of immigration on taxes and public services is one of the most important economic consequences of immigration.

What we find is that immigrants actually have a fairly positive impact on the Federal deficit situation, and the reason is that immigrants tend to come to the United States when they are young, and that means that we get the benefit of their working years. Oftentimes, average immigrants come to the United States between the ages of 18 and 30, and that means that for their working lives we get the benefit of their labor, whereas in many cases they were educated by the sending country. That is a huge net positive impact of immigration.

The other part of this is that very few immigrants come to the United States when they are over the age of 65, and that means when you look at the major Federal program in the country, which of course is Social Security, you get a real large one-generation net benefit from immigrants, because what happens is the immigrants come in at, say, age 25 and they work for 40 years, paying payroll taxes during those years.

Now, of course, when they retire they will get Social Security, but their children will be paying in, paying for their benefits. So you get this kind of one-generation net benefit from immigrants, and it is an important fiscal benefit.

In fact, just skipping ahead, because I see my time is up and I will close this out, but if you look at Table 11, what it shows is that only about 3 percent of immigrants who come to the United States are over the age of 65. That means very few are collecting Social Security. By the way, even those who do arrive over the age of 65 are not eligible for Social Security because they didn't pay into the program.

But if you look at Table 12—and this is kind of the crux of the matter—if you look at the Social Security actuary numbers, what they show is that immigrants are an incredibly important benefit to the financial solvency of both the Social Security and Medicare systems. We just basically used the Social Security Administration actuary numbers to calculate what that net benefit is to Americans, and over the next 50 years the net benefit of allowing about 800,000 to 1 million immigrants per year, which is sort of the cur-

rent policy, will lead to a net benefit of about \$1 trillion to \$1.5 trillion to the Social Security system.

So I think I will just conclude this by saying I think the evidence is fairly solid that immigrants don't cost native Americans. They benefit our economy, and I would hope that we stick with the policy that we have right now because we have kind of inadvertently stumbled upon an immigration policy that works pretty well for the immigrants and native-born Americans as well.

Thank you, Mr. Chairman.

[The prepared statement of Mr. Moore follows:]

STEPHEN MOORE, SENIOR FELLOW IN ECONOMICS, CATO INSTITUTE

Thank you Senator Brownback for the privilege of being asked to testify before your Committee on the impact of immigrants on the U.S. economy.

I am very pleased that despite the partisan battles over economic issues that the Senate finds itself embroiled in on an almost daily basis, a consensus seems to have emerged in the Congress that immigrants are—as they have been throughout most of our history—beneficial to our economy and assets to our society in other ways as well. This favorable attitude regarding immigration on Capitol Hill is evidenced by the pro-immigrant legislation that has passed the House and Senate in recent years and the wise rejection of many anti-immigration measures.

This pro-immigration environment that has emerged on Capitol Hill reflects the growing consensus within the economics profession that immigrants are on balance economic assets, not liabilities. To be sure, economists still argue about the size of the benefit of immigration to the U.S. economy, but almost all of the best research indicates that the direction of the impact is on balance positive. There is also lively debate about whether some groups of Americans—the lowest skilled Americans, blacks, earlier arriving immigrants, for example—are adversely impacted by immigration. But even here, I am pleased to report that more and more of the research findings seems to suggest that the extent to which low income Americans are hurt by the presence of immigrants has been exaggerated.

Let us start with the big picture. The past 20 years has been a period of fairly high levels of immigration, particularly in absolute numbers. See Figure 1. Over the past 20 years, the United States has legally admitted roughly 15 million immigrants and refugees. We now admit almost 4 new immigrants per year for every 1000 Americans, which is higher than in the past 50 years, but about half the historical average. See Figure 2. Still, the percentage of Americans that are foreign born has risen from about 6% in the 1970s to almost 10% today. See Figure 3.

At earlier times in our nation's history, as many as 15% of Americans were foreign born. So although our current levels of immigration are by no means unprecedented, it is true, nonetheless, that for the past 25 years, the U.S. has been quite generous in immigrant admissions and that we are now in the midst of a new great wave of immigration to these shores not experienced since the great wave of Europeans who arrived through Ellis Island at the turn of the last century.

If immigrants were economically harmful, we would certainly expect to see visible signs of the damage to the economy by now. In fact, 20 years ago, many advocates of lower level of immigration, or even in some extreme cases, a moratorium on immigration, argued that continued high levels of immigration would lead to such economic problems as: (1) increased unemployment for native born workers; (2) higher poverty rates of native born Americans; (3) lower incomes for American workers; (4) increased economic problems for minority workers; (5) a huge surge in welfare dependency; and (6) lower overall rates of economic growth.

But it didn't happen. None of these claims have been evidenced in the U.S. economy.

Now it is undeniable that when immigrants come to the United States, the labor force competition may very well cause some American born workers to lose their jobs (in the short term) through displacement; they may cause some wage rates to fall or not rise as fast as they might have otherwise, and some immigrants do take advantage of the welfare system. The relevant policy question is whether we have observed these impacts on an economy-wide level. And here there is little debate. High levels of immigration have corresponded with improvement in each of these areas, not with the problems getting worse. For example:

- **UNEMPLOYMENT**—In the period 1978–82 the U.S. unemployment rate was between 6 and 8%. Today, the U.S. unemployment rate is between 4 and 5%. The U.S. economy has shown a remarkable ability to absorb new workers into the

economy—both natives and immigrants—without causing job losses. Between 1980 and 2000 the U.S. became a job creation machine, with some 35 million more Americans employed today than 20 years ago. The U.S. has created more new jobs in the past 20 years than all of Japan and Europe combined since 1980. In fact, despite the fact that the U.S. takes in nearly as many immigrants in a year as does all of Japan and Europe combined, it is the U.S.—the nation of immigrants—that now has the lowest unemployment rate in the industrialized world.

- **POVERTY**—The poverty rate for Americans has fallen over the past 20 years for all races. The latest poverty rate statistics indicate that poverty is lower than at anytime since the mid 1970s. See Figure 4. A recent study by the Center of Immigration Studies reports that since 1980 the rate of poverty among immigrants has risen. Of course, if the overall level of poverty has fallen during this period, it means that the reduction in poverty for native born Americans has been all the more impressive. In sum, there is no evidence that immigrants increase poverty among natives, in fact the evidence suggests the opposite effect.
- **WELFARE USE**—There is no evidence that immigration has led to higher rates of welfare dependency. Since 1993, welfare caseloads have fallen by an astonishing 50% across the nation. In fact, welfare usage of the foreign born has fallen faster than for native-born Americans.
- **INCOMES**—Median family income in the U.S. has risen over the period 1981–1998 from \$39,000 to \$45,800 or by roughly 16 percent, according to recent Census Bureau data. With inflation properly measured, median family income has risen since 1981 by closer to 25 percent. Again, wage suppression does not appear to have occurred in this period of high immigration. See Figure 5.
- **IMPACT ON MINORITIES**—There is still in America far too wide an income gap between the races. But over the past 20 years of high levels of immigration, the income gap has actually shrunk, not widened. See Figure 6. The income gap between blacks and white and between men and women has narrowed to its lowest level in recorded history. From 1981 to from 60 percent of 69 percent—the highest ever recorded. For women, the gap narrowed from 89 percent to 94 percent. The black unemployment rate has fallen much faster than the white unemployment rate, as has the black poverty rate. See Figure 7. In sum, we have had record immigration and we have had record economic improvements for blacks.

What can we conclude about the impact of immigration on the U.S. economy since 1980? Over the past 20 years the U.S.

What can we conclude about the impact of immigration on the U.S. economy since 1980? Over the past 20 years the U.S. economy has experienced a \$10 to \$15 trillion increase in net wealth, according the Federal Reserve Board data, the GDP has grown by nearly 80 percent (after inflation), and the inflation rate has fallen to nearly zero. The National Bureau of Economic Research recently described the past 18 years as the longest and strongest period of sustained prosperity in the U.S. in this century. If immigrants are somehow a “cost” to the U.S. economy, that cost has been virtually invisible. The experience of the past two decades puts a huge burden on the shoulders of those who contend that immigrants are economically burdensome.

But I believe a stronger case can be made. Immigrants have contributed directly to America’s unprecedented economic expansion of the past two decades. Moreover, I believe the demographic evidence suggests that it will be in America’s self-interest to continue admitting immigrants over at least the next 20 years.

In 1998 I completed a study jointly published by the Cato Institute on the economic and fiscal impact of immigrants to the United States. The study was entitled “A Fiscal Portrait of the Newest Americans.” I would like to insert the study in the record. But allow me to now relate to you the major conclusions based on our own research findings and corroborated by several dozen prestigious economic studies published in major economic journals.

- (1) *Immigrants and their children increase economic growth.* In the most comprehensive study ever conducted on immigration, the National Research Council of the National Academy of Sciences found that immigrants inflate the incomes of U.S.-born workers by at least \$10 billion each year. This estimate is highly conservative because it does not include the impact of immigrant-owned businesses or the impact of high-skilled immigrants on overall productivity. Still, the NRC estimates that the typical immigrant and his or her children pay an estimated \$80,000 more in taxes that they will receive in local, state and federal benefits over their lifetimes.
- (2) *Immigrants pay their own way when it comes to services used and taxes paid.* Immigrants use many government services—particularly at the state and local



levels—but they also pay a lot in taxes. Conservatively estimated, in 1998 immigrant households paid an estimated \$133 billion in direct taxes to federal, state and local governments. Adding the tax receipts paid by immigrant businesses brings the total annual tax contributions of immigrants to about \$162 billion for 1998. In any given year, immigrants may use more in services than they pay in taxes, but over their lifetimes, immigrants are a fiscal bargain to native taxpayers. As their earnings rise over time, immigrant taxes exceed the benefits received. See Figure 8.

(3) *Not all immigrants make the same tax payments or impose the same costs.* The best predictors of immigrant success and thus their tax payments are their skill levels, education attainment, and ability to speak English. In general, low-skilled, low-educated immigrants and non-English speaking immigrants use more government services and pay less in taxes than those with high skills.

(4) *Immigrants have a rapid rate of economic assimilation after they arrive in the U.S.* As noted above, one of the most important economic characteristics of immigrants is that their earnings rise over time in the U.S. Hence, during their first years after arrival in the U.S. earnings are low and immigrants typically are net drains on the public coffers. But over time—usually after 10–15 years in the U.S.—they turn into net contributors. This economic assimilation pattern varies by ethnicity and country of origin, but is still evident today as it was 30 years ago when researchers first began to study the rate of economic success by immigrants over time. We also see this economic assimilation when it comes to poverty rates, unemployment, and home ownership. Figure 9 and 10.

(5) *The age profile of immigrants is a huge demographic bonus to native-born Americans.* Most immigrants arrive in the United States in the prime of their working years. For example, more than 75 percent of immigrants who come to the U.S. are above the age of 18 upon arrival. This means that there are roughly 17.5 million immigrants in the U.S. today whose educational and rearing costs were borne by the citizens of the sending country, not American taxpayers. The total discounted present value windfall to the United States of obtaining this human capital at no expense to American taxpayers is roughly \$1.43 trillion. Immigration can be thought of as an enormous \$1.4 trillion transfer of wealth from the rest of the world to the United States. Immigration is a form of reverse foreign aid.

(6) *Immigrants are huge net contributors to the Social Security and Medicare programs.* Only 3 percent of immigrants enter the U.S. over the age of 65, whereas 12 percent of Americans are over 65—and that percentage will grow to 15% within 20 years. Based on the calculations of the actuaries at the Social Security Administration, this study estimates the total value to the Social Security system from current levels of immigration. I find that the total net benefit (taxes paid over benefits received) to the Social Security system in 1998 dollars from continuing current levels of immigration is nearly \$500 billion from 1998–2022 and nearly \$2.0 trillion through 2072. Continuing immigration is an essential component to solving the long term financing problem of the Social Security system.

(7) *Immigrant entrepreneurs are a major source of new jobs and vitality in the American economy.* Most immigrant businesses—like most businesses started by American-born entrepreneurs—are not highly successful or large employers. But many of America's largest and most profitable businesses in today were started by immigrants. Immigrants who entered the U.S. as refugees, economic immigrants, or family-sponsored immigrants are now at the helm of some of the nation's leading and rapidly growing technology businesses: Hungarian-born Andrew S. Grove, recently retired as Chairman and CEO of Intel; Algerian-born Eric Benhamou, heads 3Com Corp; Iranian-born brothers Farzad and Farid Dibachi founded and heads Diba, Inc.; and Uganda-born Ajay Shah, is the chief executive of Smart Modules Technologies. The Table shows the income and employment generated by 10 highly successful immigrant firms. These 10 firms alone generated \$28 billion in revenues and employed 75,000 American workers in 1997. The tax revenues paid in 1997 by the companies directly and their employees was at least \$3 billion.

#### IMMIGRATION AND THE DEMOGRAPHIC CRISIS IN DEVELOPED NATIONS

One of the greatest unheralded economic challenges facing the industrialized nations is the demographic bubble due to unprecedented low birth rates. Economists are just starting to confront the huge economic challenge that the population implosion represents to the developed nations of the world. The birth rates in nations like Japan, Germany, France, Spain, and Italy are well below replacement level fertility. The U.S. is just slightly below replacement level fertility. Some industrialized nations, including Japan, Germany, France, Spain, and Italy, are significantly below

replacement level fertility and could experience a severe graying of their workforces. See Figure 14. The U.S., by contrast has a demographic safety valve: immigration.

This aging of workforces around the world could have profoundly negative impacts on the economies of many of America's major competitors. Consider, for example, the level of unfounded liabilities in pension programs around the world. As bad as our Social Security liability problem is, it is dwarfed by the huge levels of red ink in the European nations. Immigration will allow the U.S. to smooth out the bumps in our demographic wave in productive ways that most of our competitor nations will not or cannot allow. Our immigrant heritage allows us to bring in productive immigrant workers, who will, help pay the cost of the retirement benefits of everyone sitting in this hearing room.

#### POLICY CONCLUSIONS

The U.S. legal immigration system works remarkably well, given that it has been crafted in a piecemeal way over many years. Most immigrants who come to the U.S. today are economic contributors on net. The system of family and employer sponsored immigration is effective in getting high quality immigrants to come to the U.S. and absorbing them rapidly into the labor force and the culture. Immigrant workers have brought a flexibility and a work ethic to the U.S. labor market that is sorely absent in many of our major competitor nations.

It is noteworthy that it was not so many years ago that anti-immigration groups would point glowingly to Japan as an example of a nation that prospers without immigration. Japan is now entering its second decade of depression. Part of the problem in Japan has been economic policy mistakes. But some of its economic maladies are a result of low birth rates and Also, the aging of the workforce in Japan is a horrendous demographic crisis in that nation. The absence of immigrants in Japan has already come to haunt this once formidable economic powerhouse.

It would be economically advantageous to the U.S. to admit more—perhaps twice as many—highly skilled immigrants each year. This is not to say that low skilled immigrants are undesirable. But the economic benefits to natives of immigrants with high skill and education levels is higher than of immigrants with low skill and education levels. It is also true that younger working age immigrants are more beneficial than older immigrants.

It is worth emphasizing that many of the immigrants who have made the largest contributions in our society in recent times came to the U.S. without the characteristics that often presage success. The initial starting place of an immigrant is not always predictive of future success on these shores. Andrew Grove, co-founder of Intel, came to the America as a refugee and a family that had no money, no skills, and no special prospects for greatness. No economist would have likely predicted the greatness he achieved. Social scientists have begun to try to build profiles of immigrant success—by examining skill levels, education, ethnicity, and so on. Such studies are not always very predictive of economic success in the U.S.

It is in America's economic self-interest—and in the interests of immigrants themselves—that we keep the golden gates open to newcomers from every region of the world. The net gains to U.S. workers and retirees are in the trillions of dollars. Given the coming retirement of some 75 million baby boomers, we need the young and energetic immigrants now more than ever before and therefore we need Congress to keep the Golden Gates open.

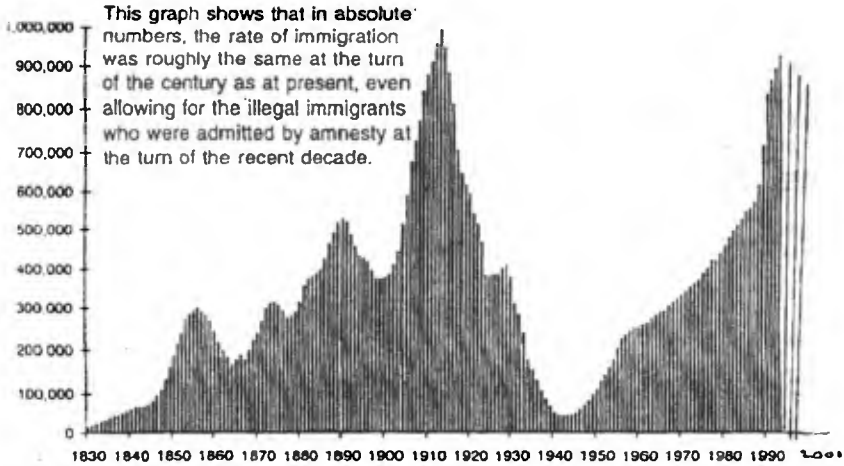
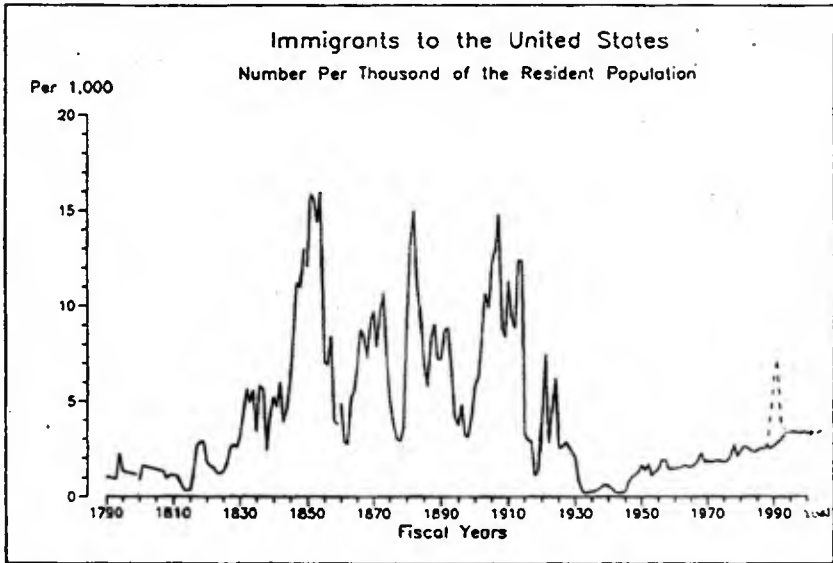
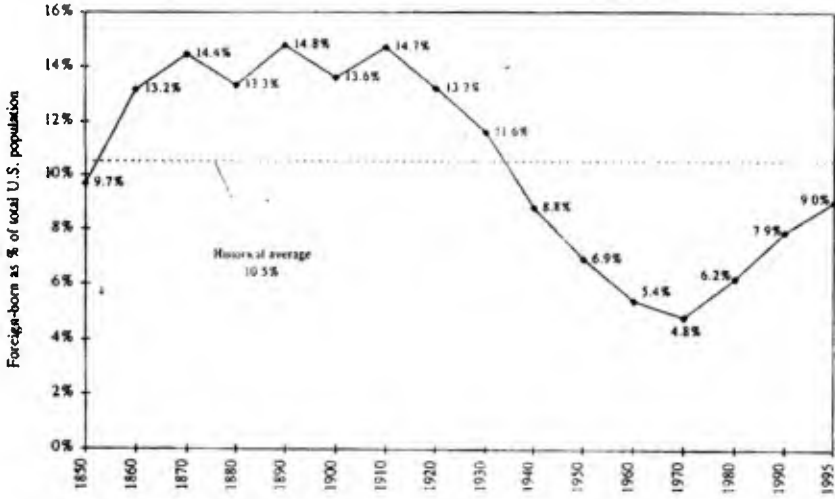


Figure 1 Ten-year moving average number of immigrants, 1830-1993  
 Source: US Department of Commerce, *Statistical Yearbook of the INS* (Washington, DC: Government Printing Office, 1993), p. 25



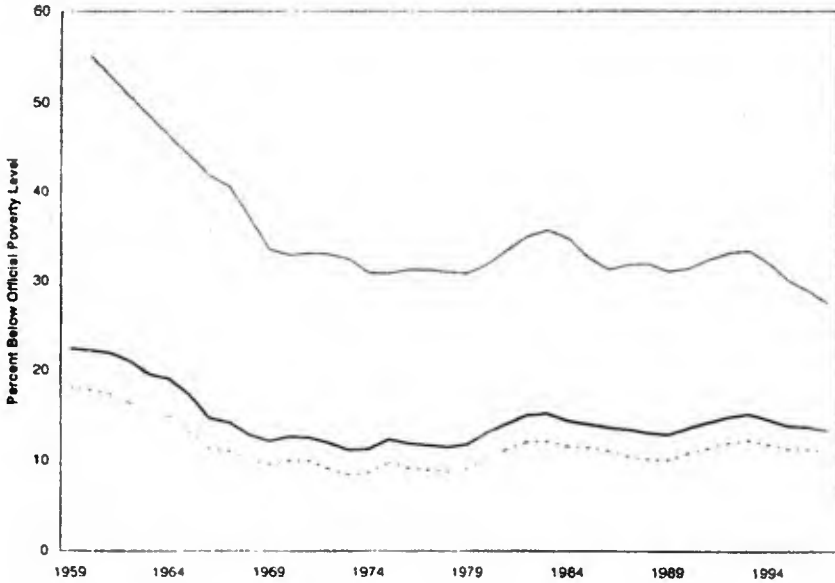
Too Many Immigrants?



Source: U.S. Census Bureau, 1997

Figure 3

Poverty, By Race



Source: Current Population Survey

Figure 4

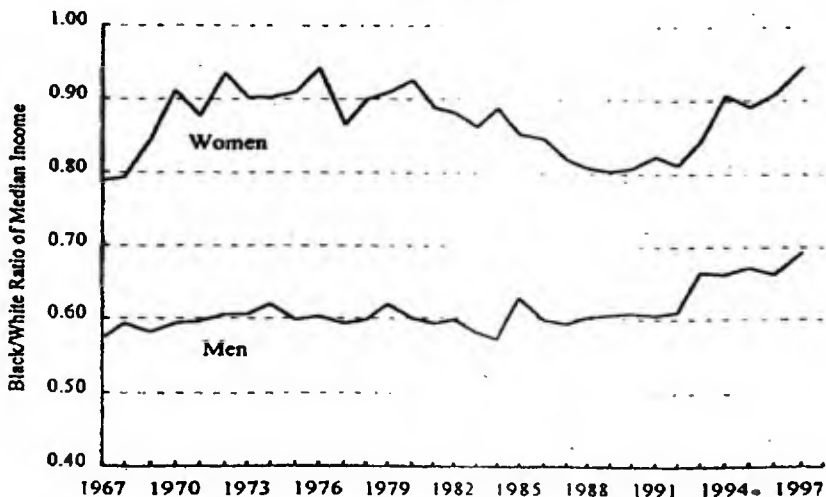
**Real Median Family Income (in constant 1997\$)  
1950-1997**



Source: U.S. Census Bureau

**Figure 5**

**Figure  
Black to White Income Ratios  
1967-1997**



Source: U.S. Census Bureau

**Figure 6**

## Declines in Unemployment Rates

### Males vs. Females

	1981	1998	Percentage Point Decline
<b>Males</b>	7.4	4.4	<b>3</b>
<b>Females</b>	7.9	4.6	<b>3.3</b>

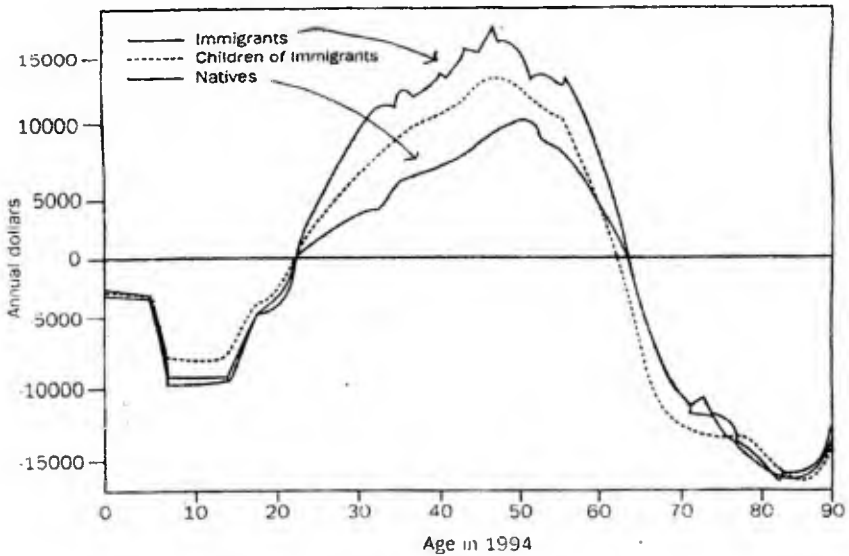
### Blacks vs. Whites

	1981	1998	Percentage Point Decline
<b>Blacks</b>	15.6	8.9	<b>6.7</b>
<b>Whites</b>	6.7	3.9	<b>2.8</b>

Source: Department of Labor, Bureau of Labor Statistics

**Figure 7**

**Figure 2**  
**Net Fiscal Impact of Immigrants**



Source: National Research Council (1997).

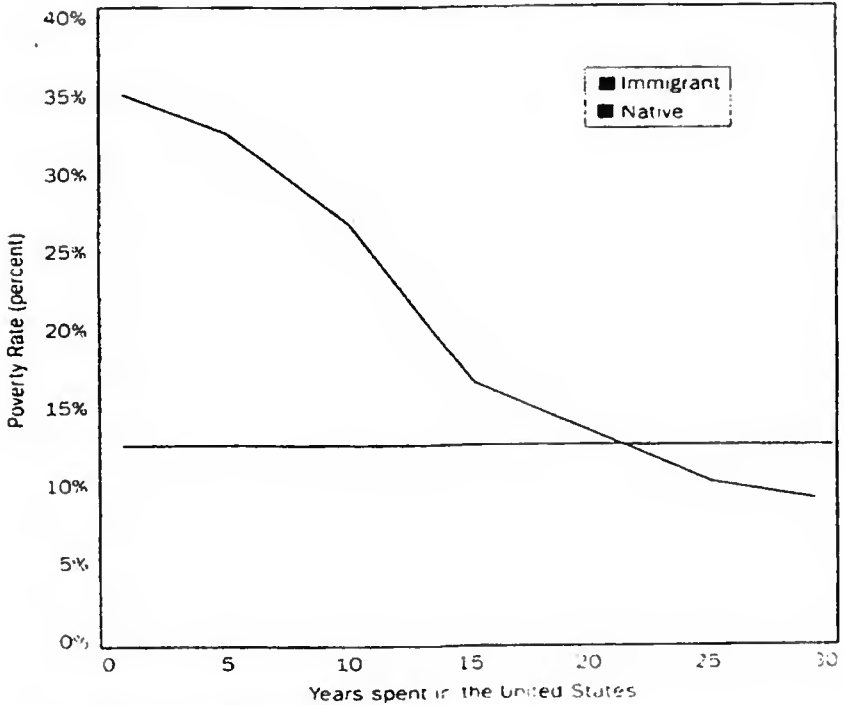
**Figure 8**

**Table 9**  
**Economic Assimilation of Recent Immigrant Cohorts, 1996**

	Natives	Immigrants by Year of Entry			
		Before 1970	1970-9	1980-9	1990-6
Unemployed	4%	2%	5%	5%	7%
Income in 1995 \$50,000 or more	10%	11%	9%	5%	3%
Not in Poverty	87%	90%	83%	76%	67%
Homeownership	69%	76%	61%	42%	22%

Source: U.S. Bureau of the Census, Current Population Survey, "Selected Characteristics of Natives and the Foreign-Born Population," 1996, Table B, P20-494.

### Poverty Rates for Immigrants Over Time



Source: U.S. Census Bureau, 1996

Figure 10



**Table 11**  
**Age Profile of Native Born Versus**  
**Foreign Born, 1996**

	Native Born	All Foreign Born	Recent Arrivals (1990-1996)
<b>Age:</b>			
Under 18	28.5%	11.2%	25.4%
18-34	24.9%	33.9%	47.6%
Over 65	12.1%	11.2%	3.3%

Source: U.S. Bureau of the Census, Current Population Survey, "Selected Characteristics of Natives and the Foreign-Born Population," 1996, Table B, P20-494.

**Table 12**  
**Impact of Immigration on Social Security Finances**  
**(Billions of 1998 Dollars)**

	25 Years (1998-2022)	50 Years (1991-2040)	75 Years (1991-2065)
<b>800,000 Net Immigration Per Year</b>			
Average Annual Increase in Net Trust Fund Balance	\$19.3	\$22.3	\$25.8
Total Increase in Net Trust Fund Balance	\$484	\$1,117	\$1,934
<b>1,000,000 Net Immigration Per Year</b>			
Average Annual Increase in Net Trust Fund Balance	\$24.2	\$27.9	\$32.2
Total Increase in Net Trust Fund Balance	\$604	\$1,396	\$2,418

Source: Author's calculations based on Social Security Administration, "Federal Old Age and Survivors Insurance and Disability Insurance Trust Funds," Board of Trustees' Report (Washington: Government Printing Office), 1998.

**Table 3**  
**Major High-Tech Companies**  
**Started by Immigrants\***

<b>Company/Consortium</b>	<b>No. of Employees in US</b>	<b>Annual Revenues</b>
Intel	29,000	\$11.5 billion
Sun Microsystems	11,000	\$6.0 billion
Computer Associates	9,000	\$2.6 billion
Solectron	4,545	\$1.5 billion
Lam Research	3,600	\$811 million
LSI Logic	2,600	\$902 million
AST Computer	2,248	\$2.4 billion
Wang Laboratories	2,000	\$1.0 billion
Amtel	2,000	\$600 million
Cypress Semiconductor	1,500	\$600 million
<b>Total</b>	<b>\$67,493</b>	<b>\$27,913 billion</b>

\* Note: At least one of the company founders was foreign born.

Source: Stuart Anderson, "Employment-Based Immigration and High Technology," (Washington: Empower America, 1996).

## The Worldwide Birth-Death of Countries Who Are No Longer Replacing Themselves

(Countries for which the total fertility rate (TFR) is equal or less than replacement level (2.1 children per woman).)

1990-1995

Country	Population		TFR 1990-1995
	1997		
Italy	57,241		1.24
Spain	39,717		1.27
Germany	82,190		1.30
Hong Kong	6,249		1.32
Slovenia	1,922		1.36
Greece	10,522		1.38
Austria	8,161		1.47
Japan	125,638		1.48
Bosnia and Herzegovina	3,784		1.50
Romania	22,606		1.50
Portugal	9,802		1.52
Switzerland	7,276		1.53
Russian Federation	147,708		1.53
Bulgaria	8,427		1.53
Estonia	1,455		1.58
Netherlands	15,661		1.59
Macau	451		1.60
Cuba	11,068		1.60
Belgium	10,188		1.62
Ukraine	51,424		1.64
Larvia	2,474		1.64
Republic of Korea	45,717		1.65
Croatia	4,498		1.65
Luxembourg	417		1.66
Belarus	10,339		1.67
Czech Republic	10,237		1.68
Hungary	9,990		1.69
France	58,542		1.70
Barbados	262		1.73
Canada	29,943		1.74
Denmark	5,248		1.75
Lithuania	3,719		1.78
United Kingdom	58,200		1.78
Singapore	3,439		1.79
Finland	5,142		1.83
Slovakia	5,355		1.85
Norway	4,364		1.88
Poland	38,635		1.89
Australia	18,250		1.89
China	1,243,738		1.92
Yugoslavia	10,350		1.93
Thailand	59,159		1.94
Bahamas	288		1.95
Sweden	8,844		2.01
Ireland	3,559		2.01
Martinique	388		2.05
United States of America	271,648		2.05
Malta	371		2.08
TFYR of Macedonia	2,190		2.10
Georgia	5,434		2.10
Democratic People's Republic of Korea	22,837		2.10

Source: Population Division, Department of Economic and Social Affairs of the United Nations Secretariat, World Population Prospects: The 1996 Revision, Annex 1 (United Nations, New York, 1996).

Table 14

OECD: Long-term Pension Deficits

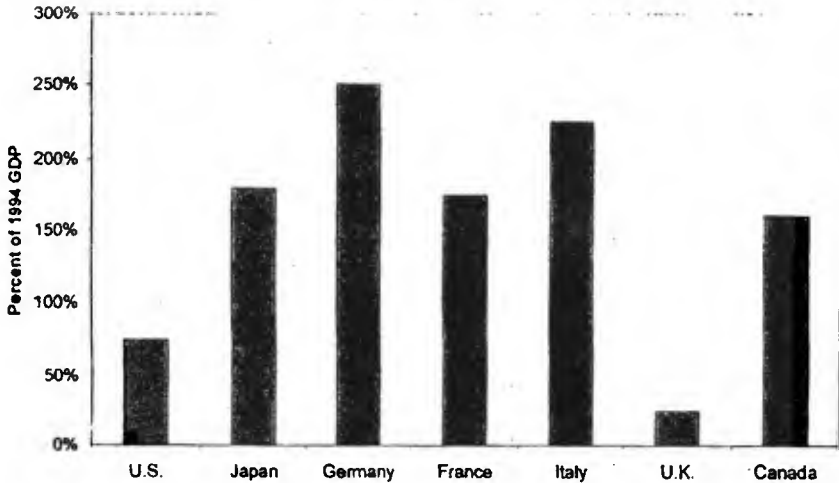


Chart 15

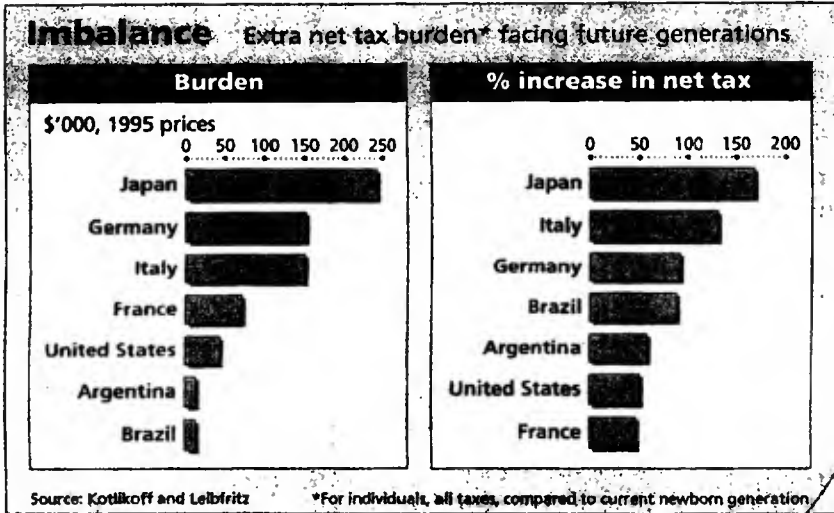


Table 16

Chairman BROWNBACK. Thank you. I am just flipping ahead to your charts, and I didn't mean for you to have to cutoff too quick.

We will run the clock at 7 minutes here, Dick, if that is OK, and we can bounce back and forth.

Your Chart 15—does that show what happens in countries that don't have the level of immigration that the United States has?

Mr. MOORE. What this shows is the long-term pension deficits of many of our industrialized competitors. What it shows is that although we obviously have a problem with our long-term Social Security solvency, other countries have a much more severe problems, and that is a result of two factors, Senator.

One is that these other countries have very low birth rates. In fact, if you look at Table 14, which is the one preceding it, it just shows you that there are now 50 countries in the world today that actually have fertility rates that are below replacement level, and these are most of the industrialized countries. Japan France, Italy, Germany, and Spain have fertility rates that are, I would argue, of almost crisis levels in terms of how low their fertility rates are.

The United States doesn't face that same problem, and the reason is our birth rate has not fallen as much as other countries has. But the other is that we have this incredible advantage. We have what I call a demographic safety valve, and that safety valve is that we can sort of smooth out this demographic problem from the huge baby-boom generation by letting in young immigrants. Japan and Italy and Spain don't have that ability because they are not countries that accept many immigrants.

Chairman BROWNBACK. By economist's standards, are we at an optimal immigration level, then, when you look at all of these factors? Is that discussed by economists much?

Mr. MOORE. It is really difficult to say.

Chairman BROWNBACK. I kind of hate to look at it from a numbers perspective because they are people that we are talking about.

Mr. MOORE. It is very difficult to say, and I would not hazard to guess what the optimal number is. What I will say is the policy that we have right now seems to be—we are able to absorb this number that has come in. It is not causing social problems. The economy has proven well able to absorb these numbers of immigrants.

For example, if you look at unemployment rates, although we have been the country among industrialized countries that has let in more immigrants than all of the other industrialized countries combined, guess what? We have half the unemployment rate of most of these other countries. So our economy has shown an incredible resilience in terms of absorbing these immigrants.

If you asked me what my optimal policy would be, I would think we could let more immigrants in, but I am pretty happy with the policy we have right now, too.

Chairman BROWNBACK. Is it safe to say that most economists agree that there is not a connection between immigration levels and unemployment rates?

Mr. MOORE. Yes. I think there is a fairly strong consensus among economists that there is a very weak relationship between immigration and unemployment. In fact, all these studies find almost no relationship. There is some controversy about whether immigrants cause lower wages in some certain occupations. I mean, we were talking about cab drivers. There is some argument that is made that when you let in a number of immigrants in, say, Chicago, they may be holding down the wage rate for what cab drivers might make. But those wage limitations are only found in some few spe-

cific industries and you don't find it economy-wide or even city-wide.

Chairman BROWNBACk. Mr. Leiden, I was disappointed to see the figure that the number of refugees that we have allowed into America over the past several years has declined by 40 percent. Now, I don't know if you have looked at these figures or numbers, or if you have any thoughts as to why is that number down. I have had different people explain and give different reasons to me, but that was a striking number to me as a new member of this Committee to see.

What is your take of why that number has decreased so substantially in recent years?

Mr. LEIDEN. Well, I am not sure I can explain the past history, although it is disturbing, as well, to me knowing how many displaced persons, how many refugees there are around the world. My understanding is that the refugee admissions number is set close to the beginning of the fiscal year, and I think it is something that the Committee really should be looking closely at.

Chairman BROWNBACk. As a person who has been on the Foreign Relations Committee who has traveled to a number of very difficult spots in the world, it is not that there is a shortage of refugees. I have been in dire situations and circumstances where the United States is doing quite a bit to try to help as far as feeding assistance and health care assistance. We have got some wonderful NGO's out there that are really shouldering much of that difficulty, but we could also do a lot more, I think, in trying to resolve some of these conflicts, a lot of the plight, but also taking more refugees ourselves. I was startled by that number, so it is something I want to look at more.

Senator Durbin?

Senator DURBIN. Thank you, Mr. Chairman. When I find myself agreeing with the Cato Institute—

Chairman BROWNBACk. The hearing is adjourned.

[Laughter.]

Senator DURBIN. I am reminded of Sister Mary Casimir, who used to exhort me to examine my conscience from time to time.

Mr. Moore, let me say that I do accept your premise and I think you are right, and I like the information you have given us here about our Nation's ability to absorb new numbers, but let me take it the next step in pure economic terms.

If I read the paper correctly, in the last 10 years we have seen a 60-percent increase in the Hispanic population in the United States. In our home State of Illinois, the number is 69 percent—a dramatic influx of Hispanics into the United States, into Illinois and many other States.

At the same time, the New York Times reported about 2 weeks ago that when it came to school drop-outs, the drop-out rate among white students was about 8 percent, among African-Americans about 12 percent, among Hispanics 30 percent, 31 percent for Latinos. Now, in purely economic terms, not whether it tugs at your heart at not, but in purely economic terms how can we let this continue, to allow this mass of humanity to come to the United States and not be educated? A substantial portion of them are really condemned to be an under-class in our society.

Your Table 9 notes that when it comes to income and poverty and home ownership, these new immigrants are not doing quite as well as those before them. So in the purest economic sense, should we not be investing in this important part of our economy, as you have identified it?

Mr. MOORE. Senator, let me start by referring to that Table 9 that you referred to because I think you may be misreading the point that I was trying to make there.

The point that this chart is meant to make, Senator, is that immigrants have what we as economists call an economic assimilation rate; that is to say, when immigrants first come into the United States, generally they have earnings that are lower than Americans do. What happens is that immigrants have this very rapid rate—these are on balance, not all immigrants, but on balance immigrants tend to climb the economic ladder of success at a fairly steep rate of ascent.

So what this is meant to show is that if you look at the new immigrants that are coming in today—for example, if you look at, let's just say, people who are making over \$50,000, you can see that only 3 percent of new immigrants are making more than \$50,000. But what is showing is that the longer period that immigrants are in the United States, the more they become like Americans, and in some cases surpass Americans.

We don't have any evidence of this, but it is my belief that if I am here 20 years from now and you are here 20 years from now, these 1990 to 1996 immigrants will be just like those who came in the 1970's; they will also have climbed the economic ladder. So that was the point I was trying to make with that.

Senator DURBIN. I see your point, but if you will go back to my earlier statistic about school drop-outs.

Mr. MOORE. Well, first of all, I agree it is incredibly troubling, and it is true that the more education immigrants have and the more skills they have, the better they are for the U.S. economy. So I think I agree with your premise that it is troubling, and I think that the solution needs to be we have to put a big emphasis as a society on educating those immigrant children because if you are talking about as we move into this new information age society 30 percent of Latino kids without, let's say, a high school education, they are not going to make the kind of earnings that are going to make them major contributors to the United States and they are not going to be able to advance themselves. So I think what we have to do then is concentrate on how do we get those immigrant kids educated.

Senator DURBIN. Mr. Leiden, let me ask you about your testimony and the chairman's question. As I read your testimony, one of the reasons for the downturn in the number of refugees is we capped it in 1996 and said 5,000 is all we are going to take.

Mr. LEIDEN. Well, that is for asylum seekers; that is, persons who apply for refuge once they are in the United States. We capped the number who can get permanent residence. So there are tens of thousands of persons who have been granted and recognized as bona fide refugees who have asylum status, but they can't get the permanent residence.



That is distinguished from the overseas refugee programs which I believe the Chairman was referring to, where there has been a drop-off. And it is a decision for us. There are plenty of people waiting at the gate. It is a decision for our country to say how many people will we let in. As I said before, I can't explain exactly why the decision was made last year as it was.

Senator DURBIN. At the risk of touching a hot button here, we have at various times in our history decided that if you have been in the United States "x" years, documented or undocumented, you will have a chance to become legal. I believe if you watch the case-load in my office you understand that. Families have been created, homes have been built, jobs are being served everyday, taxes are being paid, kids have graduated from school. They are legal in everything but the paper documentation in terms of what they are doing. They are good, positive members of our society, but every time we get close to this issue, people say amnesty for illegals, and that is usually the end of the conversation.

I would like to ask each of you if you could comment on that element historically in our immigration policy, where we are today and what you think we should do.

Mr. LEIDEN. Well, as you know, there was the legalization program in 1986 that legalized the status of simply the principal, not their dependents, if they had been in the United States since before January 1 of 1982. Some of the immigration that we have seen and the backlogs that we see in the family categories now are because only one parent was legalized and got permanent residence and then their spouse—some of their children are U.S. citizens and some are waiting for their family based petitions to come forward.

There has been for a long time in the law a provision called the registry provision. There was initially a date—I believe it was in the 1930's—that persons who could establish that they were in the United States since before that date would qualify for permanent residence. It remained at that early date, frankly, until the 1980's, but that helped people who didn't have birth records, didn't have arrival records. A lot of displaced persons came here after the Second World War.

That registry date was advanced in—I think in the 1990 Act it was advanced to 1972. Now, that is a long time from now back to 1972, but it is a way for a very long-term resident to qualify for permanent residence, whether they have been undocumented or in unlawful status, in a non-immigrant status or something. That is something that we have had in the law since before 1952 and it is something to look at.

I am aware of cases, as you mentioned, of the high school graduate whose parents call my office and say, my daughter wants to go to college, and frankly the options are very bleak.

Mr. MOORE. Are you asking me about the amnesty?

Senator DURBIN. Yes.

Mr. MOORE. I am not trying to duck your question, but it is a really tough policy issue because on the one hand you mentioned this Korean woman in your opening statement. She is not going to go back to Korea, she is going to be in the United States. We ought to legalize her because there is no way that someone like that is going back to Korea, nor should she go back to Korea.

So these people who have been in the United States for 10 or 15 years and have been working and contributing, a strong case can be made that we should make them legal citizens. On the other hand, it is true that if we keep legalizing immigrants who came in illegally, that is going to perhaps encourage illegal immigration. So it is a tough issue.

I am not sure what the right answer is, but I do think that there is a strong case, on balance, for letting people who have been here for 15 years who aren't leaving to have legal status.

Senator DURBIN. Thank you very much. Thanks, Mr. Chairman. Chairman BROWNBAC. Thank you.

I want to thank the panel for your presentation, and I look forward to accessing your knowledge greatly as we move forward in this Subcommittee. Thank you very much.

We will call up our second panel. It consists of Jennifer Kenney, who is the Director of Global Deployment Shared Services for PricewaterhouseCoopers. Her primary role is oversight of the firm's U.S. immigration function. In addition to immigration, Jennifer is International Mobility Project Manager for the global firm in her work.

Next will be Cecilia Muñoz, Vice President for the Office of Research, Advocacy and Legislation for the National Council of La Raza. She supervises all legislative and advocacy activities conducted by NCLR covering a variety of issues of importance to Latinos.

Karen Narasaki is one of the Nation's leading experts on Asian immigration. She is President and Executive Director of the National Asian Pacific American Consortium, a nationally recognized voice on civil rights and immigration issues of particular concern to Asian Pacific Americans.

Finally, our last panelist will be Elizabeth Dickson. She is Chair of the Immigration Subcommittee for the U.S. Chamber of Commerce, and is Manager of Immigration Services for Ingersoll-Rand, a leading diversified industrial equipment and components manufacturer. She has been working in this field for some period of time.

Ladies, we are delighted to have you all here with us today, and I think we will go in the order that I introduced you. I look forward to a short statement. If you would like, we can put your entire statement in the record and then we would like to have a good discussion if we can. We will run the clock at 7 minutes. It is not governing, but if you could keep it within that timeframe, it would be appreciated.

Ms. Kenney?

**STATEMENT OF JENNIFER KENNEY, DIRECTOR, GLOBAL DEPLOYMENT SHARED SERVICES, PRICEWATERHOUSE-COOPERS, CHICAGO, ILLINOIS**

Ms. KENNEY. Thank you, Mr. Chairman and members of the Subcommittee. As you said, I am Jennifer Kenney and I work at PricewaterhouseCoopers. I am the Director of Immigration Services, and I also manage our global international mobility programs and initiatives. I too work out of the Chicago office. My primary role involves immigration, as I have said.

PricewaterhouseCoopers is one of the largest professional services firms in the world. At PwC, our people are our business. Drawing on the talents of more than 160,000 people in 150 countries, PwC provides audit, tax, finance, and a full range of other business advisory services to our clients, who are leading global, national and local organizations.

Many of our clients are Fortune 100 companies. In what we call our Global 200, 105 of these clients are U.S. corporations with overseas operations. Of the remaining 95 in the Global 200, 85 are international firms with operations in the United States.

To service our clients and remain competitive, our firm employs and often cross-trains highly skilled accounting, tax, technology, and finance professionals with experience in multiple markets and territories. PwC is one of the largest international deployers of resources, with currently over 5,000 staff and partners working outside their home countries.

PwC utilizes U.S. employment-based non-immigrant visas to temporarily transfer skilled professionals from overseas, hire U.S.-educated foreign students, and fill positions where sufficient numbers of quality U.S. workers are just simply not available. Today, our firm employs in the U.S. over 2,000 foreign nationals. This represents approximately 4 percent of our workforce.

Of those numbers, 56 percent are what are called H-1B foreign nationals or specialty occupation foreign nationals. Forty-one percent are L-1 intra-company transferees from another PwC office. This is our largest growing number of immigrants. Three percent are Trade NAFTA from Canada or Mexico.

The benefits of the non-immigrant visa program to our firm and our people are great. Our multinational clients benefit from our enhanced global capabilities and our firm is able to maintain our global competitiveness. International assignees increase their technical and managerial skills, and are able to transfer their knowledge back to their home countries. U.S. staff also benefit from the experience of working side by side with foreign nationals, thus increasing their own skill base.

Unfortunately, as other panelists have mentioned already, the fundamental process of moving people across borders is very slow and very closely. Antiquated immigration rules and procedures make international mobility very difficult for my firm and others. In the U.S. and other countries, it often can take months to cut through all the red tape before a temporary international assignment can begin, making it very difficult for employers to staff their jobs and plan ahead.

For example, the American Competitiveness in the 21st Century Act which recently increased the cap for our H-1 non-immigrant visas also called for the elimination of the current backlog in INS cases and a decrease in the INS processing times. As commendable as this piece of legislation is, the INS and the Department of Labor are still unable to keep up with the volume and catch up on the backlog.

Currently, service center processing times for H-1B approval notices can take between 3 and 4 months. This is up 60 days, well above the 30 days proposed. Contributing to the delay is the Department of Labor's increased turnaround time of up to 6 weeks to

just approve a labor condition application. As a result, our audit and tax practices recently had to turn away many previously scheduled foreign nationals who were not available to work during our very busy tax season, and as a result our company suffered.

In a related matter, the portability provision allows H-1B employees to start work with a new employer in the U.S. and, if necessary, travel outside the U.S. upon filing a petition with the INS rather than wait the 3 to 4 months for petition approval. This is encouraging to employers like PwC, who often require employees to travel outside the U.S. on business.

While the spirit of the legislation is again helpful, the implementation is inherently flawed. In the absence of guidance in the field, the INS freely admits that many ports of entry still may be operating under old regulations. So despite the new law, an approval notice may still be required to reenter the United States through certain ports of entry. This lack of consistency within the INS to enforce new legislation is frustrating and costly to many employers.

Until the INS gets up to speed, PwC is now forced to advise our pending H-1B new hires to remain in the U.S. until INS approval is actually received, which again could take 3 to 4 months. Such delays are extremely incompatible with the realities of the global market in which we compete, where rapid deployment of staff is a business necessity.

To facilitate processing of non-immigrant visas, PwC supports the implementation of established user program, one similar to the current L-1 blanket program that works very successfully for our firm which requires only 14 days to process an L-1 intra-company transferee. Such a program would streamline processing and decrease turnaround times for high-volume non-immigrant visa employers with a proven track record like our firm. Such a plan would reduce paperwork and free up INS and Department of Labor resources to work on more complicated cases.

To reduce deployment times, PwC also supports the proposed June 2001 implementation of the new \$1,000 INS fee to expedite processing. The fees generated from this program might be used to enhance INS information systems to better manage the heavy caseload. In the long term, the INS must invest in building its electronic filing capabilities and bring its operations finally into the 21st century. As a start, electronic signatures on employment-based immigration filings should be implemented as soon as possible to save time and eliminate costly barriers.

Another important issue to our firm is the employment of spouses for our L-1 intra-company transferees. This is currently prohibited in the United States. Inability to obtain spousal work authorization is one of the main reasons our L-1 transferees either end an assignment early or refuse an assignment with our firm and leave for other firms or other countries within our network. Because of this, PwC endorsed last year the Spousal Equity Act, introduced in the last Congress, which would grant work authorization for spouses of L-1 immigrant visa-holders.

The hurdles that businesses face in deploying staff also act as significant non-tariff barriers to global competitiveness. Impaired mobility inhibits trade and investment across our borders. It is also detrimental to the health of local economies, economies that would

otherwise benefit from the financial and technological resources that typically accompany these types of transfers.

In conclusion, at my firm we like to think of ourselves as the premier and unique professional services organization, but when it comes to some of the issues that I have mentioned here today regarding immigration, we are in no way unique. Many of my counterparts have the same issues that we do. Congress needs to make resolving these challenges a priority. Otherwise, we will all fall short of the promise of what a global marketplace can do to boost our economy.

Thank you very much for allowing me to testify, and I look forward to any questions you may have.

[The prepared statement of Ms. Kenney follows:]

STATEMENT OF JENNIFER KENNEY, DIRECTOR, GLOBAL DEPLOYMENT SHARED SERVICES, PRICEWATERHOUSECOOPERS

Mr. Chairman and members of the Subcommittee, thank you for the opportunity to testify today. I am Jennifer Kenney, Director of Global Deployment Shared Services at PricewaterhouseCoopers. My primary role is oversight of the firm's U.S. Immigration function. In addition, I am an international human resources project manager who works on such initiatives as orientation programs for international assignees, employee satisfaction surveys, external and internal web site development and other Global Deployment information systems.

PricewaterhouseCoopers is the world's largest professional services organization. At PwC, our people are our product. Drawing on the talents of more than 160,000 people in 150 countries, PricewaterhouseCoopers provides financial audits and a full range of business advisory services to leading global, national and local companies and to public institutions. These advisory services include accounting and tax advice; management, information technology and human resource consulting; financial advisory services including mergers & acquisitions, business recovery, project finance and litigation support; business process outsourcing services; and legal services through a global network of affiliated law firms.

Before I address our foreign national employment program, I would like to briefly summarize initiatives we currently sponsor in our U.S. firm to upgrade the skills of our current and potential American workforce and to recruit under-represented minority groups. The education of the U.S. workforce in our ever-expanding, knowledge-based economy is of critical importance to our firm and our economy. Last year, our firm invested over three million dollars in high school and college internships, scholarships and mentor programs. Through our INROADS National Internship program, PwC employs over 150 summer interns who are minority finance, accounting and management students from selected colleges and universities across the country. Our Minority Scholars Program awards 40, \$5,000 scholarships each year to accounting and finance students. In addition, PwC awards between 15 and 20, \$1,500 scholarships to distinguished business students who are members of the National Association of Hispanic CPAs. PwC also sponsors high school mentorship programs in over 4,000 high schools. These mentorship programs are designed to generate student interest in careers in finance, accounting and technology. Finally, PwC staff and partners are actively involved in community youth development programs such as Junior Achievement and Big Brother/Big Sister chapters in underdeveloped neighborhoods.

Each year PwC invests millions of dollars to train our U.S. workforce. Our extensive learning and education program includes on-the-job training, self-paced computer-based learning, and technical, managerial and diversity training programs. Each of our lines of service develop curriculum to meet the needs of their particular business. For example, our management consulting practice provides entry-level technology solutions training to new hires through its intensive 12-week ASCENT program. Through ASCENT, consultants develop IT skills in various programming languages, databases and operating systems. ASCENT students also develop necessary problem-solving and consulting skills and learn to operate effectively in cross-cultural and cross-functional work teams. Other internal, trainer-lead programs for staff include: Strategic Change Management, New World Networking, e-Business, Ethics, Leadership, Working Across Cultures, SAP, Audit Training, and Microsoft Suite and Lotus Notes software training.

Many of PricewaterhouseCoopers' clients are Fortune 100 companies. In what we call our "Global 200" portfolio, 105 clients are U.S. corporations with overseas operations. Of the remaining 95 clients in the Global 200, 85 are international firms with operations in the United States. The majority of our clients trade on U.S. Capital Markets and Exchanges (i.e., NASDAQ, NYSE, etc.). Due to these activities our clients fall under SEC regulations and U.S. financial reporting standards which require our global workforce to be knowledgeable in U.S. Generally Accepted Accounting Principles (GAAP). To ensure quality in our financial reporting services our firm employs (and often cross-trains) highly skilled accountants and tax professionals with experience in multiple markets and territories.

Given our global client base, PricewaterhouseCoopers is one of the largest international deployers of resources with over 5,000 staff and partners currently working outside their home country in a PwC affiliated office. In the U.S., PwC utilizes non-immigrant visas to temporarily transfer highly skilled international personnel, hire U.S.-educated foreign students, and to fill positions where sufficient numbers of qualified U.S. workers are simply not available. Today our U.S. firm employs over 2,000 foreign nationals, representing a little over four percent of our total U.S. workforce of 46,000 individuals. Approximately 56% of these foreign nationals hold H-1B "Specialty Occupation" nonimmigrant visas, 41% hold L-1 "Intracompany Transferee" visas and 3% hold TN (Trade NAFTA) visas. On average 21% of our nonimmigrant visa holders seek permanent residence in the U.S. through employment with PricewaterhouseCoopers.

The benefits of the nonimmigrant visa program to our firm and our people are great. Our multinational clients benefit from our enhanced global capabilities and our firm is able to maintain our global competitiveness. Foreign nationals increase their technical and managerial skills and are able to transfer their knowledge to their home country. U.S. staff also benefit from the experience of working side-by-side with foreign nationals on multinational engagements, thus increasing their own skill base.

Our firm does not have identical skill sets in each of our markets, therefore we must tap the skills wherever they happen to reside to assemble the best team to service our clients. Rapid mobility of staff into and out of the U.S. is required when setting up a new office, for specialized knowledge in operations here and abroad, for professional training of the workforce, and to expose staff to a client's global operations.

The fundamental process of moving people across borders to get them where they are needed is often painful, slow, arduous and costly. This is because antiquated immigration rules and procedures—which vary widely by country—make it extraordinarily difficult for multinational firms to move people across borders on short notice.

In the U.S. and other countries it often can take months to clear all the bureaucratic hurdles before a temporary international assignment can begin. Deployment costs have risen significantly. Given the complicated patchwork of international procedures that we must overcome every day, no amount of money will ensure that we'll be able to place, and therefore effectively utilize, our people in the U.S. or overseas on a timely basis.

In the United States, current INS and Department of Labor (DOL) processing delays make it extremely difficult for employers and potential employees to plan ahead. Employers have deadlines, contracts and workload to contend with, while potential employees must often leave other positions, sell their homes and relocate their families, and factor in tax implications of their move. Even those foreign nationals already in the U.S. may be entangled in these delays as they are unable to travel outside the U.S. while petitions are pending with the INS.

For example, the American Competitiveness in the Twenty-First Century Act recently increased the cap on H-1B nonimmigrant visas and calls for the elimination of the current backlog in cases and a decrease in processing times. As commendable as this piece of legislation is, the INS and DOL are still unable to keep up with the volume of petitions. Currently, Service Center processing times for H-1B approval notices can take three to four months. Contributing to the delay is the DOL's increased turnaround time of between three and six weeks for approval of H-1B Labor Condition Applications (LCAs). As a result our audit and tax practices recently had to turn away many previously scheduled foreign nationals because they would have arrived in the States to work after our tax busy season due to the exorbitant H-1B delays. Not only did these PwC foreign nationals miss a tremendous professional opportunity, but it put great stress on our ability to timely and effectively complete our financial audits. Some of these staff members chose to work in other countries with less restrictive immigration processes.

In a related matter, the American Competitiveness in the Twenty-First Century Act's portability provision allows H-1B employees transferring to another U.S. firm to start work with a new employer immediately upon filing of a petition. Under this new legislation, the employee does not have to wait for the H-1B petition to be approved before traveling for business or personal reasons outside the U.S. This legislation is encouraging to employers like PwC who often require employees to travel outside the U.S. on business. While the spirit of the legislation is helpful, the implementation is flawed. In the absence of guidance in the field, the INS has stated that for the time being, each port of entry will determine the admissibility of an applicant for H-1B status which means that an approved petition may, in fact, be necessary to return to the U.S. from a visit abroad. As a precaution, PwC is currently advising new H-1B employees to remain in the U.S. until their petition is approved, which again, could take three to four months. This is incompatible with the realities of the global market in which we compete.

Unfortunately, inordinate delays like this have become the norm and the timing couldn't be worse. In today's global economy, the need for specialized knowledge and expertise that can be deployed anywhere, anytime has never been greater. Accordingly, PricewaterhouseCoopers supports the implementation of Established User Programs, similar to L-1 Blanket programs, that would streamline processing and decrease turnaround times for high volume nonimmigrant visa employers with a proven track record. Implementation of such programs would reduce paperwork and free up INS and DOL resources to work on other cases. The United Kingdom has implemented such a program for its corporate clients with great success.

PwC also supports the proposed June 2001 implementation of an INS \$1,000 fee to expedite processing. Due to high volume and data management issues, however, this "fast track" service will not be available for H-1B visas in the near future. Fees generated from this new program might be used to enhance INS information systems to better manage the heavy caseload and data. In the long-term the INS must invest in building its electronic filing capabilities to bring its operations into the 21st century. As a start, electronic signatures on employment-based immigration filings should be implemented as soon as possible to save time and eliminate courier and other related expenses.

The vast majority of U.S. and international executives have spouses who are working professionals. Some countries, including the U.S., maintain laws that prohibit spouses from working in the host country. The inability of a spouse to secure employment in the host country results in both a loss of dual income and career enhancement opportunities. While PwC provides visits home, cultural awareness briefings, language training, and nominal financial support—this does not make up for an involuntary career break which may mean setting aside career goals as well as relinquishing contacts, networks, and benefits.

Inability to obtain spousal work authorization is one of the main reasons our L-1 international transferees refuse, or prematurely terminate an assignment—and this is exceedingly costly for both the company and clients. PricewaterhouseCoopers wholeheartedly endorsed the "Spousal Equity Act" introduced in the last Congress which would permit the negotiation of agreements to grant work authorization for spouses of L-1 nonimmigrant visa holders. We will work towards reintroduction and passage of similar legislation with this Congress.

The hurdles that businesses face in deploying staff also act as significant non-tariff barriers to competitiveness. Despite the World Trade Organization's inability to formally launch a broad round of negotiations in Seattle, discussions on the services negotiations have begun, and the world will continue to search for new ways to expand international trade and fuel global economic expansion. Services are at the heart of the new economy. Any effort to improve the efficiency and the dynamism of the service sector will contribute to global economic growth. Not only do certain sectors, such as telecommunications, transportation, financial, distribution, professional and information services, play a key role in a country's infrastructure, but the new manufacturing economy also benefits from innovative and efficient services crucial to production, such as product design and engineering, marketing and distribution, outsourcing, and globalization strategies.

Whatever progress that can be made in reducing trade barriers will be mitigated, however, if business isn't able to move people in a timely and efficient manner to support the sale of products and services around the globe. Until deployment procedures are expedited around the world, business will not be able to adequately support the movement of goods and services. And everyone will continue to suffer. Impaired mobility inhibits trade and investment across borders. It's also detrimental to the health of local economies—economies that would otherwise benefit from the financial and technological resources that typically accompany employee transfers.

The demands of global trade are such that response time is critical to servicing of goods and the delivery of services. If we don't fix the problem now, it becomes that much more difficult in the future. PricewaterhouseCoopers has been working both in the U.S. and in Europe to ensure that liberalization for temporary entry of service professionals is on the agenda of trade negotiators. It is imperative that the U.S. and our trading partners make more meaningful commitments to establish a rapid deployment capability that provides for transparency, predictability, harmonization and speed in moving our business personnel around the world to service a global economy.

In conclusion, at PricewaterhouseCoopers we like to differentiate ourselves as the premier and unique professional services firm. However, when it comes to immigration, the challenges we face are in no way unique, nor are they easily remedied. My counterparts at both like-size firms and smaller organizations deal with many of the same issues I mention here today. Congress needs to make resolving these challenges a priority, otherwise we all will fall short of the promise of what a global marketplace can do to boost our economy.

Thank you again for the opportunity to present my firm's views at today's hearing. I look forward to your questions.

Chairman BROWBACK. Thank you, and I appreciate your thoughts, particularly your specific items that hopefully we will have a chance to address.

Ms. Muñoz, thank you for joining us.

**STATEMENT OF CECILIA MUÑOZ, VICE PRESIDENT, OFFICE OF RESEARCH, ADVOCACY AND LEGISLATION, NATIONAL COUNCIL OF LA RAZA, WASHINGTON, D.C.**

Ms. MUÑOZ. Thanks, Mr. Chairman. I am happy to be here, and I want to thank you especially for the tone that you set both with the nature of this hearing and the nature of your opening comments. I couldn't help as you were speaking but contrast that with the last time I testified, which was less than a year ago before the other body, where the witness who spoke before me had a number of complaints about immigrants and Latinos, the most colorful of which was his impression that we all keep goats in our backyards.

This is a much different tone, a much different attitude, and we appreciate that more than I can say.

Chairman BROWBACK. Thank you for noticing it.

[Laughter.]

Ms. MUÑOZ. The numbers that are coming out of the 2000 Census are a good illustration of why the immigration issue is so important to the Nation's Latinos.

Chairman BROWBACK. Aren't they astounding?

Ms. MUÑOZ. They are astounding.

Chairman BROWBACK. I open up the paper almost everyday just to look at a different set of them, and I just think this is amazing. It is beautiful what is taking place, but it really is striking. I don't mean to interrupt you, but it is so impressive to see.

Ms. MUÑOZ. And for us it is part of the American story. It is a continuation of our history, and what this is is a phenomenon that has been true of this country as long as we have been a country. And to be part of that and to have that trend continuing and to have our community be a big piece of that is an extraordinary thing. And we are mindful of that as an historic moment, but as one of many historic moments that have been about demographic change.

That has been what makes us great as a Nation, and immigration is obviously a very important part of that. We think that is



what makes us strong. As we know, immigrants are transformed by the experience of becoming Americans. We also know that America itself is transformed and reinvigorated and enriched in so many ways by the presence of immigrants.

We clearly do well by doing the right thing; that is, by having a policy strategy that is about reuniting families and protecting refugees and providing for specific labor needs. This benefits not just the immigrants that we are talking about, but it benefits all of us as a whole.

Indeed, while the basic framework of our legal immigration policy is the right one, it is also true that the way in which we implement our immigration laws is far out of step with the reality that immigrants come and work and are an asset to this country in a number of ways. And they deserve to be treated with respect and a commitment to equity, and under our current laws that is not happening and that needs to change.

Across the country, legal residents and U.S. citizens face the separation of their families, inappropriate detention and deportation, major damage to due process of law, and distinctly unequal treatment under the law. I would hope that this Subcommittee would turn its attention to the major ways in which immigration policy reflects an attitude that commits a grave injustice to our Nation's immigrants and to their many contributions to this Nation.

I want to outline just four areas that I know are either coming up in the policy debate or really should come up in the policy debate. I should say that this could have been a lot longer and I have tried to take it easy on you in this first statement.

We know that reform of the INS is going to be an issue. You highlighted it. It is important to highlight it. We also note that President Bush made it a campaign issue, and we are glad for that. For us, the bottom line is accountability. You described the need for accountability and for swift and efficient processing of naturalization petitions and family petitions and the other kinds of applications before the INS.

We would also apply the same standard to the way INS conducts its enforcement. There are far too many of us who, because we are walking down the street or driving down the road and happen to look like we might be Mexican, are pulled over, stopped, harassed, detained by local law enforcement as well as by the INS, and often in collaboration. The way INS enforcement is conducted has for decades been an extraordinary disservice to our commitment to justice and equity in this country. It feels like it is aimed against Hispanic Americans.

Any debate and discussion on reform of the INS needs also to focus on the question of accountability, standards for enforcement, and making sure that the INS is doing its job well and efficiently and thoroughly. We support law enforcement, we support border enforcement, but the way that we do is important, and it needs to be consistent with our laws and values.

We also note that today there are bilateral discussions between the Mexican and U.S. Governments particularly around the question of guest workers and migration. We welcome the discussion. We think it is very constructive to have a bilateral discussion, and we take the position that any legislation related to temporary labor

particularly in agriculture, or the service sector for that matter, needs to recognize the circumstances in which particularly farm workers live and work in the United States. These are conditions which more resemble the 19th century than they resemble what they should.

We believe that this discussion needs to start to put farm workers on equal footing with other American workers with respect to wages and labor rights. In particular, we have argued that any legislation affecting farm labor in the U.S., including this guest worker discussion, be consistent with a couple of fundamental principles before being considered by this Subcommittee.

First, any policy aimed at this sector must improve substantially the labor protections available to farm workers and the enforcement of these protections. It is unreasonable that farm workers live and work in conditions in the United States under a set of standards which are far lower than that expected by every other part of the U.S. workforce.

We also think legislative reforms need to recognize that a substantial part of the existing agricultural workforce lives and works in the United States without the benefit of immigration status. It is in the long-term best interests of the country, the industry, and the workers themselves to provide individuals with an opportunity to adjust their status and reunite with their families.

Thirdly, I just want to highlight that there are a number of ways in which we need to revisit the laws which were enacted in 1996. There is a long list of excesses still present in the law which do nothing to forward the cause of immigration control and do extraordinary harm to immigrant families and to the Nation's commitment to equal justice.

This includes unnecessary barriers to the reunification of families caused by a number of different policies, including the failure to fully extend section 245(i) and the creation of arbitrary financial requirements for the reunification of families. It also includes the injustice of court-stripping which has deprived innumerable immigrant families of their rights and the automatic deportation of illegal residents who committed minor offenses of 10 years ago and have already repaid their debt to society.

There are a variety of provisions in the law which undermine the confidentiality of immigrants and their families, and cause people to fear law enforcement and other public officials. There is a very long list here and we believe that as part of our commitment to justice and fair treatment for these folks who are contributing so much, we really need to take a look at the most punitive, most excessive aspects of the 1996 law, reopen them, and address them.

I also want to again underscore the question of immigration enforcement. I talked about racial profiling already and the way that immigration enforcement is conducted. This has as profound impact on Hispanic Americans at the border, but also in the interior.

Many of the calls that we get about racial profiling or harassment at the hands of INS come from Nebraska, Kansas, Iowa, Arkansas, Tennessee, come from parts of the country that we didn't use to hear from before. We are also concerned about the INS' increased use of verification systems, sometimes in collaboration with

the Social Security Administration in a way that is affecting industries and also affecting workers and their families.

We have noted—in fact, we have worked with you in the past on this issue—that there are high error rates in these data bases, and people's ability to work and stay with their families are being jeopardized by faulty data and by the use of verification systems which are really putting people in harm's way. We believe these policies need to be reconsidered.

I just want to conclude, Mr. Chairman, by saying that the Subcommittee has an extraordinary opportunity right now to honor the many contributions that immigrants make energizing our economy and revitalizing our communities. We appreciate that you are viewing these folks as people and parts of families rather than numbers, and we urge you to lead the charge in restoring fairness to our laws.

Thank you.

[The prepared statement of Ms. Muñoz follows:]

STATEMENT OF CECILIA MUÑOZ, VICE PRESIDENT, OFFICE OF RESEARCH, ADVOCACY AND LEGISLATION, NATIONAL COUNCIL OF LA RAZA, WASHINGTON, DC 20036

#### I. INTRODUCTION

Mr. Chairman, I appreciate the opportunity to provide this testimony on behalf of the National Council of La Raza (NCLR), the largest national constituency-based Latino civil rights organization. NCLR is an umbrella organization for more than 250 affiliates—community-based institutions that provide a wide range of services to more than 3.5 million Latinos each year. NCLR has long been involved in the public policy debate on immigration; for us this is a civil rights issue of fundamental importance. Immigration policy is a priority for us not because so many Latinos are immigrants—indeed many of our fellow Americans are surprised to learn that the majority of Latinos are native-born U.S. citizens—but rather because immigration policies tend to affect us all, whether or not we were born here.

The initial reports emerging from the 2000 Census illustrate why the immigration issue is so important to Hispanic Americans. While many of us come from communities that became American by conquest, the fastest growing segments of the Latino community are either immigrants themselves or the products of immigration. The extraordinary growth of our community, which is emerging as a force throughout the U.S., demonstrates the power of the immigration phenomenon and the ways in which the classic American story is being repeated all over the country. One of the many reasons for our strength as a nation is this repeating process, through which immigrants are transformed by the experience of becoming Americans, and America itself is also transformed, enriched, and reinvigorated by the presence of immigrants.

Few Americans doubt that our tradition as a nation of immigrants is one of America's defining characteristics; the diversity this fosters is a big part of what makes our country unique. There is ample evidence supporting the notion that this continues to be true; immigrants who choose to make their lives here enrich the United States economically, socially, and culturally. Immigrants contribute about \$10 billion to the U.S. economy each year. If you account for the impact of immigrant-owned businesses, this figure is likely to be far higher. A vast array of observers, including key business leaders, the AFL-CIO, and the Chairman of the Federal Reserve, have pointed to immigration as a key element in the nation's recent economic growth—the hard work of immigrants has been essential to creating the unprecedented prosperity that America enjoys.

But it is also part of the American story that the very processes of immigration and demographic change are sometimes greeted negatively. Even as immigrants have enriched the nation, they have also been attacked for not seeming educated enough, skilled enough, or "American" enough to belong here. There are anti-immigrant organizations and movements working today to raise concerns about current waves of immigration. At their best, these organized movements provoke discussion and debate; at their worst, they promote hatred and bigotry. These movements have often shaped the nation's policies toward immigrants, from the exclusionary laws that dominated American policy until the middle of the 20<sup>th</sup> century to the most re-

cent major immigration reform enacted in 1996, which reflects significant anti-immigrant sentiment.

The U.S. clearly does well by doing the right thing—our policy strategy of reuniting families, protecting refugees, and providing for specific labor needs appears to benefit not simply the immigrants themselves, but America as a whole. Indeed, while the basic framework of our legal immigration policy is the right one, the way in which we implement our immigration laws is far out of step with the reality that immigrants are an asset to the U.S. and who should be treated with respect and a commitment to equity. Our most recent set of immigration reforms was drafted at the height of a wave of anti-immigrant sentiment; the impact of these reforms on many hard-working immigrants and their families has been devastating. Across the country, legal residents and U.S. citizens face the separation of their families, inappropriate detention and deportation, major damage to due process of law, and distinctly unequal treatment under the law. Indeed, immigrants are subjected to a set of policies that are unthinkable for other Americans—our nation's commitment to equal justice has been severely undercut by recent changes in immigration law. In addition, the Immigration and Naturalization Service (INS) has long been notorious in immigrant communities for its poor treatment of the individuals and families it is meant to serve. I would hope that this Subcommittee would turn its attention to these major ways in which immigration policy reflects an attitude that commits a grave injustice to our nation's immigrants and their many contributions to the nation.

## II. REFORM OF THE INS

During the recent presidential campaign, then-candidate George W. Bush made a public commitment to implement substantial reforms of the INS in order to improve its effectiveness and responsiveness to the communities it serves. NCLR, like the vast majority of Latinos, welcomes this commitment and is looking forward to working with President Bush's Administration and the Subcommittee to realize this particular vision. The Latino community has an enormous interest and stake in the reform of the INS. However, the issue is not simply reforming the agency, but doing it in a way which promotes equity and accountability. If last year's legislation on reform of INS serves as a guide to this year's debate, NCLR would be comfortable with the approach in last year's Senate bill. However, if the House bill provides the framework, we would be forced to oppose.

NCLR agrees with President Bush that one of the principal priorities for INS reorganization is to improve its accountability for fair and speedy adjudication of the numerous petitions that come before it: for family visas, political asylum, citizenship, and other important processes. We have long complained that a mentality of enforcement has been too visible in the administration of these processes; while most INS personnel do their jobs well, there are too many who still believe that their responsibility is to look for ways to "get" people as they go through routine processes like naturalization and visa processing. As a result, our community fears any contact with the INS; even those who have no reason to fear a naturalization interview believe that the adjudicator might find some excuse to deny their petition, or worse. Enough people have found themselves detained or ensnared in complicated bureaucratic processes to make these fears warranted.

In addition, backlogs processing continues to plague the system. Recent efforts to speed up naturalization processing have had a positive impact, but only at the expense of slowing down the adjudication of other important petitions. It is unreasonable for an agency of the size and scope of INS to send teams of adjudicators from backlog to backlog, reducing one set of problems while another one builds. This clearly indicates the need for adequate resources, appropriate training, and a long-term strategy to ensure that the agency can fulfill its mission. There are still far too many problems that result in extraordinary delays for thousands of people; lost applications are commonplace, as is poor treatment of those who come to inquire about the status of their applications.

NCLR believes that accountability for the way INS conducts its enforcement activities is an equally important goal for the reorganization of INS. We have opposed legislation to reform the agency in the past because we believed that it would reduce accountability on the enforcement side and increase the kinds of abuse that affect far too many Latinos. Immigration enforcement often runs afoul of the civil rights of Hispanic Americans, including U.S. citizens and legal residents who are mistaken for immigrants because of their ethnic appearance. In border communities, generations of Latinos have complained about being asked to prove that they belong in their own neighborhoods; these practices are increasingly evident in the interior of the U.S. INS increasingly enlists other agencies in its enforcement strategies, in-

cluding the Social Security Administration and local police forces, in a way that is both highly invasive and abusive. Part of the discussion on reform of the INS must include the establishment of law enforcement standards that protect the rights of those who come into contact with INS and accountability for the way the entire enforcement operation is conducted.

### III. FARMWORKERS AND GUESTWORKERS

The debate on agricultural labor and guestworkers has already emerged as a major issue this year. NCLR has a long history in this debate; we are extremely concerned about the treatment of farmworkers in the U.S., which we have repeatedly expressed to this Subcommittee. NCLR strongly believes that any policy debate on agricultural labor must start from the perspective that the status quo is unacceptable; it is unreasonable for the nation's farm laborers to continue to live and work in conditions that resemble the 19th century more than they do the modern workplace. For this reason, we have strongly opposed legislation that has been introduced in the last several Congresses to expand the existing H-2A temporary worker program and reduce its labor protections.

The context in which this debate takes place is important; there is ample evidence to suggest that the major claim of the agricultural industry—that they have a labor shortage and must therefore import temporary workers—is unsubstantiated. A variety of recent reports, including by the U.S. General Accounting Office, have documented a surplus of agricultural labor. The GAO analyzed unemployment data in the 20 major agricultural-production counties in the United States and found that most have double-digit unemployment rates. Nor is there an impending shortage.

Additionally, employers have not sought to stabilize the labor market. Farmworkers' wages have declined in real terms during the last decade, and poverty rates have increased during the last few years, according to the Department of Labor. If there were a labor shortage, we would have seen employers increasing wage rates and offering other inducements. Rampant violations of minimum and other labor protections persist, according to recent studies.

There are strong indications that labor-intensive agribusiness can afford to pay a living wage. Agricultural productivity has increased substantially. The value of production of fruits, vegetables, and horticulture—labor-intensive crops—grew by 52% to \$15.1 billion between 1986 and 1995. Exports of these products nearly quadrupled between FY 1986 and FY 1997, reaching \$10.6 billion. Farmworkers did not share in that increase.

NCLR takes the position that any legislation related to temporary labor in agriculture or the service sector must recognize these circumstances and begin to address them in a way which puts farm laborers finally on equal footing with other American workers with respect to wages and labor rights. In particular, we have argued that any consideration of legislation affecting farm labor in the U.S., including the guestworker discussion, be consistent with several fundamental principles before being considered by this Subcommittee. First, any policy aimed at this sector must improve substantially the labor protections available to farmworkers and the enforcement of such protections. It is unreasonable that this sector functions under a set of labor standards far below the rest of the U.S. workforce. Any change in the law must result in substantial improvements in wages and working conditions for farmworkers. Similarly, legislative reforms must recognize that a substantial part of the existing agricultural workforce lives and works in the U.S. without the benefit of legal immigration status. It is in the long-term best interests of the country, the industry, and the workers themselves, to provide individuals with an opportunity to adjust their status and reunite with their families. NCLR believes that any reforms that simply expand the guestworker structure without significant improvements in labor standards and access to adjustment are incomplete, and likely to perpetuate the unacceptable conditions in which farmworkers live and work.

### IV. REVISIT THE 1996 LAW

There is no greater evidence of the disconnect between the important and well-recognized role that immigrants play in the economy and society of the U.S. and their treatment under the law than the laws passed in 1996, which have had a devastating impact on immigrant families and their basic rights. In particular, the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) and the Personal Responsibility and Work Opportunity Reform Act (PRWORA) enacted that year have become potent symbols of an ugly anti-immigrant era whose legacy is the atrocious treatment of immigrants and their families. While there have been modest reforms to remedy some of the ugliest provisions in these laws, there are still sub-

stantial reforms necessary to prevent the needless hardships endured by immigrant families which continue to shock their neighbors and communities.

There is a long list of excesses still present in the law which do nothing to forward the cause of immigration control, and do great harm to immigrant families and the nation's commitment to equal justice. In particular, NCLR hopes that this Congress will address:

- The unnecessary barriers to the reunification of families caused by several different provisions, including the failure to permanently extend section 245i, and the creation of arbitrary financial restrictions
- The injustice of "court stripping," which has prevented judges from offering leniency, and which has denied thousands of immigrants access to legal status for which they are eligible
- The automatic deportation of legal residents who committed minor offenses years ago and have since paid their debt to society
- A variety of provisions that undermine the confidentiality of immigrants and their families, and undermine their confidence in law enforcement and other public officials
- The lack of parity in the treatment of all of the refugees from the Cold War, particularly those from Central America who have made their homes in our communities for more than a decade
- The continuing impact of welfare reform, particularly on the health and nutritional status of legal immigrant children

NCLR strongly believes that it is in the best interest of the nation to rededicate itself to fair and equal treatment under the law. These policies, which tear families apart and undermine our nation's commitment to equal justice under the law, are more than a disservice to hard-working immigrants and their families; they undermine the commitment to fairness and equity that all Americans value.

#### V. ENFORCEMENT ISSUES AND PRACTICES

NCLR has grave concerns about the way in that immigration enforcement is conducted. While we, like most Hispanic Americans, agree that the nation has a right to enforce its laws and control its borders, the manner in which we engage in these efforts must be consistent with our laws and values. Unfortunately, immigration enforcement has for many decades been conducted in a way that undermines the rights that Americans hold most dear. Hispanic Americans, immigrant and native, continue to suffer abuse in the name of immigration enforcement.

The border between the United States and Mexico is an obvious focus of concern; the number of border enforcement personnel has increased dramatically in recent years. NCLR has long been concerned about the lack of adequate standards and training in the conduct of enforcement personnel. As large numbers of new officers are added, these concerns about their preparation are growing. In addition, along with many observers in the international and human rights communities, NCLR is alarmed at the number of deaths at the border. For many years, we have argued that an effective and humanely implemented deterrent at the U.S.-Mexico border is a key element of an immigration control strategy. It has since become clear that the cost for our current deterrence strategy is excessively high; over 600 people have died attempting to cross our border since it was implemented in the mid-1990s. This is an unacceptable and tragic outcome, which more than justifies a re-evaluation of the nation's strategy at the border.

NCLR is also highly concerned about the strategies being deployed by INS in the nation's interior. We have formally protested the strategy of creating "Quick Response Teams" (QRTs) in communities with emerging Latino populations. Our analysis of the response to this initiative suggests that a major result of this policy is the harassment of Latinos and others whose ethnic appearance suggests to law enforcement officers that they might be immigrants. The presence of INS in these communities often leads to improper collaborative efforts between INS and local police, who regularly stop Latino drivers and pedestrians and demand proof of immigration status. NCLR receives reports from all over the country of abuse at the hands of local police who have either come to believe on their own or have been persuaded by INS that their jobs should include immigration enforcement. Not only is this improper under the law, it seriously jeopardizes the public safety by destroying Latinos' confidence in their local law enforcement agencies. When entire communities begin to believe that the police are a source of harassment rather than protection, it becomes difficult to enforce the law and protect the public. NCLR strongly believes that these arrangements do little to advance immigration enforcement, and they do great harm to the larger community, not to mention to the fundamental

rights of those of us whose only "infracton" is the fact that to others we look "foreign."

In addition, INS continues to use invasive verification procedures as a key enforcement strategy in a way that is undercutting immigrant communities and entire industries. For example, in 1999 through Operation Vanguard, INS compelled the entire meatpacking industry in Nebraska to turn over its employment records for verification. INS then attempted to verify these workers through its own databases, which are known to have substantial error rates, and those of the SSA, which are also inadequate to demonstrate the workers' eligibility to work legally in the U.S. The result of this operation was massive displacement of workers, including those who were legal residents, but who mistakenly turned up as potential problems in the data match. These immigrants, who are legally here but who also fear any contact with the INS, left their jobs rather than attempt to clarify their records. NCLR has long argued that INS verification schemes are unlikely to have an impact on illegal migration, but will clearly undermine the rights of workers caught up in problems as a result of faulty data. We believe that the use of verification systems as a tool in immigration enforcement must be re-evaluated.

## VI. CONCLUSION

In conclusion, Mr. Chairman, NCLR believes that this Subcommittee has a tremendous responsibility and a great opportunity in the 107<sup>th</sup> Congress. Immigrants throughout the United States, whose populations are more diverse than ever, and whose presence is felt throughout the nation, know well that they are not afforded the respect they deserve under our immigration laws. Neither they nor NCLR argue for a massive liberalization of immigration law, nor for great expansions in the number of immigrants who come to the U.S. But we do argue for family reunification, due process of law, protection for those fleeing persecution, equal treatment, and respect. Immigrants know well that their hard work and commitment to their chosen country is part of a long and extraordinary tradition that has made America great. We diminish that greatness when we allow excessively harsh, unjust, and inhumane laws to remain on the books. This Subcommittee has an opportunity to honor the many contributions that immigrants make in energizing our economy and revitalizing our communities. We urge you to lead the charge in restoring fairness to our laws.

Chairman BROWBACK. Thank you, and thank you for the admonition at the end. I intend to do that.

Ms. Narasaki, it is delightful to see you again and I look forward to your testimony.

## STATEMENT OF KAREN K. NARASAKI, PRESIDENT AND EXECUTIVE DIRECTOR, NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM, WASHINGTON, D.C.

Ms. NARASAKI. Good afternoon, Mr. Chairman. I couldn't ask for a better birthday gift.

Chairman BROWBACK. Happy birthday. I won't sing.

Ms. NARASAKI. We appreciate your inviting us to testify on the subject of Asian immigration and to offer our views on work that we hope we can accomplish together with this Congress this year.

We do have extensive written testimony which we are asking to be submitted into the record.

Chairman BROWBACK. Without objection.

Ms. NARASAKI. Before I formally begin, I would also like to take the opportunity to thank you, Mr. Chairman, for your leadership in the 1996 battles to retain the family based visa categories. Your work was of profound importance to our community and to the Nation.

We share your belief, as you so recently and eloquently stated, that America's greatest strength remains its openness to new ideas and to new people. That is why we are committed to fair, generous, and non-discriminatory immigration policies.

Immigration policy is particularly important to the Asian community because one-third of the immigration to the U.S. over the last three decades has really been from Asia. Although we are only 4 percent of the Nation's population, we are one-quarter of the Nation's foreign-born.

Many Asian immigrants are fleeing persecution and seeking freedom for themselves and their families. Others are seeking a place where they can fully apply their talents, whether it is in arts, athletics, science, or business. Still others seek to reunite with their parents, their children, or their brothers and sisters, and to contribute to each other's and their family's well-being.

That is why we believe it is critical that our immigration system maintain a balance between the employment, family, and refugee asylum-based immigration categories. We want to particularly focus on family based immigration because it has been the cornerstone of U.S. immigration policy.

Well over 90 percent of the Asian community has arrived through the family based categories. Immigrants who entered the U.S. as adult kids or as brothers and sisters include countless individuals who have contributed to our Nation's life and economy, and who have served honorably in our armed forces.

From small businesses to high-tech companies, Asian immigrant entrepreneurs have been a critical element in the revitalization of many urban communities across the country. Many of them were sponsored into this country by their siblings or parents who emigrated earlier and became citizens.

Also, family visa policies have a direct impact on the power of America to continue to attract the world's most talented personnel to compete in the global market. The ability of immigrants, refugees and asylees to become emotionally and economically stable and socially integrated into society increases when their family members are able to join them.

For example, take the case of Ming Liu, a design engineer for a U.S. telephone and electronic equipment company from China. He was more than meeting his employer's expectations, but he became a much better worker after his wife and child were able to join him in Fremont after a long 2-year wait. His productivity skyrocketed and his boss noted that Liu not only was a better worker, but became more open socially at work. And it allowed him to subsequently create an innovative concept that helped the company to change direction and increase sales. Liu said that the arrival of his family allowed him to breath again.

In Asian immigrant families, adult children often work together to take care of aging parents. Grandparents take care of grandchildren while the parents work. Brothers and sisters pool their resources to send nieces and nephews to college, to open family businesses, and to buy homes. Their children often work in these businesses.

Unfortunately, historical exclusion and a failure to address growing family backlogs has resulted in an inordinately long wait for most of these families, waiting as spouses, siblings, and children. Close to half of the family backlogs are of individuals from Asian countries, and many have been waiting 10 to 20 years to rejoin their families here in the U.S.



Because of the per-country caps and limited family quotas, American citizens petitioning for adult unmarried children from the Philippines face a wait longer than that of those for legal permanent residents, which means that the Filipinos in our community have a disincentive from becoming citizens. The waiting times are so long that children may become 21 years of age while their parents wait to reunite with their parent or sibling. The families often are faced with an incredibly decision of moving and leaving an adult child behind to wait in an even longer line. If petitioners become citizens and the adult children marry in the meantime, they are put in yet another long line, some of them waiting as long as 7 years.

Last year, Congress took the first step in addressing the growing issue. The new V visa category allows spouses and minor children of permanent residents who have been waiting at least 3 years to enter and obtain work authorization. However, this is only a partial relief to a much larger problem.

The current waiting times for family visas, we believe, undermines the entire immigration system, and we are urging the Subcommittee to hold hearings on the issue and develop a solution that will help us to reunite these families in a more efficient and fair way.

We have also supported employment-based immigration when it meets a strongly articulated need for our economy, an employer's need to create a longer-term solution, and it provides a means of adjustment. This option, we believe, is critical for making sure that employees who invest their talents here are able to put down roots if they choose.

Consequently, we supported the legislation to raise the caps on the H-1B visas, over half of which have been issued to immigrants from Asia. A recent Department of Labor interim rule, however, is frustrating Congressional intent to allow these workers to move quickly from one company to another. We urge this Subcommittee to look into this issue and work with INS and the Department of Labor to make sure that they are working in concert with the legislation.

There are a number of other issues that I would like to get to. On asylum seekers and refugees, there is a lot of unfinished business with refugees from Southeast Asia, particularly those who were allowed in as public interest parolees under Attorney General Edwin Meese's orders in the late 1980's. They still have been unable to regularize and become permanent residents.

Legislation was passed last year, but the INS has as yet failed to take any action to put forward guidelines for how these people are allowed to adjust under the new legislation, and, in fact, have instructed their field offices to reject any applications that are being filed.

Finally, on adjustment of status, we share Senator Durbin's concern about the continuing plight of undocumented immigrants, particularly those who have strong roots in our community. We hope the Subcommittee will examine this difficult issue and the various approaches by which we can solve this current problem.

There are a number of issues that we would like to address, and I look forward to working with this Subcommittee to address them.

Thank you.

[The prepared statement of Ms. Narasaki follows:]

STATEMENT OF KAREN K. NARASAKI, PRESIDENT AND EXECUTIVE DIRECTOR,  
NATIONAL ASIAN PACIFIC AMERICAN LEGAL CONSORTIUM

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me be able to offer the following testimony on behalf of The National Asian Pacific American Legal Consortium. The National Asian Pacific American Legal Consortium ("NAPALC") is a nonprofit organization whose mission is to advance and protect the legal and civil rights of Asian Pacific Americans across the country. Immigration policy is particularly important to NAPALC because of the large percentage of immigrants in the Asian-American community and the long history of racially discriminatory treatment of Asian and Pacific Islanders by our country's immigration laws.

NAPALC and its Affiliates, the Asian-American Legal Defense and Education Fund in New York, the Asian Law Caucus in San Francisco, and the Asian Pacific American legal Center of Southern California, collectively have over 75 years of experience in providing direct legal services, community education, and advocacy on immigration law and immigrant rights issues.

NAPALC pursues fair, generous and nondiscriminatory immigration policies. We believe that history has proven that the United States has thrived economically and socially because it is a nation of immigrants. We collect data and educate policy makers as to the impact of various proposals. We also monitor implementation of immigration laws by the Immigration and Naturalization Service and provide technical assistance and education materials about changes in the immigration laws of most relevance to the Asian Pacific American community.

## I. THE HISTORY OF ASIAN IMMIGRATION IN THE UNITED STATES

### A. HISTORICAL EXCLUSION

The history of this country's immigration laws has been fraught with racial bias. The Chinese Exclusion Act of 1882 which prohibited the immigration of Chinese laborers, epitomizes the early record on immigration from Asia<sup>1</sup> 1907, anti-Asian sentiment culminated in the Gentleman's Agreement limiting Japanese immigration,<sup>2</sup> Asian immigration was further restricted by the Immigration Act of 1917 which banned immigration from almost all countries in the Asia-Pacific region<sup>3</sup>; the Quota Law of 1921 which limited the annual immigration of a given nationality to three percent of the number of such persons residing in the United States as of 1910<sup>4</sup>; and the National Origins Act of 1924, which banned immigration of persons who were ineligible for citizenship,<sup>5</sup> decade later, the Tydings-McDuffie Act of 1934 placed a quota of 50 Filipino immigrants per year.

It has been just over a generation since the Chinese Exclusion Act and its draft: April 41<sup>7</sup> Testimony before the Senate Immigration Subcommittee progeny were repealed in 1943.<sup>6</sup> Yet after the repeal, discriminatory quotas were nevertheless set using formulas giving special preference to immigration from Europe. Until 1965, for example, the German annual quota was almost 26,000 and the Irish almost 18,000 while the annual quota from China was 105, for Japan was 185, the Philippines was 100 and the Pacific Islands was 100.<sup>7</sup>

The intensity of the discrimination against immigrants from Asia is reflected in the fact that they were ineligible to become naturalized citizens for over 160 years. A 1790 law allowed only "free white persons" to become citizens. Even after the law was changed to include African Americans, similar legislation to include Asian

<sup>1</sup> Civil Rights Issues Facing Asian Americans in the 1990s, U.S. Commission on Civil Rights, p. 7 (1992).

<sup>2</sup> U.S. Dept. of State, *Paper Relating to the Foreign Relations of the United States 1924* (1939), Vol. 2, p. 339. See Higham, *American Immigration Policy in Historical Perspective*, 21 Law and Contemp. Probs. 213, 227 (1956).

<sup>3</sup> Act of Feb. 5, 1917, 39 Stat. 874.

<sup>4</sup> This quota limited non-European immigration. For example, Great Britain with two percent of the world's population had 43% of the quota. National Lawyers Guild, *Immigration Law and Defense*, p. 2-4.

<sup>5</sup> At the time, only immigrants from Asia were ineligible for citizenship solely on the basis of race. See *Ozawa v. U.S.*, 260 U.S. 178 (1922).

<sup>6</sup> Ch. 344, 57 Stat. 600 (1943).

<sup>7</sup> *Id.*

Americans was rejected.<sup>8</sup> The Supreme Court upheld the laws making Asian immigrants ineligible for citizenship.<sup>9</sup> The last of these laws were not repealed until 1952.<sup>10</sup>

## B. IMMIGRATION REFORMS

Congress sought to eliminate most of the racial barriers imbedded in the immigration system with the passage of the Immigration and Naturalization Act of 1965. Unfortunately the Act did not address the effect of earlier biases. In fact, the 20,000 per country limit, imposed without any connection to size of originating country or demand, resulted in extremely long waiting lists for Asian immigrant.<sup>11</sup>

The Immigration Act of 1990 also failed to address the tremendous backlogs that already existed for countries like Mexico, India, the Philippines, South Korea, China and Hong Kong. Instead, the problem was exacerbated with the reduction in number of visas available for adult sons and daughters of United States citizens. At the time the backlog consisted primarily of children of Filipino veterans who are allowed to naturalize under the Act because of their service to this country in fighting as a part of United States Armed Forces in World War II. Despite this fact, the quota was cut in half and other family categories were reduced, causing the backlog to increase by close to 70 percent.<sup>12</sup>

As a result, although Asians have constituted over 30 percent of the country's immigration for the past two decades, the community still makes up less than 4 percent of the United States population. Most recent numbers indicate that well over 1.6 million Asian immigrants were still waiting in backlogs for entry visas to reunite with their families. Over 45.7 percent of immigrants waiting to join their loved ones in the United States are from Asian countries. Thus any additional restrictions or reduction in the overall numbers, particularly in the family preference categories, will have an inordinate impact on Asian Pacific American families.

## II. FAMILY REUNIFICATION AS THE FOUNDATION OF OUR IMMIGRATION SYSTEM

Family-based immigration has rightly been the cornerstone of United States Immigration policy for decades. Well over 90 percent of Asian immigration comes through the kinship categories.<sup>13</sup> Families are the backbone of our country and their unity promotes the stability, health, and productivity of family members contributing to the economic and social welfare of the United States.

Immigrants who have entered the United States through the family reunification process as adult children, or brothers and sisters of United States citizens include countless individuals who have contributed to the productivity of our workforce, filled economic needs and served honorably in our Armed Forces. In addition, family reunification policies have direct impact on the ability of American businesses to attract skilled international personnel to compete in the global market. In large part the success of recruitment efforts depends on the ability of employees to consolidate their family members in the United States. The ability of refugees and asylees to become emotionally and economically stable and socially integrated into society also increases when their family members are able to join them, decreasing emotional distress and expanding the pool of resources that can be shared.

For example, take the case of Ming Liu, a design engineer for a United States telephone and electronic equipment company from China. Liu was more than meeting his employer's expectations and his boss was pleased with his hard work. But he became a much better worker after his wife and child rejoined him in Fremont, California after a two-year immigration process. Liu's productivity skyrocketed and his boss noted that Liu not only was a better worker, but that he opened up at work socially as well. Liu ultimately came up with a new and innovative concept that helped the company change direction and increase sales. Liu's own words were that the arrival of his family allowed him to "breathe again."<sup>14</sup>

<sup>8</sup>P. Chew, William and Mary Law Review, *Asian Americans: The 'Reticent' Minority and Their Paradoxes*, p.13 (1995).

<sup>9</sup>See *Ozawa v. U.S.*, 260 U.S. 178 (1922); *U.S. v. Bhagat Singh Thind*, 261 U.S. 197 (1923); and *In re Ah Yup*, 1 F. Cas. 223 (Cir. Ct. D. Cal. 1878).

<sup>10</sup>H. Kim, Ed., *Asian American History, Asian Americans and American Immigration Law* by T. Knoll, pp.52-3 (1986).

<sup>11</sup>H. Kim, Ed., *Asian Americans and the Supreme Court, Asian Americans and Present U.S. Immigration Policies, A Legacy of Exclusion*, by W. Tamayo, p. 1112-1113 (1992).

<sup>12</sup>*Id.* At pp. 1120-1121; Sec. 405 of the Immigration Act of 1990, Nov. 19, 1990, Pub. L. No. 101-649, 104 Stat. 4978.

<sup>13</sup>Hing, Bill Ong. *Easing the Backlogs for Family Immigration: Doing the Right Thing.*

<sup>14</sup>*Id.*

Even beyond the obvious psychological benefit of reuniting immigrants with their families, and the inherent value of close knit family in our own traditions, studies have shown that the policy has a marked impact on the country's entrepreneurship. A recent study found "indeed, the impressive figures on Asian Pacific entrepreneurs. . . have resulted from the current mostly family-based, immigration system."<sup>15</sup>

In Asian Pacific American families, adult children often work together to take care of aging parents and brother and sisters pool resources to send nieces and nephews to college, open family businesses, buy homes or take care of each other in times of distress.

Arguments by some anti-immigrant proponents have suggested that cuts in family immigration are justified by lower immigrant quality. But these propositions overlook the facts. According to a study by the Alexis de Tocqueville Institution, the education levels of immigrants have been improving not declining. Mean numbers of years of schooling have continuously increased; the proportion of new immigrants with less than an eighth-grade education has been steadily declining and the population with a college degree or more has actually risen.<sup>16</sup> In terms of labor markets, analysts note that where immigrants have moved in, the unemployment rate has actually dropped.<sup>17</sup>

### III. CONTRIBUTIONS OF ASIAN IMMIGRANTS

As mentioned earlier, over 90 percent of Asians immigrate to this country through the family categories. The people who come in as spouses, adult children, and siblings are generally in prime of their working lives. The median age of a legal immigrant is 29 years old.<sup>18</sup> And over 59 percent of new immigrants fall within the ages of 15 and 44 years of age.<sup>19</sup> This youth translates into a strong incentive and ability to create and produce, and it manifests itself in our nation's economy and community.

#### A. SMALL BUSINESS OWNERSHIP

Asian immigrants have dramatically increased their presence in small business. Some academics suggest this is a means to overcoming language and other barriers to the mainstream economy, whereas others have focused on explaining why Asian-Americans might fare better in the changing economic environment of the United States. Regardless of the reasons, Asian Pacific Americans have increased their presence in this sector tremendously. Between 1982 and 1987 there was an 89.3 percent increase in Asian-owned businesses.<sup>20</sup> The number of Asian-owned businesses in the United States grew 180 percent between 1987 and 1997, and during the same period there was a 463 percent increase in Asian-American business sales and receipt.<sup>21</sup> The importance of these numbers is in the understanding that the value of these undertakings is transferred to the communities, not simply to the immigrant entrepreneurs themselves:

Asian immigrant entrepreneurship, especially in ethnic enclave economies, has injected long-neglected inner-cities and sleepy suburban communities with much needed capital investment, neighborhood revitalization, and increased commercial activity. . . These sociologists point out that a substantial percentage of benefits, such as job creation, business services, linkages to international capital and markets, and generation of sales and property tax revenues, go beyond ethnic boundaries and enrich the broader public.<sup>22</sup>

<sup>15</sup> Ghosh, Shubha. "Understanding Immigrant Entrepreneurs: Theoretical and Empirical Issues," *Reframing the Immigration Debate*. Edited by Bill Ong Hing and Ronald Lee: LEAP Asian Pacific American Public Policy Institute and the UCLA Asian American Studies Center 1996.

<sup>16</sup> The Alexis de Tocqueville Institution, *The Truth About Immigrant "Quality"*, at p.12 (April 1995).

<sup>17</sup> Park, Edward Jang-Woo. "Asians Matter: Asian American Entrepreneurs in the Silicon Valley High Technology Industry." *Reframing the Immigration Debate*. Edited by Bill Ong Hing and Ronald Lee: LEAP Asian Pacific American Public Policy Institute and the UCLA Asian American Studies Center: 1996.

<sup>18</sup> U.S. Dept. of Justice, Immigration and Naturalization Service, "Legal Immigration, Fiscal Year 1998," July 1999.

<sup>19</sup> *Id.*

<sup>20</sup> Ghosh at 131.

<sup>21</sup> Securities Industry Association. *Asian American Markets*. Available at <http://www.sia.com/diversity/html/asian-american.html>.

<sup>22</sup> Park at 157.

## B. THE REVITALIZATION OF THE LOS ANGELES TOY INDUSTRY

Asian immigrants, like immigrants in general, have moved in to revive business in long-neglected urban areas. For instance when they moved in to transform the previously dilapidated area in Los Angeles and helped pick up a now thriving industry, Los Angeles became the main thoroughfare for the toy industry. More than 60 percent of the toys now sold in United States retail store distributed from the California city, making it the nation's top toy distribution center.<sup>23</sup> The district was developed by a handful of Asian immigrants who transformed a derelict downtown neighborhood into a successful business district that employs more than 6,000 people and generates estimated total revenues of \$500 million annually.<sup>24</sup>

## C. SILICON VALLEY AND THE HIGH-TECH INDUSTRY

The high tech industry in Silicon Valley is another good example of what Asian immigrants can bring the country. The Valley is home to the world's leading technology firms, and is a well-suited example since observers note that: "much of the industry's transformation into its contemporary form coincided with massive Asian Pacific immigration into the United States and California." Asian Pacific Americans provide nearly half the area's manufacturing labor force, and 25 percent of the total workforce. According to Public Policy Institute of California, one out of every four Silicon Valley CEOs is Asian.<sup>25</sup> In individual firms they may range from 20 percent to 80 percent of the company's engineers. One computer industry analyst put it this way: "The United States would not be remotely dominant in high-technology industries without immigrants. We are now utterly dominant in all key information domains. And at every high-tech company in America, the crucial players, half of them or more, are immigrants."<sup>26</sup>

## IV. POLICY RECOMMENDATIONS FOR THE 107TH CONGRESS.

## 1. FAMILY-BASED IMMIGRATION: CLEARING THE BACKLOGS.

The unreasonably long family backlogs continue to obstruct the reunification of families. As of January 1997, the last period for which the Immigration and Naturalization Service ("INS ") released a report, over 3.5 million spouses, children, brothers and sisters were waiting to reunite with their relatives in the United States. Of this number, over 1 million are spouses and minor children waiting to reunite with legal permanent residents in the United States, more than 500,000 are adult children of legal permanent residents waiting to reunite with their legal permanent resident parents, and over 400,000 are adult children are waiting to be with their citizen parents. 1.5 million are the brothers and sisters waiting to reunite with their citizen siblings. The situation disproportionately impacts Asian Americans, since 1.6 million of the 3.5 million people waiting, 45.7 percent, are from Asian countries.

The system not only has implications for those families, but is beginning to break down the current system of family-based immigration. For Filipino Americans, the waiting time for citizens petitioning for adult unmarried children is longer than for that of legal permanent residents, which means that there is a disincentive for immigrants from the Philippines to naturalize and become citizens. The waiting time for citizens from the Philippines is now 12 years versus 2 years for other countries.

The waiting time is now so long that many children will become 21 years of age while their parents wait to unite with their parents or siblings. The families must then make the hard decision of leaving behind their adult children to be put at the end of an even longer line for adult children. That waiting time is now 4 years for spouses and minor children from most countries versus 7 years for adult children of legal permanent residents.

The adult children of many United States citizens face a cruel choice. If they want to marry before being able to immigrate to reunite with their parents, they will move to the back of an even longer line for adult married children. The waiting time is now 13 years for adult married children of citizens originally from the Philippines versus 5 years for unmarried adult children from most other countries. The waiting

<sup>23</sup>Linda Griego, "Rebuilding L.A.'s Urban Communities," Final Report of RLA, Milken Institute, 1997.

<sup>24</sup>*Id.*

<sup>25</sup>25. Yang, Jeff & Yang, Nelson. *aNote*. A Magazine, January 31, 2001.

<sup>26</sup>Erasmus, Melanie. "Immigrant Entrepreneurs in the High Tech Industry," *Reframing the Immigration Debate* Edited by Bill Ong Hing and Ronald Lee: LEAP Asian Pacific American Public Policy Institute and the UCLA Asian American Studies Center: 1996.

time for brothers and sisters ranges from 12 years for most countries to 21 years for siblings from the Philippines because of the per country immigration caps.

Last year Congress began to acknowledge the predicament of permanent legal residents in bringing their spouses and children to be with them. The "V" visa created by the "Legal Immigrant and Family Equity Act of 2000" is a new non-immigrant visa category for spouses and children of permanent residents who have been waiting at least 3 years for their green card. The "V" visa allows them to enter the United States and obtain work authorization while waiting for their application determination.

While a good first step, the relief provided by this visa is limited, as it issues only temporary relief to a problem that is actually much more pervasive. The "V" visa program is valid for only 3 years. Further, the spouse is only eligible after they have waited three long years to be with their legal permanent resident husband or wife. Working out a thoughtful solution to the backlog problem is crucial to solving the challenges of the current immigration system. The family backlog seriously undermines the values and successes of immigrant families. NAPALC urges the Subcommittee to hold hearings on the issue and develop a solution that will help reunite families in a more timely and humane schedule.

## 2. EMPLOYMENT-BASED IMMIGRATION

NAPALC supports employment-based immigration if it meets a strongly articulated need by our economy, employers invest in increasing the ability of Americans to fulfill their needs in the long term, and the system provides a means of adjustment for the worker, so that if the visa holder so desires he or she may eventually adjust to permanent residency. Currently over half of all H1-B visas for high-tech workers are being issued to Asian immigrant.<sup>27</sup> The 106th Congress passed the American Competitiveness in the 21<sup>st</sup> Century Act (P.L. 106-313) in October 2000. NAPALC supported that legislation, and worked with members of Congress and the Clinton Administration to ensure that the system would function effectively for both companies and their recruits. The bill was signed into law and increased the cap on H-1B visas to 195,000 for the next three fiscal years. It also increased the ability of H-1B professionals to change employers once they are in the United States, increased the fee employers must pay to educate and train United States workers in technology occupations to \$1000, and made changes to prevent INS delays from hurting H-1B professionals who are applying for green cards. This option is critical to ensuring that those who invest their talents in this country are able to put down roots in their adopted country, if they so choose.

A recent United States Department of Labor ("DOL") Interim Rule, however, has had the effect of frustrating Congressional intent of providing these workers with the ability to move quickly to a new employer when new employer files a Labor Condition Application to the INS and the INS then sends a notice of receipt. The DOL Rule prevents the H1-B visa holder from changing employers until the Department of Labor certifies the Labor Condition Application and returns it to the new employer. The intent was to allow H1-B employees to begin work for the new employer once the INS received copies of the filed application. The Department of Labor Rule now puts the visa holders in the same vulnerable position that the "portability" provision had been trying to avoid, and essentially usurps the intent of this provision. We ask that the Subcommittee investigate the effects of this recent rule, and support efforts to revise the regulation.

## 3. ASYLEE AND REFUGEE ISSUES

The United States has a long tradition of taking in those persons who flee their country in the face of persecution based on race, religion, nationality, social group, political opinion, or armed conflict. NAPALC believes that our nation is particularly obligated though, to the Southeast-Asian refugees who face persecution in their home countries for supporting the United States Armed Forces during the Vietnam War.

The Fiscal Year 2001 Foreign Operations, Export, Financing, and Related Programs Appropriations Act, signed by the President in November, included an amendment that will allow certain persons from Southeast Asia, who have been in the United States in a temporary status since the early 1990's, to become permanent residents. While many Southeast-Asians have been resettled here as refugees, some (most with family members already in the United States) were admitted as "Public Interest Parolees." Because parolees, unlike refugees, cannot adjust to permanent residence after a year in the United States these individuals are in limbo

<sup>27</sup> Yang, Jeff & Yang, Nelson. "aNote." A. Magazine, January 31, 2001.

until an immigrant visa becomes available through a family sponsor. This is a process that can take many years depending on the category of family visa for which the person is eligible. The new law allows them to adjust their status without waiting for their family immigrant visa to become available.

There are, however, approximately 15,000 to 20,000 potential beneficiaries of this law. The provision passed last session mandates a ceiling of 5,000 persons who will be able to adjust to permanent residence under this provision of law. Congress appears to have contemplated revisiting this issue as the ceiling was applied in the last hours of passing the bill.

Regulations specifying the application procedure have not yet been published, and the INS issued instructions to their field office in January to return any paperwork thus far received. NAPALC is concerned both with the amount of time that it is taking the INS to issue regulations and with the restrictive cap that was placed at the last minute on this provision. We urge the Subcommittee to review this issue and support legislation increasing the number of visas available under this adjustment provision to match the number of individuals who would remain vulnerable and unable to adjust to permanent citizenship within a reasonable amount of time without this law. We also urge the Subcommittee to press the INS to develop regulations that fit the intent of Congress to favorably resolve this long outstanding issue as quickly as possible.

#### 4. INS SERVICES

The INS continues to be one of the most dysfunctional federal agencies. Problems at the agency, complex legislation and inadequate appropriations for INS services consistently result in poor service and unreasonable waiting periods for even consumer-paid services. NAPALC is very concerned about backlogs in INS processing of citizenship and other applications. The agency often is unable to produce regulation and set up produce regulations and procedures on a timely basis even where new legislation provides extremely short deadlines. Existing services fall behind as INS is forced to shift priorities to address outrageous backlogs in various programs or process new programs.

##### *a. Citizenship*

Given the changes in the immigration laws in 1996, the need for addressing the large numbers of legal immigrants waiting in line to be naturalized becomes all the more critical to address. The 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA) left these immigrants particularly vulnerable as their access to basic judicial review and certain government services was severely curtailed. It is thus all the more imperative that the INS's services be improved. Application fees have increased dramatically in recent years without a commensurate increase in the INS's ability to process and adjudicate these cases in an efficient manner.

Based on surveys NAPALC has collected from community-based organizations across the country that serve Asian Pacific American clients, our conclusion is that INS has clearly failed in its function and mission to deliver adequate services to its customers. For instance, a Denver, Colorado community group reported to us that processing green card and citizenship applications was taking INS about 2 years. A St. Paul, Minnesota community organization reported to us that it was taking an average of 1 and ½ for INS to process a naturalization application, which makes it difficult for many of their elderly clients to retain what they have learned for the civics test.

Finally, we applaud the efforts of the Congress in the 1061<sup>st</sup> Session in addressing the barriers faced by the Among Community, who allied themselves with the United States Armed Forces during the Vietnam War. By passing Among Citizenship Act of 2000 in May of 2000, Congress allowed certain individuals to waive the English fluency requirement and take a modified Civics examination for their naturalization process. The Among population numbers in the 200,000 range, and the Among Citizenship Act waives the requirements for up to 45,000 individuals who meet the conditions of the law.

To be eligible, Among veterans must have served with a special guerrilla unit or irregular forces operating from Laos in support of the United States Armed Forces any time between February 28, 1961, and September 18, 1978. Applicants have a period of 18 months to file for citizenship. However, reports as late as September 2000 indicated that the INS was still turning eligible people away, claiming no

knowledge of the law.<sup>28</sup> Thus we anticipate the period of time in which Among Veterans can apply for the waiver will probably need to be extended. We urge the Subcommittee to solicit a report from the INS as to their progress and the number of people that have been processed through the provisions of this law, and to hold a hearing where the subcommittee invites input from members of the Among community who can report directly on their experiences in applying for the waiver with the INS.

#### *b. INS Reorganization*

Customers experience INS as a large, confusing, inaccessible bureaucracy. It is difficult, if not impossible for them to gain access to workers and information. Communications between INS and clients are often one-way. Unless INS sends a letter or makes a phone call to the client, it is virtually impossible for the client to initiate communications with INS if they need assistance or questions answered. There is an overall lack of responsiveness to applicants, particularly those who do not have community organizations or elected officials working on their behalf. Consistent reports have been received from all parts of the country that INS workers often treat customers with lack of respect and hostility, particularly those who do not speak English well, are elderly, have disabilities, or are low-income. Notices are generally not provided in Asian Languages and customers are expected to bring their own translations, when necessary. Feedback received from the community clearly indicates an overall lack of understanding and concern for the unique cultural and linguistic needs of clients by many INS workers.

National policies established at headquarters are often not adequately communicated to staff at the local level, which has resulted in inconsistent and erroneous implementation of laws and policies by local INS employees. Local workers also sometimes take the initiative in instituting extreme actions which have not come from any national directive and which clearly violate the law, particularly around enforcement. Also, there are problems with inconsistent and inaccurate information being given to clients.

In response to increased inefficiencies, problems and failings within INS, particularly around the processing of naturalization applications, several proposals have been introduced. How INS is ultimately reorganized will have a tremendous impact on the ability of immigrants to naturalize, as well as on their ability to seek out a range of services related to their applications for green cards, work authorization, and family sponsorship.

We support the general premise around which all of the proposals are based, that INS is indeed an agency plagued by inefficiencies, failings and problems, and is in desperate need of change to drastically improve its ability to fulfill its functions in both areas of services and enforcement. We feel however, that the ultimate proposal must recognize that adequate funding must be ensured to improve the overall delivery of services, particularly in the area of naturalization and green card processing, and that these services are not sacrificed in any reorganization proposals.

A complete separation of services and enforcement into two separate and distinct agencies could leave services without adequate funding, accountability and comprehensive and consistent policy development. However, the two functions might be clearly separated into divisions if they remain under the roof of one agency. Clear separation of functions between services and enforcement will lead to greater improvements in both areas by strengthening chains of command, improving communications and accountability, enhancing training and skill development, and streamlining procedures. Any plan to reorganize INS must be the result of a well thought-out process. Legislation should not be supported if it does not include adequate appropriations. We are thus opposed to a proposal, H.R. 2528 ("Immigration Reorganization and Improvement Act"), introduced last session in the United States House of Representatives by Representatives Rogers, Reyes and Smith. This proposal separated the enforcement and service aspects, but failed to provide the reorganized agency with an agency head that would have significant authority. The bill neglected to provide a coordinating mechanism and similarly included no means to resolving conflicting policy between the two service and enforcement branches. The bill also failed to cover the costs of reorganization and did not provide any means to assuring that the current state of inadequate service levels, would at all improve. In contrast, the Senate Bill on the same subject, 5.1563, ("INS Reform and Border Security Act") addressed many of these questions. We urge the Subcommittee to hold hearings, make a comprehensive study that includes a realistic assessment of the costs, and seeks input from a wide range of stakeholders.

<sup>28</sup> Doyle, Michael. "Among Citizenship Problems Arise: New Law's Limitations Stir Controversy and Confusion." Sacramento Bee, September 13, 2000.



##### 5. RESTORATION OF BASIC DUE PROCESS RIGHTS OF LEGAL PERMANENT RESIDENTS

NAPALC also remains deeply concerned with the basic due process rights that were eroded in the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA). The effects of the 1996 laws are devastating and far-reaching. AEDPA and IIRAIRA were enacted to curtail illegal immigration and to keep criminal aliens from entering and remaining in the United States. Their enactment however, has had tremendous impact on the lives and families of those detained. Often times, the detained immigrants are the primary income-earners for their households, causing families to suffer both emotional trauma and financial hardship. 75 percent of children in the United States are from families with at least one non-citizen parent, and thus could be gravely impacted by the 1996 laws if their non-citizen parent were ever found deportable.

With its large non-citizen immigrant population, the Asian-American community is particularly susceptible to the harsh provisions of the 1996 laws. Over 40 percent of Korean, Asian-Indian, and Vietnamese communities are not yet citizens. And well over half of Cambodian, Laotian, Among, and Thai communities are not yet-naturalized immigrants.

Some of the laws' more extreme provisions mandate the detention and deportation of legal immigrants who may have committed crimes in their past, however minor and however long ago. The far-reaching effects of these laws have been to tear long-time legal permanent residents away from their jobs, businesses, families, and United States citizen children for minor offenses they committed decades prior to the enactment of the 1996 laws. Legal immigrants have been stripped of their ability to demonstrate to a judge the changed circumstances of their lives, and the hardship that deportation would create for themselves and their families. Ironically, some of the very individuals and their children who were admitted to the United States as refugees from Southeast Asia are now being threatened with return to the very regimes that persecuted them. For immigrants that cannot be repatriated to home countries such as Laos and Vietnam for political reasons, the laws have effectively resulted in life sentences behind bars, unable to provide for their families or contribute to their community.

The 1996 laws changed the standards for what makes a legal permanent resident deportable. It expanded the definition of an aggravated felony, a deportable offense, to over 30 crimes including some which are considered only misdemeanors under state law. The new definition also includes crimes where the conviction was expunged or the sentence was completely suspended. The INS applied this new definition retroactively to crimes committed even before the 1996 law, regardless of how far back the crime was committed.

In addition, the 1996 laws took away the right of legal immigrants to prove to the immigration judge that they have been rehabilitated, that they have lived in the United States for a long time, and that their departure would create hardship for themselves or their family members. Individuals no longer have the ability to demonstrate to a judge the circumstances of their home country that might place them in jeopardy if they were to go back. This is particularly problematic for those individuals who fled repressive regimes and entered the United States as refugees. Immigration judges no longer have the discretion to grant immigrants relief from deportation.

The 1996 laws require the INS to detain certain immigrants while they await their deportation hearing, stripping immigrants of their right to a bond hearing. In the past, an individual who could show that she or he was not a flight risk or threat to public safety was released on bond.

As the 5<sup>th</sup> anniversary of these laws approaches, the 1996 laws toll on the immigrant communities continues. NAPALC urges the committee to restore the constitutional guarantee of judicial review, restore basic fairness by repealing the retroactive application of the 1996 laws and establish a fair definition of crimes that lead to detention deportation. A limited bill, supported by Representative Lamar Smith that would have just begun to ameliorate the harsh injustices upon permanent legal residents passed unanimously in the United States House of Representatives last year (H.R. 5062). Senator Kennedy and Senator Graham introduced a more comprehensive proposal (S. 3120). We urge the Subcommittee to hold hearings on this issue and to act on legislation that would ameliorate the provisions that are overly harsh and violate our country's sense of fairness and commitment to due process.

##### 6. INS ENFORCEMENT

NAPALC supports both the business and labor coalitions which have called for the repeal of employer sanctions. We believe the sanctions should be repealed as a

failed policy, which has resulted in the discriminatory practices by employers against minority employees.

Reports indicate that in certain districts the INS has been targeting minority business owners for enforcement actions.<sup>29</sup> Last year the INS targeted Asian-Indian computer software engineers working at an Air Force base in San Antonio Texas. Forty computer software engineers were arrested and detained along with their family members for alleged violations of their visas, but were later all released without further action. In Dallas, Texas, a report emerged that INS officers had targeted Asian business-owners by photocopying yellow pages listings of Indian and Pakistani restaurants. NAPALC and its affiliates find such practices raise concerns of grave violations of the civil rights of these businessmen. We urge the Subcommittee to review the issue of enforcement by the INS and consider legislation that would repeal employer sanctions.

#### 7. FINDING A MEANS OF ADJUSTMENT FOR THE GROWING UNDOCUMENTED IMMIGRANTS

NAPALC remains concerned with the need to find a broad-based means of adjustment, particularly in light of the initial numbers emerging from Census 2000 which indicate a higher than anticipated level of undocumented immigrants. The INS has tried many means and approaches to block the flow of immigrants who enter the country without legal documents, or overstay their permission to reside here. But it is apparent that the people who have wanted desperately to enter this country, have been able to continue to enter and remain. It is in the nation's own interest to provide them with a means to adjust, so that they can step out of the shadows and become contributing members of our communities and participating in the welfare of the nation as a whole.

We believe that an increase in the number of adjustment of status opportunities and a reform of the employment-based categories, combined with a reduction in the family backlog, will produce a wide distribution of available workers and will present an immediate infusion of labor which economists such as Federal Reserve Board Chairman Alan Greenspan has indicated we need. One potential means of addressing the issue would be to adopt a rolling registry date, which would act as a statute of limitations. Such a provision would acknowledge the contributions these individuals have made to our economy as well as the roots that they have grounded with their years in the United States. We urge the Subcommittee to explore solutions to this problem by holding hearings and closely examining proposals that are currently being introduced in Congress.

Mr. Chairman and Members of the Subcommittee, thank you for giving NAPALC the opportunity to make these recommendations. We look forward to working with you.

Chairman BROWNBACK. Thank you very much.

Finally, Ms. Dickson, thank you very much for joining the Subcommittee. We look forward to your testimony.

#### **STATEMENT OF ELIZABETH C. DICKSON, MANAGER, IMMIGRATION SERVICES, INGERSOLL-RAND COMPANY, AND CHAIR, SUBCOMMITTEE ON IMMIGRATION, U.S. CHAMBER OF COMMERCE, WOODCLIFF LAKE, NEW JERSEY**

Ms. DICKSON. Thank you for having me. I am Elizabeth Dickson and I manage the immigration function for Ingersoll-Rand Company, and for the past year I have also been the Chair of the U.S. Chamber of Commerce Subcommittee on Immigration. I really appreciate the opportunity to share some of my experiences with a large manufacturing company dealing with finding workers that we need.

I am actually the point of contact for human resource managers throughout the United States when they have tried to fill a position with a U.S. worker and cannot find a worker for it and then come to me saying we need to bring somebody in. Frequently, I have to turn around and say to them, I am sorry, we can't bring

<sup>29</sup> Bensman, Todd. "INS Targeted Indians and Pakistanis in Dallas Sweep," *Dallas Morning News*, October 29, 2000.

them in, because there are very limited categories and ability to bring in people unless they are highly skilled professionals.

This tight labor market that we have now has really got companies like Ingersoll-Rand scrambling for much-needed workers. Ingersoll-Rand is a Fortune 200 company. We employ over 50,000 people worldwide and we have 30,000 employees in the United States. Last year, our annual sales were \$8.6 billion.

We have always prided ourselves on being an American manufacturing company, and we have manufacturing facilities located in 21 States in the United States. Forty percent of our revenues come from export business, and we have really tried to keep the work in the United States as much as possible.

However, we have had a lot of difficulty identifying and retaining U.S. workers across a large spectrum of skill levels. My testimony goes into greater detail, but I would like to just highlight for you some of the worker shortages that we have experienced.

Chairman BROWNBACK. Please.

Ms. DICKSON. Welders are one of the semi-skilled employees that are not considered professionals. It is a skill set that involves a certain amount of training to be able to perform the job competently. We have a large need for these types of workers in the rotary drill manufacturing and the road machinery division, and we have recruited through many means in the United States, using employment agencies, going to shipyards, military installations where we thought we could find these types of workers, to no avail. When we did identify skilled welders in Mexico, we were unable to bring them into the country because there really was not an appropriate and easy visa category we could use for them.

Right now, my Air Solutions Group is having a real shortage of service technicians, and again we have employees who are service technicians at our I-R Canada facility who could come into the United States and be able to perform this work at customer sites.

Because the equipment is manufactured in the United States, these workers would require work permits to come in. Even under Trade NAFTA, a service technician is not able to work independently at a customer site unless they are under the supervision of an engineer. So, again, we cannot fulfill the needs of our customers right now when we can see a solution that would not be too difficult.

Some of the other difficulties that manufacturing companies such as ours have are tool and dye workers and precision machinists. Both of those occupations have been shortage occupations for many, many years. We are having difficulty finding electricians. Electricians are very similar to welders. They are not professionals, but it is a skilled occupation that requires a certain amount of training and apprenticeship. Again, we have sometimes been able to identify electricians in other countries and been unable to bring them in.

Obviously, a big manufacturing company such as Ingersoll-Rand is very dependent on engineers. Engineering is one of the fields that we find that the INS and the Department of Labor don't even understand how complex engineering skills are now, and that there are a variety of different engineers that are very, very specialized.

Metrologists are very specialized quality control engineers. Only five universities in the United States even train metrologists and have these programs. When my recruiters go out and try to hire these people, they find that almost everyone in the class is a foreign national.

We had a 20-month search for a robotics engineer at our Baxter Springs, Kansas, facility. Metallurgical engineers have been shortage occupations for many years. Our Thermo King climate control area had a 13-month search for a plastics engineer. We finally found someone from Canada.

I think during the H-1B debate the IT shortages were clearly defined to everybody, but this is an area that is not going to go away. And it is not only professional programmers and software engineers who are covered under the H-1B program, but also the technicians and people that are in the help desk function and the technical support function that we would like to see.

With the information technology area, too, we do seem to see a skills gap. When we are really looking for programmers and software engineers who have Web-based application, Oracle experience, and stuff like that, our schools in America are just starting to teach that. A lot of these applications have been developed in India and other countries and those are the people we are trying to get. If we can only bring them in for very short periods of time as a non-immigrant, then you are going to have a turnover in that high-tech area which is very costly to business.

I think we have seen that we continue to need workers of all skill levels. Through the U.S. Chamber of Commerce and in coalition with a lot of other businesses and trade associations, we are looking to solve these worker shortages at all levels. That is why we have supported some of the programs that have been presented through the Essential Workers Immigration Coalition to try to find a workable solution for the shortage of workers who have less than a bachelor's degree, and in my testimony I included some information from that.

Like my colleague from PricewaterhouseCoopers, spousal work authorization is something that the Chamber of Commerce supports. We too see real difficulty transferring people when there are dual-career couples, and there are certainly other countries that Americans can go to, the UK, and the spouses can work. It is hard to explain to somebody from Britain that their spouse cannot work in the United States. The lack of sufficient immigrant visas is certainly another area of concern for us.

As far as the agencies go, we are really concerned with the increasing processing times at both the Department of Labor and the Immigration and Naturalization Service. I think Warren spoke about that, and also the processing times are very, very difficult to contend with.

Another area that I have found to be very troublesome is the lack of regulations. Congress passes certain laws and they become effective, and we may wait 3 or 4 years down the road to actually get regulations to implement it. This is very confusing for companies who are really trying to abide by the letter of the law and we don't have regulations.

In truth, the agencies sometimes disagree on how these laws are going to be interpreted. The Department of Labor will say one thing about certified LCAs and the INS will say another. So I think going down the road, it would be wonderful if the Subcommittee could look at these agencies working more closely together, and also having some accountability for getting regulations out in a timely fashion, as well as processing times.

Chairman BROWNBACk. Ms. Dickson, if I could cut in here, I have been buzzed for a vote. I need to leave shortly and I would like to ask a couple of questions here, if we have caught most of your comments.

Ms. DICKSON. Yes, definitely.

Chairman BROWNBACk. I appreciate that greatly, and we will take all of your full statements into the record.

[The prepared statement and an attachment of Ms. Dickson follow:]

STATEMENT OF ELIZABETH C. DICKSON, U.S. CHAMBER OF COMMERCE

Mr. Chairman and members of the Committee, good morning. Thank you for the opportunity to testify today before the Immigration Subcommittee of the Judiciary Committee on the subject of Immigration Law in 21<sup>st</sup> Century. I am Elizabeth Dickson, a Human Resource Specialist and a member of the Global Mobility Services Team for Ingersoll-Rand Company. I am also Chair of the US Chamber of Commerce Subcommittee on Immigration. My testimony today reflects my direct experience with Ingersoll-Rand's ability to find vitally needed workers. I hope that I will be able to share with you some of the numerous policies and procedural issues that a company like Ingersoll-Rand needs to contend with when hiring foreign nationals and complying with employer sanctions law.

Ingersoll-Rand is a Fortune 200 company with about 50,000 direct employees worldwide, including 30,000 domestic employees. The company is a major diversified industrial equipment and components manufacturer serving the global growth markets of Climate Control, Industrial Productivity, Infrastructure Development and Security and Safety. Its international headquarters are based in Woodcliff Lake, New Jersey and in 2000 the company had annual sales in excess of \$8.7 billion. Ingersoll-Rand Company operates manufacturing plants in over 21 countries around the world and markets its products and services, along with its subsidiaries, through a broad network of distributors, dealers and independent sales and service/repair organizations. In 2000, the company had annual sales in excess of \$8.7 billion.

As you have heard from the distinguished panelists today, immigration is a complex and politically charged issue. The tight labor market over the past several years has produced unemployment rates at a 30 year low. The economy has been creating an abundant number of jobs at all levels to keep business like ours scrambling for employees. Immigration needs to be addressed as an alternate source of workers in the U.S. If immigration policies and procedures are not revitalized, the consequences may result in a further down turn in the economy and to companies seeking more often to move outside the boundaries of the U.S. borders. Companies like Ingersoll-Rand live this reality on a daily basis and when Human Resource Managers cannot fill key positions, they are forced to look outside the US to hire or outsource the work.

Ingersoll-Rand prides itself on being an American company that strives to keep the majority of its manufacturing operation within the U.S. borders. We have manufacturing plants in 24 states and 120 facilities located throughout the United States. Over 40% of our profits are tied to export sales. Unfortunately, market forces and the unavailability of U.S. workers have created a problem of identifying and retaining U.S. workers across the spectrum of skill levels. Let me give you some examples:

1. Welders in Texas - The company manufactures a broad line of industrial machinery and equipment. The Rotary Drill Division based in Garland, Texas, is engaged in the design manufacture, and sale of rotary drill products with industrial, mining, and water well drilling applications. The division has annual sales in excess of \$150 million. This Division has been looking for welders for major projects for some time. Welders are semi-skilled employees that are not considered professionals. It is a skill set that involves specific training however in order to perform the job competently and safely. The company has recruited for welding positions

across the U.S. They have recruited at military installations, shipyards and through employment services. Ingersoll-Rand even has its own training schools for welders at the Road Machinery & Rotary Drill Divisions and has been unable to identify sufficient persons to attend this type of training to fill our needs. When the company did identify competent welders in Mexico, the process of obtaining even temporary work visas was too time-consuming and onerous to be considered a viable option.

2. Technicians for the Air Solutions Group's service and repair business are also in short supply. We have identified skilled technicians at our I-R Canada operations who have the product knowledge and technical experience to service I-R compressors in the US, however as the products they would be servicing are manufactured in the US, not Canada, they would require work permits and there is no appropriate visa category to allow such skilled technicians to travel intermittently to the US to perform service on US-manufactured machinery.

3. Experienced tool and die workers, with knowledge in stamping technology and machining are scarce. Our manufacturing plants in the Detroit area continue to experience difficulty-finding electricians for their manufacturing operations, with the automotive industry being primary competitors for such skilled workers. Electricians again require a number of years of training and apprenticeship to be a competent worker but are not considered professionals. The Human Resources Manager had identified some available electricians from Canada but there is no way to obtain appropriate work visas for such as skill without time-consuming and expensive process that smaller division cannot afford.

4. As the company continues to expand its quality initiatives, Metrologists have become a professional occupation in very short supply. There are only about five universities in the US with Masters programs specializing in metrology and almost all the students enrolled in such programs are foreign nationals. Human Resource Managers advise me that they simply cannot find Americans to fill such positions. Our Waterjet Cutting Systems business in Baxter Springs, Kansas and Farmington Hills, Michigan spent 20 months searching extensively using advertisements and professional recruiters to find an engineer experienced in industrial robotics and pressurized product development before finally hiring a qualified individual from Canada. Metallurgical Engineers have been an identified shortage occupation for years in the United States and are key contributors to machinery development projects for our mining and drilling products. Thermo King conducted a 13 month search for a qualified Plastics Engineer for their product development team.

5. Information Technology shortages runs the gamut from the highly-experienced professional programmers and software engineers down to the technicians that support "help desk" functions. There appears to be a "skills gap" in the United States as well, with the most advanced programmers and engineers coming from India, China and some of the Soviet-Block countries. When we recruit for particular skills such as Oracle database, UNIX and C++ programming or experienced programmers with web-based applications, few Americans qualify. Foreign nationals can only work as nonimmigrants in the US for a short period of time resulting in continuous turnover of certain key technology positions. Situations like this drive projects overseas, resulting in a loss of U.S. jobs and a decrease in U.S. spin-off revenue. This situation exemplifies not only the need for workers across the spectrum of skill levels.

Through the media and other sources the business community hears the mantra, "train U.S. workers; invest in the domestic workforce." We at Ingersoll-Rand and my members at the US Chamber do just this and more. We have training centers at almost all our manufacturing facilities—designed to improve technical manufacturing skills and meet our employees' personal needs; we collaborate with community colleges and vocational technical schools—providing certificate and college degree programs and sponsor distance learning on-site; we have a tuition reimbursement program for employees pursuing bachelor's and advanced degrees; we provide many corporate on-site training programs; and we encourage cultural exchanges from our facilities abroad in order to enhance diversity and awareness.

Ingersoll-Rand remains a major contributor to US colleges and universities as well as national organizations such as the International Road Education Foundation, the National Hispanic Scholarship Fund, the National Urban League, the National Alliance for Business, and the US Chamber of Commerce Spirit of Enterprise Campaign, to name a few.

Employers currently need and will continue to need workers of all skill levels. Through the US Chamber of Commerce and in coalition with businesses and trade associations across the spectrum, we seek a solution to the worker shortages at all levels. Specifically through the Essential Worker Immigration Coalition we are working toward a workable solution to the shortage of workers with less than a bachelors degree. Current law does not provide a viable vehicle to bring needed for-

eign workers into the US. From manufacturing facilities to nursing homes to restaurants and hotels, we are in dire need for employees, but are precluded from bringing them in through the existing H-2B temporary visa program. I have included some materials from the Essential Worker Immigration Coalition for your reference.

The Chamber is also concerned with the policy issues surrounding spousal work authorization, and is working in coalition for several countries to reform US work authorization for spouses of certain intra-company transfers. Another policy issue of concern to our committee is the lack of sufficient immigrant visa numbers for those lawful immigrants that wish to convert to permanent residence. We will be addressing this issue through the EWIC coalition and other organizations.

With respect to the immigration process and procedures for processing applications, we are very concerned with the increasing processing times at both the Department of Labor and the Immigration and Naturalization Service. Nonimmigrant visa petitions routinely take more than 4 months to process. The agencies need to have tightened oversight and need to be made accountable for missed adjudication time lines. The agencies administering immigration policies need to work with each other and need to coordinate strategies to execute new law. For example, on January 19, 2001, the Interim Final regulations were issued to implement to the changes in immigration laws that were enacted in 1998. The regulations, contained in over 500 pages, are onerous and not timely. In fact the new Secretary of Labor has extending the period for comment until the end of this month. The US Chamber requested this extension and we are preparing comments on the proposed regulations. Over three years ago the documents acceptable for I-9 Employment Eligibility Verification were changed by law but employers are still waiting for revised regulations and a new I-9 Form to be issued by the Department of Labor. Two laws that were enacted in October of 2000, have very little guidance from either agency. This causes chaos at the service centers and the borders.

Reform of the agencies is key. We are encouraged that the subcommittee is exploring all of the procedural and policy issues surrounding immigration law, and hope that some constructive solutions can be identified.

Thank you for allowing me to testify. I look forward to any questions you may have.

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#### STATEMENT OF ESSENTIAL WORKER IMMIGRATION COALITION, WASHINGTON, D.C.

##### MISSION STATEMENT

The Essential Worker Immigration Coalition (EWIC) is a coalition of business, trad associations, and other organizations from across the industry spectrum concerned with the shortage of both skilled and lesser skilled ("essential worker") labor. While all sectors of the economy have benefited from the extended period of economic growth, one significant impediment to continued growth is the shortage of essential workers. With unemployment rates in some areas approaching zero and with continuing vigorous welfare-to-work, school-to-work, and other recruitment efforts, businesses are now finding themselves with no applicants of any kind for numerous job openings. Reliance on market forces has proven to be unsuccessful. There simply are not enough people to meet the demand of our strong economy.

The shortage of workers is of such magnitude that some of our industries refer to it as one of the most important business issues. Many firms are curtailing expansion plans because of a lack of available, qualified workers. Indeed, the Federal Reserve Board has noted many times the widespread shortage of essential workers throughout the united states and its impact on our economy. We believe that part of the solution involves allowing companies to hire foreign workers to fill the essential worker shortages. When companies can not fill jobs with U.S. workers, hiring foreign nationals should be a viable alternative. EWIC supports policies that facilitate the employment of essential workers by U.S. companies and organizations. Current immigration law and recent tightening of federal immigration policy have greatly curtained this potential source of workers. Congress must take action to address the problems associated with the unprecedented job growth, low unemployment and corresponding inability to find domestic workers to meet the needs of American employers. Failure to do so risks American prosperity and leadership in the global economy.

## REFORM AGENDA

The Essential Worker Immigration Coalition (EWIC) is a coalition of businesses, trade associations, and other organizations from across the industry spectrum concerned with the shortage of both semi-skilled and unskilled ("essential worker") labor. This document lays out EWIC's principles for essential worker immigration reform.

## NEW LEGAL IMMIGRATION PROGRAMS BASED ON U.S. WORKER SHORTAGE

- Short-term: an effective H-2B-like program
- Long-term: an employment-based permanent residence for essential workers through an application process that is straightforward and quickly completed

## REGULARIZATION OF CERTAIN UNDOCUMENTED WORKERS CURRENTLY IN THE U.S.

- Establish a one-time mechanism to allow undocumented workers in the U.S. to convert to a legal status—a conditional employment-based status leading to permanent status
- Regularization initiatives should be matched to employability, although not necessarily a particular employer:
  - the worker should document actual or prospective employment to qualify
  - the employer documenting actual employment should be forgiven for any employer sanctions violation

## WORKABLE IMMIGRATION ENFORCEMENT SYSTEM

- Employer sanctions repeal (Immigration Reform and Control Act of 1986)
- Employer sanctions repeal should be paired with an updated legal immigration system to reduce undocumented immigration

## MAINTENANCE OF EXISTING WORKER PROTECTIONS

- A new immigration system should not result in any diminution or expansion of current worker protections

## MEMBERS (AS OF JANUARY 8, 2001)

American Health Care Association	Nath Companies
American Hotel & Motel Association	National Association for Home Care
American Immigration Lawyers Association	National Association of Chain Drug Stores
American Meat Institute	National Association of Home Builders
American Road & Transportation Builders Association	national Association of RV Parks & Campgrounds
American Nursery & Landscape Association	National Council of Chain Restaurants
Associated Builders and Contractors	National Retail Federation
Associated General Contractors	National Restaurant Association
Building Service Contractors Association International	National Roofing Contractors Association
The Brickman Group, Ltd.	National Tooling & Machining Association
Carlson Hotels Worldwide and Radisson	National School Transportation Association
Calson Restaurants Worldwide and TGI Friday's	Outdoor Amusement Business Association
Cracker Barrel Old Country Store	Outdoor Amusement Business Association
Harborside Helathcare Corporation	Resort Recreation & Tourism Management
Ingersoll-Rand	Truckload Carriers Association
International Association of Amusement Parks and Attractions	US Chamber of Commerce
International Mass Retail Association	Walt Disney World Co.
Manufactured Housing Institute	

Chairman BROWNBACK. First, Ms. Muñoz, on the problems that you are hearing from my State, I would appreciate if you can—and keep the confidentiality, but I would like to know what sorts of things you are seeing. You noted some of the profiling that you are hearing about. That is a cause of concern for me and so I would like to personally know about that.



Ms. MUÑOZ. Absolutely.

Chairman BROWNBACk. Ms. Dickson, I appreciated your comments about the nature of particular skill levels like welding. I took 4 years of welding in high school and still wasn't very good at it. I think this is an important item particularly for the manufacturing sector, and it is tough to be able to do it.

Ms. DICKSON. We actually have our own welding schools and we still can't fill the need.

Chairman BROWNBACk. Ms. Narasaki, you were not able to address the refugee issue, even though you noted its impact in Asia. Do you have thoughts as to why we have lowered that number that we are taking in so much that you could highlight in 30 seconds?

Ms. NARASAKI. Well, as you know, the limit is set each year by the administration, and I have to say we were very disappointed in President Clinton's decision to cut the levels over the last 2 years. As people have noted, there certainly is enough supply, and the United States relative to other countries really isn't doing its full share in terms of taking those refugees in.

The refugee program from Southeast Asia has been winding down. There are concerns at least for some of the countries that it has been a little bit premature and that there are some people who really do have credible fears of persecution, but who have been forcibly returned to their countries. So we hope that is something that this Subcommittee will look into further.

Chairman BROWNBACk. Well, we will, and I look forward to your more in-depth comments on this because I think we clearly can do better and we need to do better, even if it is shifting from different parts of the world, but we need to do more.

Let me just say, in conclusion, thank you very much and I am sorry I am having to rush, but we have got the tail-end of this vote. For a scene-setter hearing, you laid out a lot of work that I think could take a long period of time, but I appreciate your specificity with it, and I know as well your hearts to help us to move it on through.

None of these are particularly easy issues, even though they are very important issues and they directly impact people across the country. So I am looking forward to working with you to move these through the overall process. I think we have got a good time to be able to do a number of these issues. I think if we can be careful and thoughtful and energetic about it, we can move these on forward.

I will solicit yours and others' advice on how we do that. I have been around long enough to have hit my head up against enough brick walls to figure out there frequently is another way than just hitting the wall straight on, and I will need your expertise and thoughts on how to do that.

Finally, I hope we all continue to put forward the positive message of what this is all about. This is good, this is who we are, this is who we will be in the future, and if we can continue to put it forward in that framework and not "we/they" or "the last one in, close the door" philosophy, we are better people if we do it that way.

We have a statement from Senator Leahy which we will insert into the record at this point.

[The prepared statement of Senator Leahy follows:]

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

I would like to congratulate Senator Brownback for becoming the new Chairman of this subcommittee, and thank him for holding such a positive hearing to open his tenure. I am confident that we will be able to work together on many issues that have gone unresolved for too long, and I am hopeful that immigration policy can be an area of bipartisan cooperation in the 107<sup>th</sup> Congress. I also commend and congratulate Senator Kennedy for his decision to continue his long service to this Committee and to the Nation as the Ranking Member of the subcommittee.

The varied witnesses on today's panels demonstrate that those who have pitted business and family immigration against each other have presented a false choice. With the commitment of our new Chairman and our dedicated Ranking Member, we can address both issues in a comprehensive way. Before hearing from these distinguished witnesses, I would like briefly to discuss a few of the immigration issues that I believe should be priorities in this Congress.

Five years have now passed since Congress passed the Antiterrorism and Effective Death Penalty Act and the Illegal Immigration Reform and Immigrant Responsibility Act. Taken together, these bills contained a series of provisions that have seriously harmed our historic commitment to both refugees and to due process. Along with many of our colleagues, particularly Senator Kennedy, I have worked during the ensuing Congresses to correct the mistakes that a deeply partisan Congress made in 1996. With an evenly divided Senate and a Chairman who shares a strong commitment to refugees, I hope this Congress will be different.

First, I look forward to working with Senator Brownback again in this Congress on the Refugee Protection Act. That bill, which I introduced with his cosponsorship and strong support in the 106<sup>th</sup> Congress, would restrict the use of expedited removal, the process under which aliens arriving in the United States can be returned immediately to their native lands at the say-so of a low-level INS officer. Expedited removal was the subject of a major debate in this chamber in 1996, and the Senate voted to use it only during immigration emergencies. This Senate-passed restriction was removed in what was probably the most partisan conference committee I have ever witnessed. The Refugee Protection Act was modeled closely on that 1996 amendment, and I am working with Senator Brownback on a Refugee Protection Act for the 107<sup>th</sup> Congress, which we hope to introduce next month.

The use of expedited removal calls the United States' commitment to refugees into serious question. We now have a system where we are removing people who arrive here either without proper documentation or with proper documentation that an INS officer simply suspects is invalid. This policy ignores the fact that people fleeing despotic regimes are quite often unable to obtain travel documents before they go: They must move quickly and cannot depend upon the government that is persecuting them to provide them with the proper paperwork for departure. In the limited time that expedited removal has been in operation, we already have received reliable reports that valid asylum seekers have been kicked out of our country without the opportunity to convince an immigration judge that they faced persecution in their native lands. To provide just one example, a Kosovar Albanian was summarily removed from the United States after the civil war in Kosovo had already made the front pages of America's newspapers. I believe we must address this issue this year, and I know that Senator Brownback feels the same way.

Second, I hope that this subcommittee will examine the serious due process concerns that remain unresolved from the passage of the 1996 legislation. Congress expanded the pool of people who could be deported, denied those people the chance for due process before deportation, and made these changes retroactive, so that legal permanent residents who had committed offenses so minor that they did not even serve jail time suddenly faced removal from the United States. This new legal regime has created numerous horror stories, including the removal of noncitizen veterans of the American armed forces for minor crimes committed well before 1996. In the last Congress, I introduced a bill that would have guaranteed due process rights for veterans, a bill that was supported by the American Legion and other veterans' groups, and I plan to introduce similar legislation this year. In addition, I was a proud cosponsor of Senator Kennedy's Immigrant Fairness Restoration Act, which would have restored a broad range of due process rights to immigrants. I look forward to supporting similar legislation this year, and I hope that the Chairman will be willing to hold hearings on this important issue.

Third, this subcommittee should consider the proposals that were included in the Latino and Immigrant Fairness Act in the 106<sup>th</sup> Congress. Despite the best efforts

of many Senators, the majority would not allow a vote on that bill, either freestanding or as an amendment to other legislation. These proposals—to treat people who fled right-wing dictatorships the same way we treat people who fled left-wing dictatorships, to update the date of registry to allow people who have been living and working in the United States for 15 years or more to apply for permanent residency, and to protect families by restoring the law that allowed people eligible for green cards to apply from within the United States—deserve serious examination, and I hope this subcommittee can take on that task.

Finally, we need to pay close attention to the immigration needs of American employers. I supported increasing the number of H-1B visas last year because I was convinced that the information technology industry and other businesses needed flexibility to continue their growth. I am very interested in hearing what immigration measures today's witnesses believe would be helpful to ensure that our economy remains healthy.

**Chairman BROWNBACK.** Thank you all very much. I apologize for rushing out, but I am sure we will see you at future hearings.

The hearing is adjourned.

[Whereupon, at 3:30 p.m., the Subcommittee was adjourned.]

[A submission for the record follows:]

#### SUBMISSION FOR THE RECORD

##### **Statement of Hon. Mike DeWine, a U.S. Senator from the State of Ohio**

Thank you, Chairman Brownback and Ranking Democrat Kennedy, for holding this important hearing today to examine the state of our immigration policy. This hearing is timely and necessary. In fact, just today, Secretary of State Powell and Attorney General Ashcroft are meeting with a high level Mexican delegation to talk openly about immigration policy. I am hopeful that this meeting will be one of many future discussions on U.S.—Mexican immigration.

As you all know, the immigration process impacts not only American economic competitiveness and diplomatic relations, but more importantly, it directly affects families and children. Tragically, families are often split up because of deficiencies and delays in the immigration and naturalization process.

In the 106<sup>th</sup> Congress, to help address one such problem, I cosponsored Senator Nickles' bill, the "Adopted Orphans Citizenship Act," which amended the Immigration and Nationality Act to enable children adopted from foreign countries to attain U.S. citizenship more easily. This bill became law in October 2000. I hope we can do much more to improve our immigration system this year.

Today, we will hear testimony on the merits of family-based and employment-based criteria in determining immigration and citizenship status. Family reunification is the cornerstone of America's immigration policy and must remain so. However, in an increasingly global economy, America's future competitiveness requires us to take a look at how immigration can make our economy stronger.

While a discussion of immigration policy goals is important, I'd like to take a moment, Mr. Chairman, to call the Subcommittee's attention to the process that implements these policies. I am speaking of the operations of the Immigration and Naturalization Service (INS). It appears that although the INS consistently has received more money from Congress year after year, services have not improved. Management and personnel problems in the INS, coupled with a growing number of immigrant applications, are leading to backlogs all around the country.

Let me give a few examples from my home state of Ohio. This time last year, my casework office had 67 pending immigration cases. This year, due to the backlog at the INS, we have 147. In Cleveland, the INS office takes about 18 months to process a naturalization case, much longer than the INS's goal of 8–12 months.

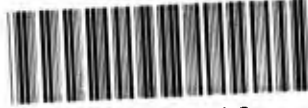
For some applicants, this delay can cost them their jobs, which also presents a problem for their American employers. Worse still, extensive delays threaten applicants' ability to even remain in this country.

Our friend and former Senate colleague—and now Secretary of Energy—Spence Abraham—noted when he was Chairman of this Subcommittee, that we have come to a point where we need to consider fundamental reform of the INS. This Subcommittee has started that process. We've begun to carefully examine ways to improve efficiency in the INS, including ways to restructure the INS with respect to services and law enforcement. As a result, the INS has made minor changes. However, no agreement on a complete and viable solution has been reached. I am hopeful that we will continue to work on proposals that will improve the functioning of

the INS, which ultimately, will be to the benefit of those immigrants who come to our country legally.

In summary, Mr. Chairman, we are a nation of immigrants—immigrants who came to these shores in pursuit of freedom, hope, and opportunity. As the Subcommittee on Immigration, we have a mandate to ensure that the proper development and execution of a fair immigration policy—one that looks out for the welfare of both American citizens and immigration applicants. As a new member of this Subcommittee, I look forward to working with our new Chairman, as well as a former Chairman, Senator Kennedy, to move our immigration policies in a positive direction.

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