

**WAR ON TERRORISM: IMMIGRATION
ENFORCEMENT SINCE SEPTEMBER 11, 2001**

HEARING
BEFORE THE
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS
OF THE
COMMITTEE ON THE JUDICIARY
HOUSE OF REPRESENTATIVES
ONE HUNDRED EIGHTH CONGRESS
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WAR ON TERRORISM: IMMIGRATION ENFORCEMENT SINCE SEPTEMBER 11, 2001

THURSDAY, MAY 8, 2003

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION,
BORDER SECURITY, AND CLAIMS,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to call, at 2:10 p.m., in Room 2237, Rayburn House Office Building, Hon. John Hostettler (Chairman of the Subcommittee) presiding.

Mr. HOSTETTLER. The Subcommittee will come to order. In preparation for the Attorney General coming to testify before the Judiciary Committee later this month on the implementation of the USA PATRIOT Act, we are having this hearing to examine immigration law enforcement since September 11, 2001 in the war on terrorism.

Of course the immigration functions of the Immigration and Naturalization Service which used to exist in the Justice Department have been transferred to the Department of Homeland Security. Accordingly, we have two witnesses here from DHS, the Bureau of Immigration and Customs Enforcement, and the Bureau of Customs and Border Protection to explain immigration law enforcement since the transfer to DHS.

We also have a witness from the Executive Office for Immigration Review, an immigration component that remained with the Justice Department to discuss immigration court activity since September 11, 2001.

No one would argue that all aliens are terrorists, but no one can deny that all of the terrorist hijackers who committed the most egregious attack on our country in its history were aliens. I take issue with the misguided accusation that the Government must stop equating immigration with terrorism. If the Government equated immigration with terrorism, all immigration would have ceased.

Clearly, the Government has not pursued ending all immigration, but we do need to be more creative than the terrorists in finding loopholes in our immigration laws, closing those loopholes and not creating new immigration loopholes.

Terrorists have not struck America again since 9/11. This is partly the result of the Departments of Justice and Homeland Security having undertaken crucial initiatives to close some of these loopholes.

For example, although alien registration has been on the law books for decades, the INS was not enforcing it. As a result, Government officials did not know when many aliens entered the U.S., where they were residing, or when they left the country. By any standard, this lack of enforcement was dangerous and ripe for abuse by aliens wishing to stay below the radar, including terrorists.

After 9/11, the Justice Department began the National Security Entry-Exit Registration System, or NSEERS, an initiative to close this loophole. Since the implementation of NSEERS in September 2002, more than 138,000 aliens from over 151 countries have been registered. NSEERS has resulted in the identification of 11 aliens linked to terrorism, the arrests of more than 120 criminal aliens and the issuance of more than 12,000 charging documents placing deportable aliens in deportation proceedings. This program is now run in DHS. It has received unfair criticism that we will put to rest today.

The Justice Department has also informed the Board of Immigration Appeals while this is not an obvious immigration enforcement tool, it is actually a prerequisite for effective law enforcement. The Board of Immigration Appeals had a backlog of cases as long as 6 years old. Aliens with appeals pending so long at the Board were walking our streets, including criminal aliens who were free to commit further crimes.

Streamlining has permitted the Board to more quickly decide nonsubstantive appeals while spending its resources on novel appeals rather than spending equal amounts of resources on both types of appeals.

As a result the backlog has been significantly reduced. I support the Board's streamlining initiative. Delay is in every interest for aliens seeking to remain unlawfully in the United States. Justice delayed is justice denied for the majority of Americans who want to see the removal of illegal and criminal aliens.

I look forward to hearing from today's Government witnesses about their other immigration law enforcement initiatives underway, as well as future plans to ensure that terrorists can no longer exploit loopholes in our immigration laws.

And I now turn to the Ranking Member of the Subcommittee, Ms. Jackson Lee, for any opening remarks she may have.

Ms. JACKSON LEE. Thank you, Mr. Chairman. I would be happy to yield to the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Can you yield to me later?

Ms. JACKSON LEE. All right, Mr. Conyers. Obviously your instructions will be adhered to. I just want to make sure that you had the opportunity to speak at this time if you so desired.

Let me first of all thank you, Mr. Chairman, for this hearing. I think that we are showing remarkable collegiality over a couple of weeks. We have had some concerns, but I know that I am looking forward—we have been putting on our calendars a mutual discussion for some more hearings that I would like to see occur, but this is an important hearing and it is an important initiative. And frankly I think it is important, Mr. Chairman, and it should be attributed to your leadership and the full Committee and full Com-

mittee Ranking Member and Chairman and hopefully the leadership that both of us are giving to this issue; the very fact that we may be on different sides of the issue on certain aspects, but we are at least providing an open forum to question the issue of civil liberties, civil rights, and how we balance security with the responsibilities and the principles of this Government.

Might I say that I am also very pleased to at least be cited and quoted in your remarks that immigration does not equate to terrorism. I think I have said that since 2001, over and over again, and you may have put a different twist on it, but I think it is extremely important to reinforce that statement that immigration does not equate to terrorism, and that this Nation loses if we do.

Let me take you down memory lane, Mr. Chairman, and I think this preceded your tenure on this Committee. I had before me two incidents that took a very long period of time. First, the incident involving the FBI shooting in one of our northern States—and my memory fades me at this point—I want to say Red Bluff. But in any event—and the Waco incident.

And the question there was excessiveness and whether or not in protecting Americans, neighbors, Texans, against these individuals with sort of out-of-the-way viewpoints, living in manners that were not traditional, we were not familiar with, they were strange, whether or not we had the right, the authority, or whether or not we used the right judgment in taking over and proceeding against the Davidians in Waco and the incident that occurred with the shooting of the pregnant wife, I believe, and son of the individual by the FBI.

These were very intense times, and it dealt with domestic issues, Americans who were divided on the way they wished to live, or the idea that the Government should not intrude in their particular comings and goings. And there were many of us who may not have agreed philosophically with the positions of any of those groups, the paramilitary that believed, however, that the right to association and the freedom of speech was necessary to be able to promote.

And so I would like this hearing to open the eyes of the Members of this Committee beyond the question of security, and we have got to find them and we have got to get them, because I think it is important that we talk about the NIMBY concept, “Not In My Backyard.” and clearly you can use that in many ways. Not-in-my-backyard terrorism, or not-in-my-backyard will we have the kind of, if you will, shameful practice that detains individuals without access to counsel, that calls individuals enemy combatants and without due process right, that denigrates our own judicial system by suggesting that we could not have an even-handed fair trial and convict those who deserve to be convicted and rule those innocent who likewise deserve their innocence.

And it is extremely important that we focus, Mr. Chairman, on these troubling aspects of what the Attorney General has promoted. And just for the record on memory lane so I can be correct, it is Ruby Ridge. Red Bluff was on my mind, because it was in Houston, Texas. But it is Ruby Ridge.

But I think it is extremely important that we—as we look forward to the Attorney General’s presentation, that as we question these individuals here, that we talk about administrative actions versus statutory actions and legitimacy of such; that we talk about, again, as I said, the access to counsel; and that we are very much aware that by diminishing the rights of those that we feel should be targeted, we are in fact diminishing the rights of Americans. And if you talk to the victims of Ruby Ridge and if you talk to the Davidians, though we realize that there was much heroic work by law enforcement—and I said that on the record during those hearings—there was a question of judgment, of whether or not we could have done this in a different way.

So let me conclude, Mr. Chairman, by saying this. On 2001, 9/11, America should not have burned its Constitution, because in fact there were many faces who died on 9/11. The United Nations, in essence, was represented in the Twin Towers. They were our brothers and sisters. They were there doing business with us, creating business, creating an economic engine. And therefore to be able to determine that we have people who are stopped on the street because of their origins, country or religion, I think it is shameful on America.

I hope that we will hear about this today in an edifying way, and, Mr. Chairman, I hope we will find a collaborative way to address your concerns and to address my concerns as well.

I yield back the balance of my time.

Mr. CONYERS. Mr. Chairman.

Mr. HOSTETTLER. The Ranking Member of the full Committee, Mr. Conyers, is recognized for an opening statement.

Mr. CONYERS. I thank you for your kindness. I want to thank you and our Ranking Member, Sheila Jackson Lee, for the hearing and for the concern that both of you bring to this subject matter. It is very important.

We are also quite proud of our minority counsel Nolan Rappaport who has been working on this matter with us for quite a long time.

Now, you should know that there are—to show that this is not a partisan operation here, there are parts of the discussion about homeland security that we support. So I just want to get this on the record. This is not a pro-and-con situation. There are some things we can move through quite rapidly because we are in agreement. Our witnesses may bring forth information that we may want to listen to and look at everything they say, of course; but, for example, the student and exchange visitor information system, we are having a problem with that. The Operation Tarmac, so far so good. The monitoring system needs a little bit of tweaking that you will hear about a little later on. And that just about runs out of the good things.

But do not be dismayed. Some of the things that we have some criticism about we may be able to repair. We have got the leaders here. I mean, this is what the hearing is for, and so I am very pleased with the undertaking that has begun here with this Subcommittee, and I would like to put the rest of my comments in the record and yield back.

Mr. HOSTETTLER. Thank the gentleman.

Mr. HOSTETTLER. The Chair now recognizes the gentleman from Texas, Mr. Smith, for an opening statement.

Mr. SMITH. Thank you, Mr. Chairman. I will be brief because, as we all know, we have votes that we need to go catch.

The first thing I want to do is express my appreciation to the Administration officials who are here and tell them how much it means, I think to all Americans, to know that they are doing everything they possibly can to protect American lives, and that is, after all, why we fought the war on terrorism, why we continue to do so, and why we continue to need to know, more than anything else, who is coming into the country, why they are coming in, what they have with them, and how long they are staying. And that is a tough goal to achieve, but I appreciate all the efforts that are being made to try to accomplish just that.

Secondly, Mr. Chairman, I don't know after we have these votes, I would like to come back for questions, so I would like to submit written questions, if I may, to some of the witnesses that are here.

And lastly I would like to recognize a former staff member of the Immigration Subcommittee, Cordia Strom, who happens to be in the front row and who served us so well for the 6 years she was here. But, Cordia, in an effort to embarrass you, I am glad you are here and glad to see you.

I will yield back, Mr. Chairman.

Mr. HOSTETTLER. I thank the gentleman.

[The information referred to follows in the Appendix]

Mr. HOSTETTLER. The Chair now recognizes the gentlelady from California, Ms. Sánchez, for an opening statement.

Ms. SÁNCHEZ. Thank you, Mr. Chairman, and good afternoon to all the witnesses who have taken the time to come to answer questions today and give testimony. We are about to embark on a vitally important topic that needs careful attention, and I thank Chairman Hostettler and Ranking Member Jackson Lee for scheduling this hearing.

Since the tragic events of September 11, 2001, this country has focused a great deal of time and energy on finding ways to keep this Nation and the world safe from terrorism. Unfortunately, some of those measures have come at the cost of other American values, such as the free movement of people and goods, freedom of speech and association, and due process under the law.

The very difficult task we have is to balance our need for national security with our need to protect people's rights.

And I would ask if we are going to continue or hold off until we vote. Are they calling votes?

Mr. HOSTETTLER. After the gentlelady's opening statement, we will recess.

Ms. SÁNCHEZ. Okay. I will make pace to finish. I am concerned about all of the various liberties that are being invaded or that are at stake. I want to highlight a couple in particular.

First, I am distressed over the recent decision requiring State and local law enforcement officials to enforce immigration laws, and apparently I am not the only one who is distressed over that. Local and State officials, including members of the Los Angeles Police Department, have protested this since the idea was first mentioned. They continue to do so.

In addition, a variety of groups across the political spectrum are concerned about such a setup. Even without regard to civil liberties, this decision is problematic. Law enforcement is already burdened with keeping track of all the numerous criminal laws. Now they are being expected to understand and remember countless immigration laws as well.

Inevitably, we will see situations where a person who may look Arab or Middle Eastern or Latino or other—or, in their words, like an immigrant—may be detained by a police officer who thinks this person may be in violation of the immigration laws, only to discover later that this person is either a legal permanent resident or, in fact, a citizen of the United States.

I am also gravely concerned about the workplace sweeps that have been occurring around the Nation. Many of them are connected with the Operation Tarmac, which purports to make our airports safer. Unfortunately, there is little or no evidence that it is doing that. Instead, tens of thousands of innocent people are being detained and harassed as they try to go about doing their jobs and providing for their family, all at a great expense to the taxpayers of this country.

The encroachments on our civil liberties go far beyond the two I have mentioned here. When looked at as a whole, these invasions of our rights present severe attacks on the values cherished in a democracy. We must be vigilant in ensuring that in our desire to feel safe, we do not adopt questionably successful measures that are certain to alienate our immigrant communities. This hurts our ability to effectively fight terrorism, as every citizen and every community has an important role to play in our Nation's security.

Thank you, Mr. Chairman. I yield back the balance of my time.
Mr. HOSTETTLER. I thank the gentlelady.

The House has now four votes that are pending that could take an appreciable amount of time, anywhere from 40 to 50 minutes. I apologize to the witnesses for this inconvenience. It is our job to go and vote, and so I now recess the Committee subject to the call of the Chair. And please everyone come back as soon as possible after the votes.

[Recess.]

Mr. HOSTETTLER. The Subcommittee will come to order. Once again, I appreciate the witnesses' forbearance, apologize for the inconvenience, and at this time I would like to introduce members of the panel.

Kevin Rooney has served as the Director of the Executive Office for Immigration Review since January 1999. EOIR oversees the immigration court system, including the 52 immigration courts nationwide and the Board of Immigration Appeals. From March of 2001 till August of 2001, Mr. Rooney was the Acting Commissioner of the Immigration Naturalization Service. He also served as the EOIR Deputy Director from 1995 to 1997 before serving as the assistant director of the Bureau of Prisons from 1997 to 1999. Mr. Rooney was the Assistant Attorney General for Administration from 1977 to 1984 under three attorneys general during the Carter and Reagan administrations. He is a graduate of St. Mary's Seminary and the University of George Washington University School

of Law—Southern University and George Washington University School of Law. Mr. Rooney is also a U.S. army veteran.

Michael Dougherty was appointed to serve as the Director of Operations for the Bureau of Immigration and Customs Enforcement in the Department of Homeland Security in March of this year. Mr. Dougherty began his law enforcement career as a special agent of the former INS in New York, and in 1992 was among the first agents assigned to the Joint Terrorism Task Force, the FBI. He served as the JTTF case agent for the first World Trade Center bombing investigation and the subsequent seditious conspiracy to destroy New York City landmarks. Prior to his current appointment, Mr. Dougherty was a partner in KPMG, where he was an advisor in investigations and integrity management, computer forensics and electronic discovery and fraud and misconduct diagnostic assessment. He is a graduate of Ohio State University.

Jay Ahern is the Assistant Commissioner, Office of Field Operation, at the Bureau of Customs and Border Protection in DHS. Before the creation of DHS, Mr. Ahern served in the same position with the U.S. Customs Service since June 2002. Prior to that, he served in various positions with the Customs Service both at headquarters and in the field. Mr. Ahern is a graduate of Northeastern University.

Laura Murphy has been the Director of the Washington National Office of the American Civil Liberties Union since 1993, where she directs the Federal lobbying operation for the National ACLU. Prior to 1993, she worked with the ACLU in other capacities as a lobbyist on women's and civil rights for the ACLU Washington National Office as the Development Director of the ACLU Foundation of Southern California and a board member for two ACLU affiliates in California and Illinois. She worked as a legislative assistant for two Members of Congress and was chief of staff for the California Assembly Speaker. Ms. Murphy is a graduate of Wellesley College.

Mr. Hostettler. I thank the panelists for your attendance here today. Mr. Rooney, you have 5 minutes for your testimony today, and, without objection, your written testimony can be submitted for the record.

STATEMENT OF KEVIN ROONEY, DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, DEPARTMENT OF JUSTICE

Mr. ROONEY. Thank you, Mr. Chairman. Mr. Chairman, Ms. Sánchez, I am pleased to appear before you today to discuss how the Executive Office for Immigration Review, which we call EOIR, has responded to the challenges facing the Nation's immigration system in the aftermath of the events of September 11, 2001.

Mr. Chairman, since this is the first opportunity for me to testify during your tenure on this Subcommittee, I would like to take a moment to outline EOIR's role in the immigration system. EOIR is an administrative hearing tribunal which presides over both the trial and appellate immigration cases throughout the United States. We were established in 1983 when the Department of Justice created the office of the Chief Immigration Judge, which now has 52 immigration courts around the country, and combined this function with the long-existing Board of Immigration Appeals. EOIR operates under a delegation from the Attorney General of his

authority to interpret the immigration laws and to ensure due process in their application.

Since our creation in 1983, we have operated within the Department of Justice, but organizationally separate from the former Immigration and Naturalization Service.

EOIR has no jurisdiction over an alien unless the Government files charging documents with our courts. As you know, on March 1, 2003, the functions of the INS moved to the Department of Homeland Security, and DHS now prosecutes immigration cases before EOIR's tribunals which remain in the Department of Justice.

The most common type of proceeding before EOIR is the removal hearing. In these hearings, the DHS charges and must prove that an alien is in the United States unlawfully and should be removed. However, while almost all of the hearings include the issue of removability, the outcome of many of these hearings does not turn on this issue but rather on the issue of relief from removal. Most aliens concede that they are removable but then apply for one or more forms of relief from removal. At that time, the burden shifts to the alien to prove that he or she is eligible for relief, including asylum, voluntary departure, cancellation of removal, et cetera.

Another frequent proceeding conducted by EOIR is the bond redetermination hearing for aliens in pending immigration hearings. Eligible aliens can ask an immigration judge to reduce the amount of bond set by DHS or to set a bond if DHS has determined that no bond should be set. If either the alien or DHS disagrees with the decision of the immigration judge, that party may appeal the decision to the Board. Disagreements with rulings by the Board can be litigated in Federal court by the alien; or, in rare cases, DHS, the Board, or the Attorney General may refer a Board decision to the Attorney General for de novo review.

EOIR fulfills its mission despite an enormous volume of cases. In fiscal year 2002, the 52 immigration courts received more than 290,000 matters, which was an increase of more than 8,000; from the previous year, and an increase of 37,000 from the year before that.

In fiscal year 2002, the immigration judges completed nearly 275,000 matters. So they received 290,000 and completed 275,000.

As an appellate body, the Board handled a proportionate volume. In fiscal year 2002, the Board received nearly 35,000 cases, up from 28,000 the year before. It completed more than 47,000 cases, an increase from 32,000 from the year before. This increase in case completions is principally attributable to the implementation of the Attorney General's regulations restructuring the Board.

EOIR's mission has never been more critical than in the aftermath of September 11th. The terrorist atrocities of that day have presented the Justice Department and the Nation with an extraordinary challenge. Immigration policy is a crucial element in meeting that challenge, and as the Attorney General's primary interpreter of immigration laws, EOIR is at the forefront of the effort.

I have several examples to cite here, Mr. Chairman, but I think I will just move on in the interest of the shorter time that we have.

I just want to emphasize the Attorney General's restructuring of the Board of Immigration Appeals. The results of that struc-

turing have been very impressive. I testified here in February of 2002 when we announced the restructuring regulations, and we have seen significant success since that time. On September 25th of last year when the new time rule became effective, we had nearly 22,000 cases that were ready for adjudication by the Board of Immigration Appeals. During the past 7 months, the Board has completed all of the single member adjudications that were involved in those 22,000, and today have less than 1,600 that have been referred to the three Member panels. So we feel very good about the success that we have had there.

I appreciate the opportunity, Mr. Chairman, to come talk to you this afternoon, and I look forward to working with the Members of the Subcommittee in answering any questions that you may have.

Mr. HOSTETTLER. Thank you, Mr. Rooney.

[The prepared statement of Mr. Rooney follows:]

PREPARED STATEMENT OF KEVIN D. ROONEY

MR. CHAIRMAN, RANKING MEMBER JACKSON LEE, AND MEMBERS OF THE SUBCOMMITTEE:

It is my pleasure to appear before you to discuss how the Executive Office for Immigration Review (EOIR) has responded to the challenges facing the nation's immigration system in the aftermath of the events of September 11th, 2001.

BACKGROUND INFORMATION REGARDING EOIR

EOIR is an administrative hearing tribunal which presides over both trial and appellate immigration cases throughout the United States. It was established in 1983 when the Department of Justice (Department) created the Office of the Chief Immigration Judge and its Immigration Courts and combined this function with the existing Board of Immigration Appeals (Board). In 1987, the Office of the Chief Administrative Hearing Officer (OCAHO) was added to EOIR to interpret the laws sanctioning the hiring of illegal aliens, immigration-related employment discrimination, and in 1991, immigration-related document fraud was added to OCAHO's jurisdiction. EOIR operates under a delegation from the Attorney General of his authority to interpret the immigration laws.

Prior to the consolidation of the Immigration Courts and the Board under EOIR, initial immigration hearings were conducted by the Immigration and Naturalization Service (INS). Moving the adjudication function to EOIR ensured impartiality in immigration proceedings by having cases decided by a different administrative entity than the agency initiating the removal proceeding. EOIR does not have jurisdiction over an alien's case unless the government files charging documents with EOIR. On March 1, 2003, the functions of the INS moved to the Department of Homeland Security (DHS). DHS, therefore, now prosecutes immigration cases before EOIR's tribunals, which remain in the Department of Justice under the Homeland Security Act of 2002.

The most common type of proceeding before EOIR is the removal hearing. In these hearings, the DHS charges, and must prove, that an alien is in the United States unlawfully and should be removed. However, while almost all hearings include the issue of removability, the outcome of many of these hearings does not turn on this issue, but rather on the issue of relief from removal. Most aliens concede that they are removable, but then apply for one or more forms of relief from removal. The burden then shifts to the alien to prove that he or she is eligible for relief, including asylum, voluntary departure, cancellation of removal, or other remedies. Another frequent proceeding conducted by EOIR is the bond redetermination hearing for aliens in pending immigration hearings. Eligible aliens can ask an immigration judge to reduce the amount of bond set by DHS, or to set a bond if DHS has determined that no bond should be set.

If either the alien or DHS disagrees with the decision of the immigration judge, that party may appeal the decision to the Board. The alien may litigate disagreements with rulings by the Board in federal court, or, in rare cases, DHS, the Board or the Attorney General may refer a Board decision to the Attorney General for *de novo* review.

EOIR's primary functions are: 1) to provide a uniform interpretation and application of immigration law, through a timely adjudication process involving individual

cases; and 2) to provide due process and fair treatment to all parties involved. In FY 2002, the 52 Immigration Courts received more than 290,000 matters, an increase of more than 8,000 from FY 2001, and an increase of more than 37,000 from FY 2000. During FY 2002, the immigration judges completed nearly 275,000 matters. As an appellate body, the Board handled a proportionate volume. In FY 2002, the Board received nearly 35,000 cases, up from 28,000 the year before. It completed more than 47,000 cases, an increase from 32,000 from the year before. This increase in case completions is principally attributable to the implementation of the Board's restructuring regulations, which I will address later. As DHS increases its enforcement activities, EOIR expects the number of cases it receives each year to continue to rise.

SEPTEMBER 11 AND NATIONAL SECURITY ISSUES

EOIR's mission has never been more critical than in the aftermath of September 11th. The terrorist atrocities of that day have presented the Justice Department, and the nation, with an extraordinary challenge. Immigration policy is a crucial element in meeting that challenge, and as the Attorney General's primary interpreter of immigration laws, EOIR is at the forefront of the effort.

Ten days after the attack on the United States, we implemented new procedures for handling immigration cases involving aliens linked to the government's ongoing investigation of the September 11th attacks and other terrorist activity against the United States. These immigration matters were identified as "Special Interest Cases." In conjunction with that effort, the Chief Immigration Judge instructed immigration judges and court administrators to close to the public hearings involving Special Interest Cases, and to bar access to the related administrative record and docket information. These instructions were issued to protect national security and public safety by preventing sophisticated terrorist organizations like al Qaeda from learning about the government's ongoing terrorism investigation. But they also were designed to protect the identities and the privacy interests of the aliens in these proceedings. At the same time, these aliens were neither prevented from seeking legal counsel nor from presenting evidence in support of their claims, including witness testimony, nor were they prevented from making their identities public. In fact, more than 75 percent of the 611 aliens whose hearings were closed under these procedures were represented by counsel. Litigation involving the closures has drawn different results. The Third Circuit Court of Appeals has upheld the Special Interest Case procedures while the Sixth Circuit reached the opposite conclusion. The plaintiffs in the Third Circuit have asked the Supreme Court to consider the case, and we await its decision. At present, there are no aliens that are subject to the closure rules because the immigration court hearings in all designated Special Interest Cases have been completed.

This comprehensive approach to national security interests in the immigration context is also reflected in the Attorney General's recent decision in *Matter of D-J-*, 23 I&N Dec. 572 (A.G. 2003). This case arose when a ship carrying 216 undocumented aliens sailed from Haiti into Biscayne Bay, Florida in October 2002. Mr. D-J- was among the aliens apprehended by law enforcement authorities, detained, and placed in removal proceedings as being inadmissible to the United States. He applied for a bond to obtain his release pending his hearing on his asylum application. The government argued, based on information received from the Departments of Defense and State and the Coast Guard, that granting bond to Mr. D-J- and the others on that boat threatened national security because such a grant would encourage other mass migrations and strain the capabilities of the Coast Guard to protect this country. The Department of State memorandum stated that potentially threatening nationals from other countries were using Haiti as a launching point to enter the United States. The immigration judge granted the bond, and the Board upheld the grant based on its finding that the broad national interests invoked by the government were not appropriate considerations for the immigration judge or the Board in making the bond determination without further direction from the Attorney General. Upon reviewing the decision, the Attorney General provided such guidance and directed the immigration judges and the Board to consider national security interests when deciding bond applications.

Another tool developed by the Attorney General to address national security issues that arise in cases before EOIR is the protective order. On May 28, 2002, the Department published an interim regulation that provided a mechanism for the government to ask an immigration judge to place a protective order over information that, while not classified, was sensitive and could damage law enforcement or national security interests if released beyond the parties to a specific immigration proceeding. If an immigration judge grants a protective order, the alien, counsel, and

anyone else approved by the government, is given full access to the protected information, but can not disclose that information to others. The alien may challenge the admissibility of the evidence and may appeal the granting of the protective order if he or she appealed the case to the Board. The public may attend all portions of the alien's hearing, except those parts where the protected information is discussed. A violation of the protective order could render the alien ineligible for discretionary relief and could subject the alien's attorney to disciplinary procedures. This tool demonstrates the careful balancing of rights and interests in the post-September 11th environment: it provides the maximum access to evidence for the alien and to the hearing for the public without compromising important governmental interests. While an important instrument in the effort to protect national security, protective orders have been requested in a limited number of cases. Since their introduction, the government has sought them no more than a dozen times.

REFORM OF THE BOARD OF IMMIGRATION APPEALS

Shortly after taking office, the Attorney General expressed concern that inefficiency and delay in the adjudication of appeals by the Board effectively denied justice to all parties. To address this concern, the Attorney General proposed in February 2002 and finalized in August 2002, a regulation to restructure the Board (Board Restructuring Regulation). During the last decade, the Board experienced a dramatic increase in the volume of appeals filed for adjudication. In 1992, the Board received more than 12,000 new cases; by 1999, it received more than 31,000 new cases. This upsurge in new cases can be attributed, in large part, to greater enforcement activities on the part of the former INS and significant changes in the immigration laws. During that time, the number of pending cases also grew at a striking rate. At the end of 1992, the Board had more than 18,000 pending cases; by 1999, the number of pending cases had grown to nearly 52,000. The result of this backlog was a significant delay in the adjudication of a large number of cases. To remedy this untenable situation, a reform of the structure and procedures of the Board was required.

In response to both the growing number of appeals and the growing backlog, the Department began to address these problems comprehensively and developed methods to increase the Board's efficiency without compromising its mission. In October 1999, EOIR promulgated a regulation to streamline some of the Board's processes (Streamlining Regulation). The Streamlining Regulation allowed single Board Members to decide straightforward and non-controversial kinds of appeals in certain types of cases with either a short order on the merits or without a separate written opinion, in essence affirming an immigration judge's decision without further opinion.

The Attorney General's Board Restructuring Regulation expanded the Streamlining regulation to include most types of cases before the Board. The Attorney General concluded that further streamlining the Board's processes was the most effective means of allocating the Board's resources to create the best possible appellate review for all cases within the Board's jurisdiction. Accordingly, review of cases by three Board Members or the entire Board is reserved for controversial or novel cases that require the Board to correct errors of fact, to settle inconsistencies in the rulings of different immigration judges, or to apply new provisions of law, including those case determinations to be issued as precedent decisions. Other features of the regulation include establishing reasonable deadlines for completion of adjudications, generally 90 days for single Board Member adjudications, and 180 days for three Board Member decisions; establishing immigration judges as the primary fact finders in immigration matters because they reach the correct result in the overwhelming majority of cases; and reducing the size of the Board to 11 members, a number consistent with the historic capacity of appellate courts and administrative appellate bodies to adjudicate the law in a cohesive manner, the ability of individuals to reach consensus on legal issues, and the requirements of the existing and projected caseload of the Board.

The results of the Attorney General's Board Restructuring Regulation have been impressive. On September 25, 2002, when the final rule became effective, nearly 22,000 cases were ready to be adjudicated by the Board. During the past 7 months, the Board completed all of its single Board Member adjudications and only 1,700 cases remain for adjudication by three Board Member panels. The Board also will reach its optimal size of 11 members in the coming weeks after reassigning five Board Members to other important roles within EOIR. Arising from the challenges facing the Department after September 11th, EOIR's more efficient Board has, through the Attorney General's initiatives, preserved its role in providing full review

and careful deliberation to the cases before it, and will continue to be of great value to the immigration community.

ONGOING COORDINATION WITH THE DEPARTMENT OF HOMELAND SECURITY

The development of the protective order regulation occurred while the INS was still in the Department of Justice and exemplified the cooperation of intra-departmental components in promulgating regulations. EOIR worked with the rest of the Department by supplying its expertise in the operations of the Immigration Courts and the Board. Because it is uniquely situated to evaluate the practical outcome of regulatory proposals on its operations, EOIR's viewpoints are sought on those proposals that will affect our activities. With the transfer of the INS from the Department of Justice, we continue to have the same cooperative working relationship with DHS on issues that affect both of our agencies. The Department's and EOIR's participation in these discussions continues our tradition of ensuring that the application of homeland security and other immigration-related initiatives incorporates the principles of due process and fairness, ensuring that EOIR continues to adjudicate matters thoughtfully and efficiently.

Thank you for this opportunity to appear before the Subcommittee. I look forward to working with members of the Subcommittee and would be pleased to answer any questions you may have.

Mr. HOSTETTLER. Mr. Dougherty.

STATEMENT OF MICHAEL DOUGHERTY, DIRECTOR OF OPERATIONS, BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Mr. DOUGHERTY. Thank you, Mr. Chairman.

Mr. Chairman and Members of the Subcommittee, I am Mike Dougherty, the Director of Operations for the Bureau of Immigration and Customs Enforcement, now known as BICE, and I want to thank you for the opportunity to discuss one of our primary missions, which is to combat terrorism through the aggressive enforcement of our immigration and customs laws.

I speak to you today from a unique perspective. I started my career as an INS special agent. I helped pioneer the INS counterterrorism program and served in a supervisory capacity in the FBI counterterrorism program. And as you mentioned, Mr. Chairman, prior to my appointment, I was a partner in a global accounting and advisory services firm.

We as a Nation are proud of our globally celebrated and unmatched commitment to embracing those who have come here legally to join us in the building of America. And rightly so. That is what makes us great. However, as the tragic events of September 11th made clear, those bent on tearing us down will try to take advantage of our generosity and openness.

The 19 hijackers involved in the attacks on the World Trade Center and Pentagon exploited our immigration system to gain access to this country. It is one of BICE's core missions to prevent such exploitation.

The Homeland Security Act of 2002 abolished the INS, and the President's reorganization plan established BICE. The new Agency brings together more than 14,000 employees, including some 5,500 special agents. This makes it the second largest investigative team in Federal law enforcement.

As the investigative arm of the Department of Homeland Security, BICE has an incredibly broad array of investigative missions and authorities. For example, BICE is responsible for investigating alien smuggling, immigration and benefits fraud, document fraud,

money laundering, export and import violations, including those related to weapons of mass destruction and sensitive technology. We also investigate other criminal activities that have been linked to terrorism.

Moreover, BICE is responsible for apprehending, detaining and removing aliens from the United States. Effectively executing these missions is an enormous challenge that can only be addressed successfully if our resources, including our legal authorities, are utilized in the most effective and efficient manner.

The challenges and problems of the former INS are well known. Now in the Department of Homeland Security, we are addressing these problems directly and seizing this historic opportunity to effectively and fairly enhance our immigration laws and enforce them. There is no alternative.

BICE is at the forefront of our Nation's efforts to protect the homeland, the Nation, and the American people against future attacks.

The investigation of September 11th again demonstrated the vital role that the application of immigration enforcement authority and expertise play in securing our Nation. It is well known that Zacarias Moussaoui, the alleged 20th hijacker, was initially arrested and detained pursuant to this authority. BICE's immigration enforcement authority has been aggressively applied since the first attack on the World Trade Center in 1993.

Immigration special agents were integral to the successful investigation and prosecution of the defendants in that attack as well as subsequent criminal intelligence case. I was one of those agents.

Today BICE has more than 200 agents and officers assigned to joint terrorism task forces, and all of BICE's programs are design to protect our Nation and our way of life.

Today I would like to highlight certain initiatives we are undertaking to ensure the integrity of our Nation's legal system, safeguard it and protect it from potential national security threats and serious offenders.

For example, on March 20, BICE agents began seeking out Iraqi nationals believed to be unlawfully in the United States. This effort carried out jointly with the FBI as part of Operation Liberty Shield was aimed at identifying and collecting information regarding individuals who might pose a threat to the safety and security of the American people.

Another example is the National Security Entry-Exit Registration System, known as NSEERS. Mandated by Congress, it was launched in September 2002. It identifies persons from certain countries of concern who are subject to fingerprinting and photographing at ports of entry and must regularly report during their stay. To date, more than 138,000 people from 150 different countries have been registered. In this process we have identified 11 persons closely linked to terrorism and have arrested more than 120 criminal aliens including violent offenders and child molesters.

Under the Absconder Apprehension Initiative, BICE tracks, apprehends, and removes aliens who have violated U.S. immigration laws, been ordered deported but fled before their order could be carried out. We have determined that there are an excess of

300,000 absconders subject to removal, including 80,000 with criminal records.

There is a separate population that cannot be removed from the United States at this time. The first phase targets persons from countries with active al Qaeda networks, and more than two-thirds of the 1,139 absconders from these countries arrested so far have already been removed from the United States.

We are also working to improve the efficiency of the Student Exchange Visitor Information System, known as SEVIS, which was developed in recognition of the fact that ensuring foreign students comply with the terms of their visa is vital to our national security.

And, Mr. Chairman, in conclusion, I would like to send a clear message to this Committee and the American people regarding BICE's commitment to fulfilling its mission of protecting the homeland by vigorously enforcing our immigration laws. We take our mandate from the people and Congress seriously, and we will utilize our resources fairly and aggressively to enforce our laws and restore integrity to our system of legal immigration.

We are eager to work with you and other Members of Congress to achieve the level of security the American people desire and they deserve.

Thank you, and I look forward to your questions.

Mr. HOSTETTLER. Thank you, Mr. Dougherty.

[The prepared statement of Mr. Dougherty follows:]

PREPARED STATEMENT OF MICHAEL T. DOUGHERTY

MR. CHAIRMAN AND MEMBERS OF THE SUBCOMMITTEE, thank you for the opportunity today to update you on the Bureau of Immigration and Customs Enforcement's (BICE) efforts to combat terrorism. No mission of the U.S. government is more important than protecting the Nation and the American people against future terrorist attacks, and that is the paramount responsibility of the newly created Department of Homeland Security (DHS). The work of BICE is an indispensable part of fulfilling this responsibility. As you know, BICE has only recently been formed and I am especially pleased to be able to provide you with an update on initiatives begun under the now legacy Immigration and Naturalization Service (INS) and how these operations will be managed by their new custodian, BICE.

We as a nation are proud of our globally celebrated—and unmatched—commitment to embracing those who come here legally to join us in building up America, and rightfully so. It is what makes our country great.

However, as the tragic events of September 11, 2001 made clear, those intent on tearing us down will try to take advantage of our generosity and openness by exploiting any mechanism that allows them access to the United States. The nineteen hijackers used our immigration system to gain access to the country in order to carry out the deadly attacks of September 11. While the horrific events of that date reinforced the vulnerabilities in our immigration system, operatives in prior terrorism cases have used fraudulent identities, visas, and travel documents to gain access to our country and further their operations. In the 1993 World Trade Center bombing, operatives arrived in the U.S. on student visas but never attended school here. What is also clear from this history is the incredibly powerful tool that immigration enforcement provides in addressing the vulnerabilities in our system that have been exploited by terrorists and other violent criminals.

BICE's mission is to use its enforcement tools to prevent exploitation of the immigration system. To fulfill this mission, BICE targets terrorist and criminal organizations that threaten the country's security and strategically focuses our resources to address these threats. In addition to working on specific cases that raise national security concerns, we identify and mitigate the vulnerabilities in our immigration system that could be exploited by terrorist and criminal organizations.

OVERVIEW

The Homeland Security Act of 2002 abolished the INS and the President's Reorganization Plan under the Act established BICE. BICE combines the investigative

functions of the Immigration and Naturalization Service (INS) and the U.S. Customs Service with the Federal Protective Service (FPS). In addition, the President's Plan merged the Air and Marine Interdiction Unit and the legacy INS Detention and Removal Program into BICE. The new agency brings together approximately 14,000 employees, including some 5,500 special agents. This makes it the second largest investigative team in Federal law enforcement. Only the Federal Bureau of Investigation (FBI) is larger.

BICE enforces immigration and customs laws, giving it one of the most complex and far-reaching missions within DHS. BICE investigates immigration violations, migrant and contraband smuggling, human trafficking, money laundering, trade fraud, and export violations. BICE also manages the investigation of document, identity, visa and immigration fraud. Controlling the flow of goods and people within our country, verifying the authenticity of identity and travel documents, and monitoring the legal transfer of funds are critical to reducing our vulnerability to terrorist attacks. Meeting BICE's critical responsibilities requires a robust intelligence capability, an air and marine interdiction capability, and an ability to apprehend, detain, prosecute, and remove illegal aliens. Finally, BICE is charged with protecting more than 8,000 Federal facilities nationwide against terrorism, a responsibility carried out by a component part of the Agency, the FPS.

The investigation following the events of September 11, 2001, demonstrates how immigration authority and intelligence are critical to national security investigations. Immigration authority provided for the arrest and detention of Zacarias Moussaoui, the individual charged with complicity in the September 11th attacks, while the terrorism investigation was ongoing. Criminal immigration provisions allowed for the prosecution of associates of the September 11th hijackers who used fraudulent visas or documents or who applied for immigration benefits through fraud. The intelligence community relied on data produced by immigration databases and analyzed by the Intelligence Division to help track the hijackers and locate all their known places of residence and known associates in the U.S. and abroad. The Intelligence Division also provided data and analysis on travel patterns and document use by the hijackers. Finally, INS used its authorities to detain and remove aliens who came to the attention of law enforcement through leads related to the September 11th investigation, including known associates of the hijackers. Clearly immigration expertise and authority play a major role in such national security matters.

Although I am here today to speak about immigration enforcement and its role in counter-terrorism, that plan will incorporate the authorities that formerly fell within the U.S. Customs Service that now reside in BICE. For example, our alien smuggling initiatives, initiatives that have direct national security implications in some cases, will now benefit from the financial crimes expertise developed by Customs agents. In sum, BICE employs the powerful tools of civil and criminal immigration authority to protect the nation and now adds U.S. Customs Service authority to its arsenal in the war on terrorism.

COUNTER-TERRORISM IMMIGRATION ENFORCEMENT

The bombing of the World Trade Center in 1993 signaled the beginning of a new phase in the global fight against terror: for the first time, a terrorist attack was brought to American soil by foreign terrorists. In the year before the bombing, INS agents joined the Joint Terrorism Task Forces (JTTF) in New York and Newark. Immigration JTTF agents were integral to the successful investigation and prosecution of key defendants in the New York "TRADEBOM" case. In fact, one of the lead defendants in that case was charged with, and convicted of, immigration fraud as all enforcement authorities were brought to bear on the perpetrators of this crime.

In the years following, Congress enhanced our mission in combating international terrorism. Through the enactment of the Antiterrorism and Effective Death Penalty Act and the Immigration Reform Act, Congress provided substantial new enforcement weapons to be used against aliens engaged in, or supporting, international terrorism. In the same timeframe, the former INS was authorized to effectively coordinate with other law enforcement and security agencies in combating alien terrorists and foreign terrorist organizations. By 1996, 24 immigration special agents served on 14 different JTTFs.

The focus on using immigration authorities to deter terrorism continued with the establishment of INS's National Security Unit (NSU) in 1998. This unit was established to act as the central liaison and oversight mechanism for all terrorism and national security matters as well as to oversee the national INS JTTF program.

Today, BICE fields over 150 immigration agents, 45 customs agents, and 14 FPS agents assigned to the JTTFs. Further increases are a priority as is cross training

of all BICE/JTTF agents so that each agent on the task force brings to bear the full authorities behind BICE enforcement.

BICE's Division of National Security Investigations is designed to tackle national security threats previously addressed by INS and Customs as independent agencies. It will oversee BICE initiatives aimed at protecting our national homeland security. The Division has three component Branches: the National Security Unit, the Strategic Investigations Branch, and the Compliance Enforcement Branch, each with its own active and dynamic national homeland security mission.

The National Security Unit focuses on programs, policies, and initiatives that identify, prosecute, and remove foreign nationals and groups involved in terrorist activity. The Strategic Investigations Branch focuses on programs, policies, and initiatives designed to prevent terrorist groups, foreign entities, or criminal organizations from trafficking in Weapons of Mass Destruction or unlawfully transferred technology. For example, BICE cases in this area include stopping the trafficking of strategic military component parts and technology used in Weapons of Mass Destruction, warplanes and missiles. This Branch also monitors any individuals or groups who engage in transactions that support or facilitate such illegal activities or those that violate United States embargoes or sanctions. It incorporates the traditional authorities of the former U.S. Customs Service into BICE's national security mission. The Compliance Enforcement Branch is focused on maintaining the integrity of our immigration system by actively locating and removing non-immigrant visa violators. This program will focus substantially on violators identified in our Student and Exchange Visitor Information System, or SEVIS, and the soon to be implemented U.S. Visit system.

The National Security Unit works in concert with the National Security Law Division (NSLD) in developing hard-hitting, effective strategies in the war on terrorism. The NSLD also assists in cases where BICE agents seek indictments for alien smuggling and benefit, identity, visa and marriage fraud linked to "special interest cases." BICE's unique authority and experience in civil and criminal immigration law disrupt the activities of those who seek to harm our nation.

In addition to the work of the National Security Division, BICE is engaged in proactive enforcement actions geared toward prevention and disruption of terrorist cells, and suspected terrorist supporters and activists, before they have the opportunity to act. BICE is uniquely poised, because of its statutory authorities and mission, to undertake prevention and disruption activities against foreign nationals from countries known to contain active supporters or harborers of al Qaeda—and other—designated foreign terrorist organizations.

A prime example of this national security focus is the initiative BICE launched on March 20, when agents began seeking out Iraqi nationals believed to be unlawfully in the United States. The joint effort, carried out with the FBI as part of Operation Liberty Shield, aimed to identify and collect information on individuals who might pose a threat to the safety and security of the American people. Approximately 2,000 interviews were conducted resulting in 92 arrests (84 on immigration violations and 8 on criminal charges) by BICE. The Iraqis targeted as part of this effort were identified using a range of intelligence criteria and based on screening of data from our immigration databases. Additionally, as part of Operation Liberty Shield, BICE detained arriving asylum applicants from Iraq and nations where al-Qaeda, al-Qaeda sympathizers, and other terrorist groups are known to have operated. This reasonable and prudent action allowed BICE agents to contact asylum seekers, determine the validity of claims, verify identities, and interview those detained in order to gather intelligence for potential threats and/or sources of information. Further, BICE led an initiative to review approximately 2,500 asylum files related to Iraqi nationals in order to exploit these files for potential threats and/or sources of information. Of the 2,629 reviewed, 619 cases have been referred for follow-up investigation by BICE and the FBI.

Projects initiated under the INS now subject to BICE management include the Absconder Apprehension Initiative (AAI), National Security Entry-Exit Registration System (NSEERS), critical infrastructure protection operations, anti-smuggling programs, the Student and Exchange Visitor Information System (SEVIS), and the operations of the Law Enforcement Support Center (LESC). The recently announced U.S. Visitor and Immigrant Status Indication Technology system (U.S. VISIT) will replace the currently existing NSEERS program, integrate the SEVIS program, and encompass the Congressional requirements of the automated Entry Exit system. U.S. VISIT is designed to make entering the U.S. easier for legitimate tourists, students and business travelers, while making it more difficult to enter the U.S. illegally through the implementation of biometrically authenticated documents.

An examination of these projects and initiatives demonstrates how immigration expertise is vital to the protection of the national security and how that authority will be enhanced by proximity to the other authorities now housed within BICE.

Absconder Apprehension Initiative

BICE is deeply committed to using the full range of its broad statutory authority to enhance domestic security. The Absconder Apprehension Initiative is one of several notable examples of this approach. Under this initiative, BICE tracks, apprehends, and removes violators of U.S. immigration law who had been ordered deported, but fled before the deportation order could be carried out. Careful analysis has determined there are in excess of 300,000 alien absconders with unexecuted final orders of removal including approximately 80,000 with criminal records. Moreover, historically, voluntary departures have not been tracked. BICE views the failure to track departures as a serious issue effecting national security. The affective implementation of the Entry-Exit system, now part of U.S. VISIT, under development will be part of the solution to confirm departures.

BICE has identified outstanding areas of concern. For example, Phase I of the two-phase alien absconder project first sought to target 5,900 aliens from countries with a known al Qaeda presence or known terrorist recruiting activity. After vetting all files, approximately 5,000 individuals were deemed appropriate for removal. To date, only 1,139 absconders have been apprehended. Moreover, 803 of those arrested have been removed from the country; 224 of those arrested are currently in BICE custody awaiting removal; and 45 apprehended absconders are in various stages of criminal prosecution by the United States Attorneys for a variety of offenses. BICE has taken a variety of steps to apprehend these individuals or to verify they have left the U.S. These efforts include following-up on all available leads by conducting field investigations to determine if individuals are still located in the U.S. Additionally, we have analyzed passenger departure manifests, a variety of public and government data systems including driver license information, and state-owned systems available to law enforcement personnel.

Phase II of the Initiative is focused on the apprehension and removal of more than 300,000 aliens with unexecuted final orders of removal. As a force multiplier, this data is being entered into the FBI's National Crime Information Center (NCIC) database so that the added weight of other Federal, state, and local law enforcement officers is brought to bear on this mission. Working with the FBI, an Immigration Violators File has been created within NCIC specifically for this initiative and is expected to be deployed in June. We are now in the process of prioritizing these violators so that the most violent offenders, those that pose the greatest threat to public safety, are located first.

BICE recognizes the fundamental importance of this program to immigration law enforcement. To maintain integrity in our legal immigration system, there must be consequences for those who fail to abide by orders of removal. In order to give this effort appropriate attention and priority, BICE plans to move the AAI from the Investigations Program to the Office of Detention and Removal. The shift will permit Special Agents, who currently handle these cases, to concentrate on national security and criminal investigations and at the same time allow Deportation Officers to focus on locating and apprehending absconders. BICE's ultimate goal is to apprehend and remove all aliens who have received a final order of removal. We realize accomplishing this goal will take time to achieve but it is vital to the integrity of our immigration system.

National Security Entry-Exit Registration System (NSEERS)

The NSEERS program, which BICE now oversees, plays an important role in our anti-terrorism efforts. The program has recently been folded into the new comprehensive U.S. VISIT system mentioned above.

Congress called for development of an integrated entry-exit system for arriving visitors. NSEERS is the first part of that system. NSEERS promotes several key national security objectives:

- Allows the United States to run the fingerprints of aliens seeking to enter the country or already present against a database of known terrorists and criminals;
- Enables the United States to determine whether such an alien has overstayed their visa status; and
- Permits the United States to verify that an alien is complying with the terms of his visa status by living where he said he would live and by doing what he said he would do while in the United States, thus ensuring that he is not violating our immigration laws.

Since the implementation of NSEERS last September, more than 138,000 individuals from more than 151 countries have registered. BICE Special Agents are responsible for interviewing and processing registrants referred for investigation of possible immigration violations, criminal violations, or terrorism-related matters. To date, the program has resulted in the identification of 11 aliens linked to terrorism, the arrest of more than 120 criminal aliens, and the issuance of more than 12,000 notices to appear for removal proceedings.

Student and Exchange Visitor Information System (SEVIS)

Ensuring that foreign students comply with the terms of their visas is also vital to our nation's security. That is why the Congress mandated in 1996 the development of the Student and Exchange Visitor Information System (SEVIS), which was deployed under the legacy INS. This new Internet-based system, now part of U.S. VISIT and operated by BICE, maintains information that can be accessed electronically, making it a powerful tool for combating fraud and for ensuring that individuals comply with the terms of their visa. Student status violators are now referred to our Division of National Security Investigations where those leads are prioritized based upon factors such as criminal history and prior adverse immigration history. High priority leads are then referred to the appropriate field office for investigation. To date, 174 cases have been referred for field investigation resulting in 20 arrests. As BICE continues SEVIS implementation, increased resources will be required to ensure effective enforcement against student violators. Under BICE, we plan to resolve inherited technical issues and further enhance operational and resource planning to support follow-up investigations and enforcement actions. With current investigations resources already strained, a fee-based SEVIS structure currently under review within the Administration must be implemented to provide strong enforcement against violators.

SEVIS leads, as well as those leads generated by the NSEERS program I just described, will now be coordinated, disseminated, and tracked through the newly-created Compliance Enforcement Program.

It has been widely reported that the SEVIS system suffers from various technical problems. BICE is being aggressive in addressing these inherited issues. For example, there has been an identified issue with the interface between SEVIS and the Department of State Consular Affairs Consolidated Consular Database. At times, there was a delay in data share from SEVIS to the Consular Affairs system. That issue was corrected on May 2nd and we have worked closely with the Department of State to reconcile any data gaps between the two systems. Additionally, the problem of "data bleeding" or the more technical term "data crossover" is the incorrect placement of student or school data in a record. For example, there was an instance where one school printed an I-20 only to find information from another school appearing on the I-20. A solution was identified and successfully tested this week. The solution will be integrated into the SEVIS software next week.

Critical Infrastructure Protection Operations

Another priority within BICE is reflected through the creation of the Critical Infrastructure Protection Office which will focus its traditional immigration employment verification authorities on our nation's critical infrastructure or venues. The presence of workers who have presented fraudulent identification and employment authorization documents poses a significant security breach at our nation's critical infrastructure. Operation Tarmac, for example, was launched in recognition of the fact that illegal workers at airports may pose a serious security risk. It aims to ensure that people with access to secure areas at airports are properly documented and identified. Those without proper documentation are either prosecuted or removed. So far, more than 229,000 Employment Eligibility Verification Forms (Forms I-9) have been audited at more than 3,000 airport businesses. Nearly 1,000 unauthorized aliens have been arrested, with more than two-thirds of them being charged with criminal violations. Additionally, fines have been levied against employers for worksite violations.

Operation Glowworm uses the same approach to enhance the security of our Nation's nuclear power facilities. Field offices have investigated the 104 commercial nuclear plants and facilities regulated by the Nuclear Regulatory Commission (NRC) and more than 63,000 permanent and contract employees with direct plant and facility access. We are pleased to report significant industry compliance with employment documentation requirements, resulting in only six administrative arrests.

Earlier this year, Operation Game Day was conducted to protect public security and safety at Super Bowl XXXVII in San Diego, California. This operation targeted security and transportation companies in the San Diego area that had unrestricted

or broad access to Super Bowl activities, including the game at Qualcomm Stadium. BICE reviewed employment authorization records of approximately 11,000 security guards and checked indices for approximately 3,500 licensed taxi drivers working in the San Diego area. Operation Game Day resulted in the arrest of 45 security guards and 24 taxi or limousine drivers for either criminal or immigration violations.

Consistent with aligning BICE's structure and resources with the threats facing the Nation, BICE has focused its resources on protecting critical infrastructure. BICE plans on expanding upon operations such as Tarmac, Glowworm and Game Day, by further investigation of industries, facilities, landmarks and other critical infrastructure vulnerable to those who seek to do harm. Planning for future critical infrastructure operations will use a risk-based approach to assess threats, develop targets and allocate investigative resources.

Anti-Smuggling Program

BICE's Anti-Smuggling Program aims to dismantle smuggling organizations with links to terrorism and others groups that pose a risk to our national security. Available information indicates terrorist organizations use human smuggling rings to move around the globe, which makes investigating and dismantling these organizations a vital part of our overall effort to enhance homeland security.

Focusing our anti-smuggling resources on domestic security led to the initiation of Operation Southern Focus in January 2002. This multi-jurisdictional operation targeted large-scale smuggling organizations specializing in the movement of U.S.-bound aliens from countries of concern. Many targets of Operation Southern Focus were believed to be responsible for smuggling hundreds of aliens into the country. Since the inception of this operation, nine major smugglers have been arrested and charged with alien smuggling violations, and significant alien smuggling pipelines have been severely disrupted. BICE plans to continue to focus anti-smuggling efforts on organizations and systems that can be exploited by terrorists to gain entry to the United States.

As I mentioned earlier, BICE seeks to enhance its anti-smuggling efforts by incorporating financial crimes expertise developed by Customs into this critical immigration enforcement program.

Law Enforcement Support Center (LESC)

BICE makes its investigative expertise more widely available by providing support to state and local law enforcement through the LESG located in Burlington, Vermont. The Center's primary mission is to help local law enforcement agencies determine if a person they have contact with, or have in custody, is in fact an illegal, criminal, or fugitive alien. The LESG provides an around-the-clock link between Federal, state, and local officers and the immigration databases maintained now by BICE.

When a law-enforcement officer encounters an alien, LESG personnel are able to provide that officer with vital information and guidance, and if necessary, place the officer in contact with a BICE immigration officer in the field. The partnerships fostered by the LESG increase public safety. Everyday, these partnerships result in the apprehension of individuals who are unlawfully present in the United States, many of whom have committed a crime and pose a threat to the local community or our Nation. Under BICE, the role of the LESG will be enhanced by further expanding service to local law enforcement and maximizing the intelligence and analytical capabilities of this critical resource. In addition to serving law enforcement agencies, BICE is transitioning the LESG by enhancing the internal and external coordination of national law enforcement activities. Under BICE, the LESG will play a more significant role in support of the Institutional Removal Program (IRP); Alien Criminal Apprehension Program (ACAP) and expand on the development of the Central States Command Center philosophy of coordinated processing of criminal aliens for removal through technological tools such as video conferencing.

CONCLUSION

Deterring illegal migration and combating immigration-related crime have never been more critical to our national security. The men and women of BICE are tackling this challenging mission with diligence, determined to ensure that no duty is neglected even as they continue to adjust during this time of transition into the new Department. We are eager to work with you and the other members of Congress to provide the American people with the level of security they demand and deserve. Thank you. I look forward to your questions.

Mr. HOSTETTLER. Mr. Ahern.

STATEMENT OF JAY AHERN, ASSISTANT COMMISSIONER, OFFICE OF FIELD OPERATIONS, BUREAU OF CUSTOMS AND BORDER PROTECTION, DEPARTMENT OF HOMELAND SECURITY

Mr. AHERN. Good afternoon, Mr. Chairman, Members of the Committee. It is a privilege to be here before you today and discuss the actions of the Bureau of Customs and Border Protection and its efforts to combat terrorism. Today, which is day 69 of our reorganization, I will outline some of our accomplishments to date and, moreover, our future plans and our strategy for protecting the United States from terrorism.

As you know, on March 1, 2003, inspectors from the Immigration and Naturalization Service, the Animal Plant and Health Inspection Service, the Customs Service, as well as Border Patrol agents, were merged into the Bureau of Customs and Border Protection. I will refer to that as CBP.

Now, for the first time in our country's history, all agencies of the United States Government with significant border responsibilities have been brought under single leadership. With our combined skills and resources, we will be far more effective than we were when we were separate agencies.

The priority mission of CBP is to prevent terrorists and terrorist weapons from entering the United States. This extraordinarily important mission means improving our security at our physical borders and our ports of entry, and it means that we must extend our zone of security beyond our physical borders, and we must go ahead and improve on a layered strategy as we move forward in our defense. We do not want to have the American borders as our last line of defense, and we want to make sure we push the borders back so we have a better opportunity to be successful enforcement officers.

As we do this, we must continue to perform our traditional missions as well. The CBP missions include apprehending illegal individuals coming into the United States, stemming the flow of illegal drugs and other contrabands, protecting our agricultural and economic interests from harmful pests and disease, protecting American businesses from theft of their intellectual property, and regulating and facilitating international trade, collecting import duties and enforcing U.S. trade laws. Enforcement of our laws and facilitation of legitimate travel and trade—these twin goals need not be mutually exclusive. We must and we will perform all of our important security mission without stifling the flow of legitimate trade and travel that is so important to our Nation's economy.

Secretary Ridge, Under Secretary Hutchinson, and Commissioner Bonner and I have established a clear and understandable chain of command for CBP personnel and have directed that all operations not be interrupted as a result of this transition.

To this end, effective March 1st, 20 interim directors of field operations were appointed and, based on the 20, Customs' field operations structured to exercise line authority over the 317 ports of entry within their jurisdiction.

At each of the ports of entry—air, land and sea—interim directors were appointed to be in charge and responsible for all the CBP

inspection functions from the legacy organizations of Customs, Immigration, and Agriculture.

A clear chain of command was also established for the Border Patrol, for the Border Patrol's 21 sector chiefs reporting directly to the chief of the Border Patrol who reports to Commissioner Bonner.

By unifying the border agencies, we can and will improve the way Government manages our borders. We want to learn from our legacy organizations, and at the same time we are looking to bring new innovations to border management. To that end, a full-time transition management office has been put in place to help address the changes that come from the standup of any new organization.

CBP's mission is vitally important to the protection of America and the American people. In the aftermath of the terrorist attacks of September 11th, numerous initiatives were developed to meet our twin goals of improving security and facilitating the flow of legitimate travel and trade. Information is one of the most important keys to our ability to increase security without stifling legitimate trade and travel. Good information enables us to be more accurate at identifying and targeting what is high risk and defined as potential threat and also what is low risk.

CBP has several programs and initiatives that will help us accomplish that task. The National Targeting Center created last year, with fiscal year 2002 emergency supplemental funding, has significantly increased our overall capacity to identify potential terrorists and threats of terrorism by providing a centralized national targeting of passengers' cargo for the first time in our history. The Automated Targeting System is a system with which we process advance manifest information and passenger information to pick up anomalies and red flags and determine what cargo is high risk and therefore can be scrutinized at the port of entry, or, in some cases, under a Container Security Initiative at the foreign port of export.

The Advance Passenger Information System is also critical to identify individuals who may pose a security threat. Legislation enacted by Congress in late 2001 made submission of this information mandatory.

With Canada, as part of our Smart Border Initiatives, we have implemented the NEXUS program under which frequent travelers, whose background information has been run against terrorism and criminal indices, are issued a proximity card or SMART card allowing them to be inspected expeditiously at the ports of entry.

CBP depends on a broad range of technology and other tools to effectively inspect people and goods entering the country, including technology for detecting weapons of mass destruction, explosives, chemicals, and other contraband. Non-Intrusive Inspection technology provides for a far more efficient and effective as well as less invasive method of inspecting conveyances and cargo coming into this country.

We are taking steps to also harden the ports of entry on the northern and southern land border so that we can prevent unauthorized crossings. Hardening the port includes the installation of gates, signs, lights, but, more importantly, remote surveillance systems at the ports of entry, many of them in remote locations, including along the vast northern border with Canada.

The most important component of CBP's success in protecting America and the American people lies in the men and women who perform the task on a daily basis on the Nation's frontline.

Since September 11th, 2001, with the support of Congress, 1,025 new immigration inspectors and 2,050 new Border Patrol agents have been hired; 355 of the immigration inspectors and 560 of the Border Patrol agents were deployed to the northern border, where prior to that there had been significant understaffing. We intend to establish a staffing level of 1,000 Border Patrol agents on the northern border this year.

Foremost, the Border Patrol's mission is to provide for the national security of the United States, preventing the illegal entry of people, goods, and contraband that crosses our borders between the ports of entry. The Border Patrol executes its mission through a proper balance of agent personnel, enforcement equipment, technology, tactical infrastructure and intelligence, as well as liaison efforts. Often the border area in which these efforts are conducted—it is barely discernible where we are relative to the borders of the Nations that are adjacent to this country.

In fiscal year 2001 and 2002, Border Patrol agents apprehended a combined total of over 2 million people that were illegally attempting to enter the United States. Understanding the critical need for permanent staffing and equipment increases to its strength and security on our northern border, and with your support, we have increased the number of remote video surveillance cameras, fixed-wing airplanes and helicopters to our list of force multipliers along the northern border. Beginning in 2002, immigration inspectors now in CBP have had access to photographs and data transmitted electronically by the Department of State through a data share effort so that we can go ahead and look at the holders of nonimmigrant visas. This permits the inspectors to review visa application data and verify the identification of the holder at the time of entry.

On September 11, of 2002, the former INS implemented the National Security Entry-Exit Registration System. As announced by Secretary Ridge, NSEERS will become part of the U.S. VISIT program, and CBP remains committed to supporting this effort. The NSEERS program requires certain nonimmigrant aliens from designated countries to be fingerprinted, interviewed, and photographed at ports of entries when they apply for admission into the United States. CBP officers have made every effort to minimize any delay or inconvenience to those individuals required to register by streamlining the process for previously registered aliens.

As Secretary Ridge recently announced, the new U.S. VISIT program will provide us with the biometric information now collected in the NSEERS registration process and again we will stand ready to support that initiative.

We also recognize the strong link for our counterparts within the Immigration and Customs enforcement so we would make sure to continue to coordinate in the area of information technology as well as investigative support to ensure that our systems have compatibility.

Mr. HOSTETTLER. Mr. Ahern, could you wrap up? Could you summarize if possible?

Mr. AHERN. Yes, I will. I am at the conclusion.

Mr. HOSTETTLER. All right.

Mr. AHERN. I will thank you for your opportunity to take any questions you have later.

Mr. HOSTETTLER. Thank you, Mr. Ahern.

[The prepared statement of Mr. Ahern follows:]

PREPARED STATEMENT OF JAYSON P. AHERN

I. INTRODUCTION AND OVERVIEW

Good afternoon Mr. Chairman and Members of the Subcommittee. It is a privilege to appear before you today to discuss the actions of the Bureau of Customs and Border Protection and our efforts to combat terrorism. As you know, on March 1, 2003, immigration inspectors from the Immigration and Naturalization Service (INS), agricultural inspectors from the Animal and Plant Health Inspection Service (APHIS), customs inspectors from the U.S. Customs Service, and the entire Border Patrol merged to form the Bureau of Customs and Border Protection—BCBP—within the Border and Transportation Security (BTS) Directorate of the Department of Homeland Security. Now, for the first time in our country's history, all agencies of the United States government with significant border responsibilities have been brought under one roof. With our combined skills and resources, we will be far more effective than we were when we were separate agencies.

The priority mission of BCBP is to prevent terrorists and terrorist weapons from entering the United States. This extraordinarily important priority mission means improving security at our physical borders and ports of entry, but it also means extending our zone of security beyond our physical borders—so that American borders are the last line of defense, not the first line of defense. In sum, the BCBP's missions include apprehending individuals attempting to enter the United States illegally; stemming the flow of illegal drugs and other contraband; protecting our agricultural and economic interests from harmful pests and diseases; protecting American businesses from theft of their intellectual property; and regulating and facilitating international trade, collecting import duties, and enforcing U.S. trade laws. We must perform our all important security mission without stifling the flow of legitimate trade and travel that is so important to our nation's economy.

II. STANDUP OF CUSTOMS AND BORDER PROTECTION

Secretary Ridge, Under Secretary Hutchinson, Commissioner Bonner, and I, have established clear, understandable chains of command for all BCBP personnel, and have directed that operations not be interrupted. To this end, effective March 1, 2003, twenty interim Directors of Field Operations (DFOs) were appointed, based on the twenty-office field structure of U.S. Customs, to exercise line authority over 317 ports of entry within their jurisdiction. At each of the ports of entry—land, sea, and air—interim Port Directors were appointed to be in charge of and responsible for all the BCBP inspection functions, customs, immigration, and agriculture. A clear chain of command was also established for the Border Patrol, with the Border Patrol's twenty-one Sector Chiefs reporting directly to the Chief of the Border Patrol, who reports to Commissioner Bonner.

This is the first time there has been one person at each of our nation's ports of entry in charge of all Federal Inspection Services. We are in the process of competitively selecting individuals to fill these DFO and Port Director positions on a permanent basis, and that process should be completed in the near future.

We want to learn from our legacy organizations and at the same time we are looking to bring new innovations to border management. To that end a full-time Transition Management Office has been put in place to help address the challenges that come from the standup of any new organization. That office is staffed with representatives from all the incoming agencies.

A. Responding to the Terrorist Threat

As the single, unified border agency of the United States, BCBP's mission is vitally important to the protection of America and the American people. In the aftermath of the terrorist attacks of September 11th, numerous initiatives were developed to meet our twin goals of improving security and facilitating the flow of legitimate trade and travel. Our strategy in implementing these initiatives—and accomplishing our twin goals—involves a number of factors, including (A) improving targeting systems and expanding advance information regarding people and goods, (B) pushing our “zone of security outward” by partnering with other countries, (C) push-

ing our “zone of security outward” by partnering with the private sector, (D) deploying advanced inspection technology and equipment, (E) increasing staffing positions for border security, and (F) working in concert with other agencies.

Targeting and the Necessity of Advance Information

Information is one of the most important keys to our ability to increase security without stifling legitimate trade and travel. Good information enables us to more accurately identify—or target—what is “high risk,” defined as a potential threat, and what is low risk. The separation of high risk from low risk is critical because searching 100 percent of the cargo and people that enter the United States would unnecessarily cripple the flow of legitimate trade and travel to the United States. What is necessary and advisable is searching 100 percent of the *high-risk* cargo and people that enter our country. To do this, we need to be able to identify what is high risk, and do so as early in the process as possible. BCBP has several programs and initiatives that help us accomplish that task.

National Targeting Center (NTC)

The National Targeting Center (NTC), created last year with FY '02 Emergency Supplemental funding, has significantly increased our overall capacity to identify potential terrorist threats by providing centralized, national targeting of passengers and cargo for the first time. NTC inspectors and analysts use a sophisticated computer system to monitor, analyze, and sort information gathered by BCBP and numerous intelligence and law enforcement agencies against commercial border crossing information. By mining the information in that system, NTC personnel identify potential terrorists and terrorist targets for increased scrutiny at the border ports of entry. When NTC personnel identify potential threats, they coordinate with our officers in the field and monitor the security actions that are taken. Because multiple agencies both contribute information to the National Targeting Center and rely on it *for* information, the Center allows a coordinated and centralized response to potential threats.

Automated Targeting System (ATS)

The Automated Targeting System (ATS), which is used by NTC and field targeting units in the United States and overseas, is essential to our ability to target high-risk cargo and passengers entering the United States. ATS is the system through which we process advance manifest and passenger information to pick up anomalies and “red flags” and determine what cargo is “high risk,” and therefore will be scrutinized at the port of entry or, in some cases, at the foreign port of export.

In FY '02, we implemented a domestic targeting initiative at all U.S. seaports using the Automated Targeting System. Under that initiative, all manifests for ocean going cargo destined for the United States are processed through ATS and reviewed by trained personnel. When high-risk shipments are identified, inspectional officers at U.S. seaports conduct standardized security inspections on those shipments. Importantly, the goal is to inspect *100 percent* of the high-risk sea cargo. We have implemented a similar system successfully at the Northern land border ports of entry where the entry information is used for risk assessments. We are already in the process of duplicating this process along the Southern land border ports of entry.

Advance Passenger Information System (APIS)

Advance information is also critical to our efforts to identify individuals who may pose a security threat. Before September 11th, 2001, air carriers transmitted information on international airline passengers in advance of their arrival to the Advance Passenger Information System (APIS) on a purely voluntary basis. Legislation enacted by Congress in late 2001 made submission of this information mandatory. An informed, enforced compliance plan has resulted in 99 percent of all passenger and crew information (including those pre-cleared outside the United States) now being transmitted through APIS in a timely and accurate manner.

NEXUS

With Canada, we have implemented a program that enables us to focus our resources and efforts more on high-risk travelers, while making sure those travelers who pose no risk for terrorism or smuggling, and who are otherwise legally entitled to enter, are not delayed at our mutual border. This is the NEXUS program, under which frequent travelers whose background information has been run against criminal and terrorism indices are issued a proximity card, or SMART card, allowing them to be inspected expeditiously through the port of entry. NEXUS is currently operational at six crossings located at four major ports of entry on the northern bor-

der: Blaine, Washington (3 crossings); Buffalo, New York; Detroit, Michigan; and Port Huron, Michigan. Recently, we opened a new NEXUS lane at the International Tunnel in Detroit. Some upcoming expansion sites for NEXUS include Niagara Falls, New York; Alexandria Bay, New York; and Pembina, North Dakota.

SENTRI

SENTRI is a program that allows low-risk travelers to be processed in an expedited manner through a dedicated lane at our land border with minimal or no delay. SENTRI is currently deployed at 3 southwest border crossings: El Paso, Texas, San Ysidro, and Otay Mesa, California, and expansion plans are being developed. We are committed to expansion.

B. Development and Deployment of Technology, Equipment, and Systems

BCBP depends on a broad range of technology and other tools to effectively inspect people and goods entering the country, including technology for detecting weapons of mass destruction, explosives, chemicals, and contraband.

Non-Intrusive Inspection (NII) technology provides for a more effective and efficient, as well as less invasive, method of inspecting conveyances and cargo, compared with drilling or dismantling of conveyances or merchandise. NII equipment includes large-scale x-ray and gamma-ray imaging systems, portal radiation monitors, and a mixture of portable and handheld technologies to include personal radiation detection devices that greatly reduce the need for costly, time-consuming physical inspection of containers and provide us a picture of what is inside containers.

After the terrorist attacks of September 11th, efforts were stepped up to “harden”—to prevent unauthorized crossings of—the northern and southern land borders. In addition to staffing increases, the hardening of these ports of entry involved the installation of gates, signs, lights, and remote surveillance systems at ports of entry, many of them in remote locations, along the vast northern border with Canada. The Border Patrol also deployed additional agents to strategic locations along the northern border to aid in providing a law enforcement response to intrusions and deterring the illegal entry of anyone wanting to commit acts of terror.

C. Staffing Positions for Border Security

As important as our efforts to improve targeting, build partnerships with other countries and industry, and deploy technology are to preventing terrorism, these efforts simply cannot be effective without our well-trained staff of inspectors, canine enforcement officers, and Border Patrol Agents at and between the border ports of entry. The most important component of BCBP’s success in protecting America and the American people lies in the men and women who work directly on our nation’s frontlines.

One need only recall that it was a Customs inspector, Diana Dean, who in December 1999 stopped and arrested an Al Qaeda terrorist from crossing into the United States from Canada with a trunk load of powerful explosives in his car. His mission, as we now know, was to blow up Los Angeles International Airport.

Inspector Dean relied on nothing but her training to pick up on Ahmed Ressay’s nervous behavior, his unusual travel itinerary, and his evasive responses to her questions. And thanks to her skill and professionalism, and the skill and professionalism of her fellow inspectors at Port Angeles, Ressay was arrested and a deadly Al Qaeda terrorist plot to do great harm to American lives was foiled.

In an effort to fight terrorism, 1,025 new immigration inspectors, now with BCBP, were hired in FY ’02 and the beginning of FY ’03, 355 of whom have been specifically assigned to supplement northern border enforcement activities. The Border Patrol hired 2,050 new agents in FY ’02, and, as of February 2003, a total of 560 Border Patrol Agents were deployed all along the Northern Border. It is also worth noting that 125 additional Border Patrol agents and 4 Border Patrol helicopters were redeployed temporarily to the Northern Border in support of Operation Liberty Shield. We intend to establish a staffing level of 1,000 Border Patrol Agents deployed to the northern border this year.

D. Apprehending Individuals Entering Illegally Between the Ports of Entry

The Border Patrol, now part of BCBP, is specifically responsible for patrolling the 6,000 miles of Mexican and Canadian international land borders and 2,000 miles of coastal waters surrounding the Florida Peninsula and the island of Puerto Rico. Their primary task is securing America’s borders between official ports of entry. Foremost, the Border Patrol’s mission is to provide for the national security of the United States by *preventing* the illegal entry of people, goods, and contraband across our sovereign borders. Secondly, Border Patrol operations are designed to detect,

interdict, and apprehend those who attempt to illegally enter the United States or transport any manner of goods or contraband across our borders.

The Border Patrol executes its mission through a proper balance of agent personnel, enforcement equipment (such as a fleet of specialized aircraft and vehicles of various types), technology (such as sensors and night vision cameras), tactical infrastructure (such as roads and vehicle barriers), and intelligence and liaison efforts. Often, the border area in which these efforts are brought to bear is a barely discernible line in uninhabited deserts, canyons, or mountains.

Although the scope of the Border Patrol mission has not changed since the terrorist attacks of September 11, 2001, enforcement efforts have been accelerated, to enhance Border Patrol presence along the northern border and to make clear that its priority mission—like BCBP's—is keeping terrorists and terrorist weapons from entering the United States. As we expand that presence on the northern border, it is also essential that we expand control of the southwest border.

In FY 01 and FY 02, Border Patrol Agents apprehended a combined total of over 2 million people for illegally entering the United States. In FY 03, the Border Patrol will continue focusing on strengthening northern border security between the ports of entry; maintaining and expanding border enforcement capabilities on the southwest border, with primary focus on the Arizona corridor; and expanding and integrating technologies with other components of BCBP to support border control efforts.

Following the events of September 11th, the Border Patrol undertook a number of enforcement initiatives to assist in supporting and augmenting U.S. national security.

Immediately after September 11, 317 Border Patrol Agents were detailed to 9 airports across the country within 36 hours of the attack. The Border Patrol also detailed additional agents and air assets to the 8 northern border sectors to augment existing capabilities and expand coverage within the sectors' areas of responsibilities. The Border Patrol worked in cooperation with the U.S. Coast Guard conducting joint operations on the Great Lakes and surrounding waterways to deter illegal entry and apprehend violators.

On the Northern Border, the Border Patrol is working with the Royal Canadian Mounted Police (RCMP), Citizenship and Immigration Canada, and Canada Customs and Revenue Agency to establish Integrated Border Enforcement Teams (IBETs) at several key locations. This initiative grew from years of cooperation and coordination, and today it is a hallmark of bi-national law enforcement cooperation and coordination.

The core membership of IBETs has divided the U.S.-Canada border into 14 geographic regions and created Joint Management Teams (JMT) in each one. The JMT's are comprised of senior agency leadership from among the participating agencies. They concentrate on sharing intelligence and information and often conduct joint operations to enhance border security. The IBET mission focuses on 3 mutually agreed upon priorities: 1) Matters of national security, 2) matters of organized crime, and 3) matters pertaining to other cross border criminal activity. These priorities guide local level decision makers in border security coordination efforts.

For the first time in history, a permanent Border Patrol Agent position has been authorized to be assigned to RCMP headquarters in Ottawa, Ontario in Canada. Understanding the critical need for permanent staffing and equipment increases to strengthen security on our Northern Border, with your support, we increased the number of remote video surveillance cameras, fixed-wing airplanes, and helicopters to our list of "force multipliers" along the Northern Border.

E. Preventing Individuals From Entering Illegally At The Ports Of Entry

With respect to preventing individuals from entering the country illegally at the ports of entry, BCBP works with the Department of State to ensure BCBP inspectors have the tools they need to verify the identity of immigrant visa holders and the authenticity of visas issued by the Department of State.

Beginning in 2002, immigration inspectors—now in BCBP—have had access to photographs and data transmitted electronically by the Department of State relating to holders of nonimmigrant visas. This permits inspectors to review visa application data and verify the identity of the holder. Senior BCBP and State Department staff met during the week of March 24, 2003, to reaffirm their commitment to these initiatives and to outline new goals for electronic data sharing that will expand the exchange of data between State and BCBP, and further enhance both the visa issuance and inspections process.

The National Security Entry Exit Registration System (NSEERS) was implemented on September 11, 2002. The NSEERS program requires certain non-immigrant aliens from designated countries to be fingerprinted, interviewed and

photographed at Ports of Entry (POEs) when they apply for admission to the United States. BCBP officers have made every effort to minimize any delay or inconvenience to those individuals required to register by streamlining the process for previously registered aliens.

Under the NSEERS program, we have apprehended or denied admission to more than 740 aliens at our POEs who present law enforcement threats due to felony warrants or prior criminal or immigration violations rendering them inadmissible. As Secretary Ridge recently announced, the new Visitor and Immigrant Status Indication Technology (VISIT) system will provide us with the biometric information now collected in the NSEERS registration process. BCBP will continue its support of this effort.

As part of ongoing efforts to enhance public safety and national security, in January, a requirement that all commercial carriers submit detailed passenger electronic manifests before an aircraft or vessel arrives in or departs from the United States was put into action. Section 402 of the Border Security and Visa Entry Reform Act of 2002 requires the submission of Advanced Passenger Information (API) on all passengers arriving by sea or air. Passenger information that must be submitted in advance includes: complete name; date of birth; citizenship; gender; passport number and country of issuance; country of residence; U.S. visa number, date and place of issuance (where applicable); alien registration number (where applicable); address while in the United States; and such other information as determined to be necessary for the enforcement of the immigration laws and to protect safety and national security. The advance submission requirement will help the BCBP verify the identities of individuals being transported and enforce U.S. immigration laws. This program will assist inspectors in our Passenger Analytical Units (PAUs) in reviewing passenger manifests prior to an aircraft or vessel's arrival. These units generate useful information for Inspectors engaged in determining whether an alien seeking admission to the United States is in fact admissible. Using the Advanced Passenger Information System (APIS) in conjunction with the Interagency Border Inspection System (IBIS), PAU Inspectors are able to analyze the passenger arrival and departure information. We are currently integrating these former INS functions into existing BCBP NTC and APIS programs.

In the aftermath of September 11th, the former INS worked with other agencies and the Office of Homeland Security to develop 7 interagency security enhancement initiatives for the refugee program. These heightened security enhancements, now being performed by BCBP, included additional databases, records and fingerprint checks, and pre-flight notification to the FBI.

We are reassessing the eligibility of certain countries to participate in the Visa Waiver Program (VWP). As you may know, the Attorney General terminated Argentina's participation in the VWP in February 2002, and Uruguay's participation was terminated on April 15, 2003. BCBP has joined with the State Department to tighten regulations regarding various entry procedures that under ordinary circumstances facilitate travel, but which could be exploited to do harm to the United States. For example, on March 17, 2003, certain permanent residents of Canada were required to present passports and visas for entry into the United States, where they were previously exempt.

III. CONCLUSION

Mr. Chairman, Members of the Subcommittee, I have outlined a broad array of initiatives today that, with your assistance, will help BCBP to protect America from the terrorist threat while fulfilling our other traditional missions. We know that this new agency, BCBP, faces great challenges in merging the border agencies and in fulfilling both our priority and traditional missions. But, now that all the Federal Inspection Services and the Border Patrol have been unified in BCBP, under the Department of Homeland Security, we are in a far better position to meet those challenges and accomplish those goals. We will be far more effective working together, than we were as separate agencies in different departments. We will learn all we can from our legacy agencies and we will bring new innovation to border management.

With the continued support of the President, DHS, and the Congress, BCBP will succeed in meeting the great demands placed upon it, and will play a key role—by better securing our border against the terrorist threat—in the Department of Homeland Security.

Thank you again for this opportunity to testify. I would be happy to answer any of your questions.

Mr. HOSTETTLER. Ms. Murphy.

**STATEMENT OF LAURA MURPHY, AMERICAN CIVIL LIBERTIES
UNION**

Ms. MURPHY. Chairman Hostettler, Ranking Member Jackson Lee, and Members of the Subcommittee, on behalf of the ACLU and its nearly 400,000 members, I welcome this opportunity to present our views.

The plethora of ad hoc and disjointed immigration policies imposed by the Bush administration have the net effect of equating immigration with terrorism, especially as far as Arabs, Muslims, and South Asian immigrants are concerned.

While this hearing is about our efforts in terrorism and immigration enforcement, Congress should take pains to see these as very different issues and not continue to allow this Administration to charge an already overtaxed immigration service with the lion's share of the responsibility to stop terrorism. Most importantly, it is possible for us to be both safe and free by doing a better job of insisting on fairness and due process in our immigration system.

Among those who died in the horrific attacks of September 11th were citizens of some 26 foreign countries. The attackers did not distinguish on the basis of citizenship or immigration status. Victims included U.S. citizens and permanent residents, temporary workers, visitors and undocumented laborers.

Following these attacks, the President and Congress expressed solidarity with the Muslim, Arab, and South Asian immigrant communities and warned against singling them out for the actions of the terrorists. Unfortunately, the Government's actions toward immigrants over the past 20 months are in sharp contrast to its words.

In the initial draft of legislation that became the USA PATRIOT Act, the Bush administration proposed allowing the summary detention and deportation of even legal immigrants, with no review by any Federal court.

I want to thank members of this panel who worked with us to object to these draconian powers. Your bipartisan efforts helped limit detention of immigrants without charge to 7 days and preserve Federal court review in the final version of the PATRIOT Act.

Unfortunately, even before Congress had finished its work on the PATRIOT Act, DOJ began, through a series of unilateral regulatory and policy changes, to dismantle many of the safeguards that ensure detention and deportation decisions remain within the rule of law. Even as DOJ took swift and decisive action to stop hate crimes against Arabs, Muslims, and South Asians, it began a massive preventive detention campaign which resulted in the secret detention and deportation of close to 1,000 immigrants.

Government officials now acknowledge that virtually all the persons that it detained shortly after September 11th had no connection to terrorism.

As I describe in more detail in my written statement, under new DOJ policies, immigrants today can be arrested and held in secret for a lengthy period without charge, be denied release on bond without effective recourse, and have their appeals dismissed following cursory or no review.

Immigrants can be subjected to special discriminatory registration procedures involving fingerprints and lengthy questioning concerning their religious and political views. An immigrant spouse who is abused by her husband must fear deportation if she calls the local police who have been called upon to enforce immigration laws.

Asylum seekers fleeing oppressive regimes like those of the Taliban or Saddam Hussein may face mandatory detention without any consideration of their individual circumstances.

Those who have been hurt by these policies are ordinary immigrants, not terrorists. They are cab drivers, high-tech workers, students, members of the National Guard who protect our airports, and members of the armed services who helped fight this most recent war in Iraq; people like you and me who are just looking for a piece of the American dream. A better approach is to target terrorists, not immigrants.

Targeting immigrants comes at a significant cost, not only to basic fairness, because it alienates the very communities we need cooperation from, and it represents poor national security policy. Top national security and law enforcement officials agree. Vincent Cannistraro, former head of counterterrorism at the CIA, said the Justice Department's detention of thousands of immigrant Muslims, the policy of shaking the tree in Islamic communities, alienates the very people on whom law enforcement depends for leads and may turn out to be counterproductive.

Charles Moose, Montgomery County Police Chief, who responded forcefully during the sniper case to reassure immigrants who assisted in the investigation that police officers would not inquire into immigration status, said quote: Now this movement by the Federal Government to say that they want local police officers to become INS agents is against the core values of community/policing: partnerships, assisting people and being there to solve problems.

We can design immigration enforcement policies that are true to our civil liberties and our values as a Nation of immigrants. We should ensure adequate resources for information technology. In other words, rather than saddle immigration offices with new responsibilities to collect information which they already maintain, Congress should insist on fundamental recordkeeping reforms that hold immigration agencies accountable for keeping timely and accurate paperwork.

Secondly, we need to put terrorism enforcement first. Those responsible for the attacks of September 11th entered this country legally. Stopping the next terrorist attack is more important than rounding up every last undocumented immigrant. We can't afford to drive away potential witnesses with a ham-handed enforcement approach. Terrorism investigation should be separated from immigration enforcement so immigrant communities feel comfortable going to the FBI.

By working together to find solutions to immigration enforcement that respects civil liberties and fundamental values, we can avoid the false choice between civil liberties and safety. By abandoning false solutions that target immigrants, not terrorists, America can

remain safe, free and true to its fundamental values as a Nation of immigrants.

Thank you so much for this opportunity to present the ACLU's views.

Mr. HOSTETTLER. Thank you, Ms. Murphy.

[The prepared statement of Ms. Murphy follows:]

PREPARED STATEMENT OF LAURA W. MURPHY AND TIMOTHY H. EDGAR

Chairman Hostettler, Ranking Member Jackson Lee and Members of the Subcommittee:

On behalf of the American Civil Liberties Union and nearly 400,000 members, dedicated to defending the Bill of Rights and its promise of due process under law for all persons, including immigrants, I welcome this opportunity to present the ACLU's views at this hearing on immigration enforcement since September 11, 2001.

When terrorists attacked the World Trade Center and the Pentagon on September 11, 2001, they attacked a nation of immigrants. Among those who died in the attacks were citizens of some 26 foreign countries. The attackers did not distinguish on the basis of citizenship or immigration status. Victims included United States citizens and permanent residents, temporary workers and visitors, and undocumented laborers.

Following these attacks, President Bush and Congress expressed solidarity with the Arab, Muslim, and South Asian immigrant communities and warned against singling out whole communities for the actions of the terrorists. Unfortunately, as we look back on the government's actions toward immigrants over the past twenty months, its actions are in sharp contrast to its words.

Even as the Department of Justice took swift and decisive action to stop hate crimes against Arabs, Muslims, and South Asians, it began a massive preventive detention campaign. This campaign has resulted in the secret detention and deportation of close to 1000 immigrants designated as "persons of interest" in its investigation of the attacks. Government officials now acknowledge that virtually all of the persons that it detained shortly after September 11 had no connection to terrorism. While the government told the public not to engage in ethnic stereotyping or to equate immigrants in general with terrorists, its own policies did precisely that.

Under new Department of Justice policies, immigrants today can be arrested and held in secret for a lengthy period without charge, denied release on bond without effective recourse, and have their appeals dismissed following cursory or no review. They can be subjected to special, discriminatory registration procedures involving fingerprinting and lengthy questioning concerning their religious and political views. An immigrant spouse who is abused by her husband must fear deportation if she calls the local police. Asylum-seekers fleeing repressive regimes like those of the Taliban or Saddam Hussein may face mandatory detention, without any consideration of their individual circumstances.

There is a better approach. Instead of automatically viewing non-citizens with inherent suspicion, America should focus its resources on investigating and apprehending those who intend to commit acts of terrorism. America puts itself at greater risk by alienating immigrant communities, making immigrants distrustful and fearful of government.

The government must stop equating immigration with terrorism. Stepping up border screenings in a smart way can be part of a policy to make the United States safer, as I discuss below. Still, improving the "gatekeeper" function of immigration agencies is only one part, and not the most important one, of a balanced approach to national security that improves national security while respecting civil liberties.

Terrorism can only be stopped by improving the vulnerabilities in our intelligence system identified by the Joint Inquiry of the House and Senate intelligence committees into the September 11 attacks. Immigration agents can stop terrorists if they have been told for whom to look by intelligence and law enforcement agencies; they should not be told to guess who is a danger on the basis of crude ethnic stereotypes.

Immigrants and new citizens make our country stronger, not weaker. They serve in our armed forces, as high-technology workers helping design the latest security technology, and as translators of critical intelligence information. They provide a bridge to world understanding, helping counter anti-American sentiment. If we isolate immigrants, we isolate ourselves—and make our country more vulnerable to terrorism.

Put simply, target terrorists, not immigrants.

ERODING THE PROMISE OF "DUE PROCESS OF LAW"

The Fifth Amendment to the United States Constitution provides that no person may be deprived of liberty without due process of law. This provision protects all persons, including immigrants, from arbitrary and unlawful detention by the government.

The government's initial round-up of Arab, Muslim and South Asian immigrants and visitors was only the opening salvo in a coordinated and relentless government effort to remove basic, fundamental checks and balances on its immigration detention and deportation powers. In its initial draft of legislation that became the USA PATRIOT Act, the Bush Administration proposed suspending the "Great Writ" of habeas corpus, protected by the Constitution, to allow the summary detention and deportation even of legal immigrants with no review by any federal court. It appeared that those targeted in the round-up would have even the most basic of constitutional rights—the right to challenge in court one's detention by the government—swiftly swept aside.

My staff and I worked together tirelessly with members of Congress during the all-too-brief six week period during which Congress considered the USA PATRIOT Act to try to restore some measure of accountability to the legislation. Members of this Subcommittee, on both sides of the aisle, worked with us to preserve some measure of due process for immigrants. I want to thank, in particular, Representatives Cannon and Flake for registering objections to these draconian immigration detention and deportation powers in our meeting which resulted in a letter to Chairman Sensenbrenner on September 21, 2001. Your efforts to work together with Representatives Conyers, Jackson-Lee and other Democrats helped limit detention of immigrants without charge to seven days and preserved habeas corpus review in the final version of the USA PATRIOT Act. These changes were among the most important improvements Congress made to the USA PATRIOT Act to preserve civil liberties.

Unfortunately, even before Congress had finished its work on the USA PATRIOT Act, the Department of Justice began, through a series of unilateral regulatory and policy changes, to dismantle many of the safeguards that ensure detention and deportation decisions remain within the rule of law.

While some of these erosions to due process have been justified by the government as directed against possible terrorists, almost all affect every immigrant. Here are just a few:

Mandatory Detention. As a result of a recent Attorney General opinion, *In re D-J-*, the government can now designate whole categories of immigrants, such as Haitians or asylum-seekers from the Arab and Muslim world in "Operation Liberty Shield," to be subject to mandatory detention while often lengthy and protracted immigration charges are resolved. Where mandatory detention is involved, the government simply abandons an individual hearing altogether, deciding instead on the basis of immutable characteristics, usually national origin, that particular groups of non-citizens can be locked away even if they present no danger and are likely to appear at future proceedings. While the Supreme Court just recently upheld, in limited circumstances, mandatory detention in the case of certain legal residents who are deportable as a result of criminal convictions, the Attorney General's opinion goes much further. Under his view, the Department of Justice can, without Congress's approval, strip whole categories of non-citizens of a right to a bond hearing simply by citing generalized "national security" concerns that have nothing to do with the risk to security posed by the individual subject to detention.

As a result of this new policy, a Haitian fleeing political turmoil and persecution from left-wing or right-wing death squads, or a woman from Iran fleeing persecution on account of her gender, will face detention with no ability to obtain release on bond while their cases for asylum are heard. The new opinion says the government can lock up asylum-seekers not because they pose a risk of flight or danger, but in order to deter others from seeking freedom from persecution. This policy is inhumane and violates international law.

Lengthy Detentions Without Charge. Non-citizens residing in the United States today live in constant fear of arbitrary arrest and deportation. As a result of a regulatory change unilaterally approved by the Bush Administration, non-citizens can be arrested without charge by immigration officials and held for what the Department of Justice calls a "reasonable time" but which, in practice, has resulted in numerous detentions that have lasted weeks and weeks. While this flies in the face of the seven-day limit Congress imposed in section 412 of the USA PATRIOT Act, the position of the Department of Justice is that the USA PATRIOT Act's seven-day limit has no application to persons it arrests under its pre-existing detention authority.

Holding Immigrants Ordered Deported. For months, many immigrants caught in the government's post-9/11 dragnet could not obtain release from detention even if they gave up on challenging their deportation. The Department of Justice implemented, for all "special interest" detainees, a "clearance" procedure in which the INS was prohibited from implementing deportation orders until detainees had been cleared by Department of Justice investigators. There is no statutory authority for using immigration detention in this way. The Supreme Court has upheld the government's power to detain immigrants for the purpose of removing them from the country, not as an end-run around the due process protections of the criminal laws. The ACLU assisted immigration attorneys from around the country by drafting model habeas corpus pleadings to force the Department to release or deport individuals who had given up on fighting their deportation. Rather than defend its actions in court, the Department simply sped up its clearance process for any immigrant who was fortunate enough to obtain an attorney who filed such a challenge.

Selective Enforcement of Obscure Immigration Infractions. Not content with its claimed power to hold immigrants without charge for a "reasonable time" that could last weeks or months, the Department of Justice has also combed the statute books to uncover previously obscure and exceedingly minor immigration status infractions to enforce against otherwise law abiding immigrants. Perhaps the most extraordinary example is the arrest of Thar Abdeljabar, a traveling Palestinian salesman with a wife and five children. Mr. Abdeljabar and his wife are both lawful permanent residents, and two of his children are United States citizens. Mr. Abdeljabar was arrested because police were suspicious of his carrying cash and a map with circled cities that he uses for his work. He was questioned but not charged by the FBI, only to be charged by INS with a failure to file a change of address form within ten days of moving.

This extraordinary decision, which violated the government's own prosecution guidelines, was followed by an announcement that the Department of Justice would enforce this previously obscure law at its discretion, prompting an avalanche of change of address forms that overworked INS employees were now expected to process. An immigrant is not safe if he or she complies with the change-of-address law, however. According to press reports last year, the INS has over 200,000 unfiled and unprocessed change of address forms among 2 million documents lost or forgotten by the government at a records storage facility outside Kansas City, Missouri. Each one of those 200,000 law abiding immigrants is at risk of deportation because of sloppy INS record keeping and a draconian enforcement mindset.

While an Immigration Judge dismissed the case against Mr. Abdeljabar, others caught in the government's dragnet in the future will have to face an immigration hearings appeals system whose independence and authority are increasingly under assault by this Administration.

SECRECY IN IMMIGRATION DETENTION

The detentions and deportations of immigrants deemed of "special interest" to the government were accomplished under an unprecedented veil of secrecy. The secret detentions left spouses, children, classmates and employers to wonder where they had been taken, and who would be next. The Department of Justice refused to identify the detainees, arguing that doing so might jeopardize national security. The secrecy alarmed us and other human rights groups, and, together with the Center for National Security Studies, we filed a federal lawsuit seeking their names under the Freedom of Information Act. The United States District Court ruled in our favor, saying that "[s]ecret arrests are 'a concept odious to a democratic society,' and profoundly antithetical to the bedrock values that characterize a free and open one such as ours." The government's appeal in that case was argued on November 18, 2002; a decision has not yet been issued.

In a further effort to deny information to the public and press, the Justice Department closed deportation hearings in "special interest" cases. The government refused to release this basic information even to members of Congress. Rep. John Conyers, Jr., was even barred entry to a routine immigration hearing involving a "special interest" detainee, despite his status as Ranking Member of the House Judiciary Committee, with oversight of the Department of Justice, the agency conducting the hearing.

On behalf of Rep. Conyers among others, the ACLU challenged the secret deportations, arguing that transparency and accountability are essential to the workings of American democracy. While the ACLU does not contest that the government may close hearings, or parts of hearings, on a case-by-case basis where the judge finds that closure is necessary for national security, these cases are different because they involve a blanket policy of closing all "special interest" hearings without any judicial

findings. The U.S. Court of Appeals for the Sixth Circuit agreed with the ACLU, declaring that a blanket policy of secret deportation hearings was unlawful, saying, “Democracies die behind closed doors.” In a second lawsuit, the U.S. Court of Appeals for the Third Circuit sided with the government. As a result, the United States Supreme Court may have to resolve this controversy.

Concerned that the secret hearings were a cover for civil liberty abuses, the ACLU initiated an ambitious effort to identify the people affected. Working with the Human Rights Commission of Pakistan (HRCP), the ACLU located twenty-one detainees who had been deported to Pakistan, or who had left the United States voluntarily to avoid indefinite detention. The interviews were heart-breaking. These Pakistani immigrants were not terrorists; instead, they came to the United States for the same reason previous generations of immigrants who had come to our shores. They had been salesmen, housewives, and cab drivers—most with children and homes in America, grateful to be in a country where they could achieve a better life and live in freedom.

Their detention put an end to all that. They described the anxiety-ridden days, which turned into weeks, and then into months—culminating in deportation. Few had been charged with crimes, and several had been deprived of access to counsel. In some cases, the United States government ignored the plight of their United States citizen children born in this country. Back in Pakistan, these American children, unable to speak the local language, were miserable and failing at school. The plight of these families was featured on Cable News Network (CNN), National Public Radio and on the front page of *The New York Times*.

ERODING ACCOUNTABILITY

While the government has been eroding basic due process rights, and casting a veil of secrecy over immigration detention and removal, it has also undercut mechanisms of accountability that ensure its actions remain within the rule of law. As the ACLU discussed in written testimony before this Subcommittee last year, new regulations undercut the authority and independence of the Executive Office of Immigration Review (EOIR), the agency charged with providing an administrative check on immigration agents’ actions.

These changes prompted the National Association of Immigration Judges (NAIJ) to warn of “disturbing encroachments on judicial independence” and to advocate, as part of the reform of INS and the creation of the Department of Homeland Security, an independent immigration court. Unfortunately, while the final version of the Homeland Security Act of 2002 left EOIR within the Department of Justice, it omitted important provisions to enhance EOIR’s authority and independence. As a result, EOIR will not be able to effectively resist Department of Justice efforts to seriously erode its judges’ ability to oversee life-and-death decisions concerning detention, deportation, and asylum.

As a result, Department of Justice policies that sideline EOIR will continue to erode accountability for unlawful government action. These include:

Nullifying Release Orders. What rights do detainees have in their immigration hearings, whether closed or open, to obtain release from prison? As a result of policies approved by the Department of Justice, far fewer. Responding to questions concerning its blanket detention policy in September 11 “special interest cases,” the government promulgated new regulations allowing it automatically to prevent any order from an Immigration Judge allowing a detainee release on bond from going into effect. Even if the detainee can persuade the Board of Immigration Appeals to affirm the release order, the government can still keep a detainee in prison while it certifies the request to the Attorney General. No standards govern the granting of a stay in these cases; it is simply at the discretion of the government. These new “automatic stay” rules effectively render bond hearings meaningless in individual cases at the request of the government. Habeas corpus challenges to the use of these automatic stay orders are pending in the courts.

Limiting Administrative Review. Under the popular but misleading banner of reforming the backlogs in the administrative appeals system at the Board of Immigration Appeals (BIA), the Department of Justice has implemented new rules that undermine review of adverse decisions by immigration judges. Today, non-citizens’ ability to appeal an immigration judge’s decision has been limited by rules that refer most appeals to a single Board member and put strict time limits on appeals decisions that, if not met, result in automatic dismissal of an appeal. Under the new system, Board Members feel pressured to dispense “justice” after spending only minutes on immigrants’ appeals. In addition, the BIA’s role as an impartial decision-maker in interpreting immigration laws has been threatened because of an ill-considered decision to dismiss half the Board on the basis of no objective standards.

Fears that Board members, fearing dismissal, would hesitate to fulfill their duty to question government action have been realized, as the first Board members selected for dismissal have been those most friendly to immigrants.

ALIENATION OF IMMIGRANT COMMUNITIES

Immigrants represent an extraordinary resource for the United States in its efforts to combat terrorism. Terrorism is a global problem that requires cooperation not just among governments, but among communities that increasingly straddle borders and cultures. Noting that an intelligence intercept warning of an impending terrorist attack that was received September 10, 2001 was not translated until September 12, Congress's own Joint Inquiry into the attacks of September 11, 2001, identified a critical need to hire more translators with knowledge of Arabic, Urdu, Farsi, and other foreign languages.

Likewise, to encourage cooperation in solving crime and terrorism, law enforcement officials have worked hard to win the trust of immigrant communities. Yet these efforts have been seriously undermined by a series of ham-handed policies likely to further alienate immigrants from the United States government. These include:

Use of Local Law Enforcement to Enforce Immigration Laws. Under new legal opinion that erases decades of practice by the Department of Justice, the Department's Office of Legal Counsel has asserted that state and local law enforcement officials have, in certain circumstances, an "inherent power" to enforce the civil provisions of the immigration laws. In other words, state and local police can arrest non-citizens who are suspected of violating no criminal law, but simply of overstaying a visa or committing some other civil violation of their immigration status. When this policy was first announced, a firestorm of controversy erupted, with opposition coming not only from advocates for immigrants and civil liberties, but also from chiefs of police and local officials who rejected the invitation of the Department of Justice to become immigration enforcement officers. Likewise, prominent conservative leaders, including Grover Norquist of the Americans for Tax Reform, and David Keane of the American Conservative Union, expressed opposition to the new policy, fearing the precedent of allowing state and local enforcement of a federal regulatory program. Nevertheless, despite the initial signals from the Bush Administration that it intended to adopt this policy only with respect to suspected terrorists, it has gone forward with opening up the federal criminal database—the National Crime Information Center (NCIC)—to a wide array of immigration infractions, and insisted that state and local police should arrest those listed in the NCIC.

"Voluntary" Interviews of Arab and Muslim Males. The Department of Justice has implemented a program to question, without any particularized suspicion, thousands of Arab and Muslim men in an allegedly voluntary but, in reality, highly coercive manner. A memorandum giving guidance on how to conduct interviews instructed the interviewers to ask about sensitive, First Amendment protected activities such as religious practice, mosque attendance, and the interviewee's feelings towards the United States government. In addition, interviewers were instructed to ask questions designed to elicit information without any relevance to terrorism but which was relevant to immigration status, and to refer any person who agreed to a voluntary interview to the INS if there was an immigration status violation. This policy resulted in a number of immigration status arrests, which are virtually certain to lead all immigrants to hesitate, for fear of deportation, before sharing possibly vital information concerning terrorism with the federal government.

Special Registration of Arab and Muslim Males. Following an intense internal debate, and over the objections of the Department of State, the Department of Justice embarked on a selective registration program for males from certain countries that plainly amounts to discriminatory profiling. "Special registration" requires the fingerprinting of visitors from specified Arab and Muslim countries, their registration with local immigration offices, and, at the discretion of the government, detailed interviews that have involved questions about First Amendment protected activities, including religious and political practices and beliefs. This selective program sends a chilling message to the entire Arab and Muslim world at a time when America needs allies more than ever before. A series of inadequately publicized deadlines for the registration of temporary residents resulted in mass confusion and arrests. Problems have included conflicting advice about who must register and widespread denials of the statutory and constitutional rights of registrants to have an attorney (at their own expense) accompany them through the registration process.

Security Sweeps that Target Undocumented Workers, Not Terrorists. "Operation Tarmac" and similar security sweeps are designed to ensure that workers in sen-

sitive industries, such as airports, are properly vetted. While verifying the identity of such workers may be a legitimate goal, its implementation has result in mass arrests not of terrorists, but of undocumented workers. In an address before the American Bar Association on April 24, 2003, Assistant Attorney General Viet Dinh admitted that “Operation Tarmac” had not resulted in the arrest of even a single individual of “special interest” to the government’s terrorism investigation, much less a suspected terrorist. Such policies send a signal to immigrant communities that they will be targeted for arrest and deportation under the guise of preventing terrorism.

Targeting immigrants comes at significant cost not only to basic fairness, it represents poor national security policy. Top national security and law enforcement officials agree:

- William H. Webster, former FBI director, said mass arrests could prevent investigators from developing important leads on suspects. It “carries a lot of risk with it. You may interrupt something, but you may not be able to bring it down. You may not be able to stop what is going on.”
- Vincent Cannistraro, former head of counter-terrorism at the CIA, said, “[T]he Justice Department’s detention of thousands of immigrant Muslims—the policy of ‘shaking the tree’ in Islamic communities—alienates the very people on whom law enforcement depends for leads and may turn out to be counterproductive.”
- Oliver “Buck” Revell, former FBI executive assistant director, said of mass voluntary interviews: “One, it’s not effective. And two, it really guts the values of our society, which you cannot allow the terrorists to do.”
- Kenneth P. Walton, former FBI assistant director, on mass voluntary interviews: “It’s the Perry Mason School of Law Enforcement, where you get them in there and they confess. Well it just doesn’t work that way. It is ridiculous.”
- Charles Moose, Montgomery County Police Chief, who responded forcefully in the Washington, DC sniper case to reassure immigrants who assisted in the investigation that police officers would not inquire into immigration status. “Now this movement by the federal government to say that they want local police officers to become INS agents is against the core values of community policing: partnerships, assisting people, and being there to solve problems. . . .”

A BETTER APPROACH: SECURITY AND LIBERTY FOR A NATION OF IMMIGRANTS

Designing immigration enforcement policy that remains true to our civil liberties and our values as a nation of immigrants while improving security is a challenge, but it is possible. First, we must recognize that immigration policy is simply one part of an overall strategy to reduce America’s vulnerability to terrorism.

We should begin by recognizing the limits of immigration enforcement as a part of a counter-terrorism strategy. Immigration officials serve as gatekeepers, administering immigration laws that provide who may be admitted into the country and who may not. They cannot do their job without adequate intelligence.

The Joint Inquiry of the House and Senate intelligence committees into the September 11 attacks uncovered a number of serious, structural breakdowns in the intelligence agencies that may have contributed to the attacks. One vivid example is the failure of the CIA to share with the FBI or immigration agencies the names of two Al Qaeda members for a period of eighteen months—by which time they had already entered the United States, traveling under their own names. Immigration agencies cannot be saddled with the blame for this fiasco; they cannot arrest or keep out potential terrorists about whom they have no knowledge.

The ACLU endorsed in testimony before the House Permanent Select Committee on Intelligence a number of the recommendations of the Joint Inquiry to improve the functioning of the intelligence community by addressing pre-9/11 intelligence failures. These failures were not the result of civil liberties protections or checks and balances, but rather represented organizational failures which will take resources, including dollars and political will, to address. No border security policy can be effective without solving these intelligence problems.

Nevertheless, within the framework of immigration policy, serious problems have certainly been uncovered concerning the functioning of the immigration agencies. Again, these problems largely concern organizational failures, not a lack of legal authority or civil liberties protections. Focusing on solving these problems will improve security at far less cost to civil liberties and without alienating immigrant communities. These include:

- *Adequate resources for information technology.* The immigration agencies have done an extraordinarily poor job of keeping basic records. Rather than saddle immigration offices with new responsibilities to collect information which they already maintain, such as through special registration, Congress should insist on fundamental record-keeping reforms that hold the immigration agencies accountable for keeping timely and accurate paperwork.
- *Improved information-sharing.* Immigration agencies and the State Department must have adequate technology to access information maintained by law enforcement and intelligence agencies, to find out whether a particular individual is a criminal or a terrorist and should be kept out of the United States. Prior to September 11, 2001, not all consulates and immigration inspectors had real-time access to this information.
- *Put terrorism enforcement, not immigration enforcement, as the top priority.* Where the FBI is conducting a terrorism investigation, immigration enforcement should take a back seat because the FBI's need to obtain the cooperation of potential witnesses and to track down leads to uncover possible terrorists is more important than deporting undocumented immigrants. The FBI should adopt a policy of not deporting those who are mere immigration violators but who are uncovered in a terrorism investigation, and make sure that policy is adequately publicized and enforced.
- *Reverse legal opinion claiming state and local law enforcement have immigration powers.* For the same reason, the Department of Justice should revert to its previous opinion holding that state and local law enforcement lack authority to enforce immigration laws. State and local law enforcement must have the trust of their communities to ferret out crime and terrorism.
- *Abandon mandatory detention policies to free up scarce resources for those who are dangerous.* Immigration detention space is limited and expensive, and continuing policies that prohibit release even of those non-citizens who show they are not dangerous and are not likely to flee simply forces the government to release others who may be dangerous.

CONCLUSION

By working together to find solutions to immigration enforcement that respect civil liberties and fundamental values, we can avoid the false choice between civil liberties and safety. By abandoning false solutions that target immigrants, not terrorists, America can remain safe, free, and true to its fundamental values as a nation of immigrants.

Thank you for this opportunity to present the ACLU's views.

Mr. HOSTETTLER. We will now move into a round of questions by the Subcommittee.

My first question is to Mr. Rooney. Has any classified evidence been used in immigration proceedings since 9/11?

Mr. ROONEY. No, Mr. Chairman.

Mr. HOSTETTLER. All right. In your written testimony, you state that all designated special interest cases have been completed. What about future terrorism-related cases? Are these—I guess the question is, are these the only class of immigration cases that are closed to the public?

Mr. ROONEY. No, Mr. Chairman. Actually the procedure of closing the cases to the public, which we applied to the special interest cases, is a procedure that we use in a number of cases: asylum cases where you want to protect the identity of the individual seeking asylum, some juvenile cases, and battered spouse cases. So it is a practice that we have regularly used over the years.

Mr. HOSTETTLER. Very good.

And is there not case law that states that Government disclosure of information possibly linking an alien to terrorism will support an asylum claim if the Government discloses information?

Mr. ROONEY. Yes. Yes indeed.

Mr. HOSTETTLER. Very good. You say that a limited number of protective orders have been requested. Have any protective orders been granted? If so, have they worked well?

Mr. ROONEY. Yes, they have. We have done it about 10 or 12 times, and they have been granted, and it works very well.

Mr. HOSTETTLER. Very good. Thank you.

Mr. Dougherty, is Operation Liberty Shield or any part of it such as detaining asylum applicants from certain countries still ongoing?

Mr. DOUGHERTY. No, Mr. Chairman. We concluded our operations pursuant to Liberty Shield on the 25th of April.

Mr. HOSTETTLER. Very good. You state that over 2,000 interviews were conducted as a part of Operation Liberty Shield, resulting in 92 arrests, 8 of which were on criminal charges. What kind of crimes did these individuals commit?

Mr. DOUGHERTY. There were a range of crimes represented in that population, some related to immigration fraud and other common law crimes.

Mr. HOSTETTLER. Okay. Do you have any examples, specific?

Mr. DOUGHERTY. I can certainly provide the specifics.

Mr. HOSTETTLER. Very good. We would appreciate that.

In Operation Liberty Shield, you state that BICE detained arriving asylum applicants from Iraq and from nations where al Qaeda sympathizers and other terrorist groups are known to have operated.

Has any alien who has come into the United States to plan or engage in a terrorist attack in the past made an asylum claim at a port of entry?

Mr. DOUGHERTY. Yes, sir. There is actually what I would term a notorious case, September 1, 1992 Ramzi Yousef, the mastermind of the World Trade Center bombing, came into JFK Airport, offered an Iraqi passport, and subsequently claimed asylum. He was not detained at that time and was released in the United States.

Mr. HOSTETTLER. And then committed what was known as the 1993 World Trade Center bombings.

Mr. DOUGHERTY. Yes. I should point out he had a companion with him. They flew in on the same plane, came in together. His companion was detained, was in an INS detention facility when the bombing occurred; however, was one of the co-conspirators and is in prison today.

Mr. HOSTETTLER. Very good. Mr. Ahern, will BCBP be responsible for the entry-exit system?

Mr. AHERN. It is my understanding that Secretary Ridge last week announced that the Department of Homeland Security will be taking responsibility for the program development of the U.S. VISIT program which will pretty much consume entry-exit. NSEERS.

Mr. HOSTETTLER. Do we know which bureau will be in charge of that?

Mr. AHERN. It will be under the Directorate of Border and Transportation Security under Under Secretary Hutchinson's direction, because there are cross-cutting issues for each one of the bureaus. Certainly ICE as well as CBP both have uses and needs for the entry-exit program.

Mr. HOSTETTLER. Okay. I have a question about some press reports that the Data Improvement Management Act alone did not require Canadians to show a document to enter the U.S., that that bill actually preceded 9/11.

The media is reporting that Canada may be exempt from the entry/exit system. Do you see a potential loophole that it might create permitting nonCanadians to claim that they are Canadians to enter this country without being subject to the system?

Mr. AHERN. Not at this time, I wouldn't see that as being a potential loophole.

Mr. HOSTETTLER. Very good. Thank you.

Now, I have a question for Ms. Murphy. In your testimony, you state that immigration agents can stop terrorists if they have been told for whom to look by intelligence and law enforcement agencies. What if there is no intelligence on an alien who poses a terrorist threat, as was apparently true of at least 16 of the 19 September 11th terrorists, they were here legally and there was no relevant intelligence on them?

Ms. MURPHY. Are you saying, should the immigration system be structured in a way that gives this sort of unilateral decision-making authority to border patrol agents? I am not sure what you are asking me. I don't know what to do about the fact that the INS, the Customs Service and the State Department aren't communicating as well as they could in providing foreign intelligence information to the Immigration Service in a timely manner.

Mr. HOSTETTLER. What if it doesn't exist? With regard to sharing information that does exist, if it doesn't exist?

Ms. MURPHY. Well, if it doesn't exist, then we—the Immigration Service has to do the best it can. But, then it is up to the FBI to monitor behavior, investigation behavior of people who appear suspicious. I mean, we have a huge border; millions of people come through.

We are not going to be able to anticipate in every circumstance, you know, who is a terrorist and who is not. But I don't think that you can say that only people from certain countries are likely to be terrorists when have you got people like Zacarias Moussaoui, who has got a French passport, and the shoe bomber with a British passport and John Walker Lindh, who is an American citizen.

Mr. HOSTETTLER. Right. So we will have to expand our capabilities. You make a very good point in that.

The Chair now recognizes the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Thank you, Mr. Chairman. Again, let me thank the witnesses for their presentation.

And, Ms. Murphy, I think you hit the nail on the head. And I do have questions for Mr. Ahern and Mr. Dougherty and Mr. Rooney, so I too will try to abbreviate my questions.

But if you would briefly respond. This whole question of administrative intervention. You are right. We worked closely together across party lines on PATRIOT Act 1, realizing our respective responsibilities to secure this Nation. And we had a good start and a good bill. And all of a sudden, in the dark of night, these interventions raise their head and have continued to raise their head.

Tell me how difficult it is, being an advocate for civil liberties, or lawyers who have to defend those clients, lawyers who have an immigration specialty, or lawyers who have a civil rights or several liberties specialty. How difficult has it been to get your hand around these administrative fiat, that are not court law, statutory law, to even know whether we are coming or going with respect to individuals who have been detained?

Ms. MURPHY. Well, thank you, Congresswoman. I think that we are dealing with a couple of problems. One problem is the secrecy that this Administration engages in, for example, in these special interest cases, these deportation hearings. Even Congressman Conyers was excluded from a hearing, and he is a Member of the Judiciary Committee, on one of these special interest cases.

So the unprecedented secrecy is a very difficult problem. And we have had to file Freedom of Information Act requests to get basic information about the initial detainees, over a thousand people. The Government wouldn't tell us who they were, where they were housed. And how can the public assure that the Government is going after the terrorists if it is not willing to let the public know what it is doing?

Also, there is a problem when one of my colleagues asserted that NSEERS was mandated by Congress. Congress required an entry/exit system, not a call-in program based on country of origin. So with NSEERS, the Administration keeps saying that this is Congressionally mandated. But it goes far beyond anything that the Congress has required.

So the lack of consultation with Members of Judiciary Committee in particular, the inability—the unwillingness of the Administration to be forthcoming, and, you know, issuing secret orders in terms of new memos, like the Creppy order, closing immigration hearings. I just think that this is a tremendous problem for advocates, because we want to be free from terrorism. We want the Government to have the tools necessary to do its job.

But, I think that the Government is engaged in an ad hoc, ham-handed method that harms all immigrants, not just immigrants from Muslim, Arab and South Asian communities.

Ms. JACKSON LEE. Well, first of all, obviously there are many ways that we can secure this Nation, and I can assure you that there is much work for Homeland Security Committee to be doing regarding our borders and regarding technology and what comes and goes, versus what we are trying to do here without any random reason or rhyme, if you will, about this.

Let me just quickly give these questions to Mr. Ahern, Mr. Dougherty and Mr. Rooney, but also just acknowledge on the record, just so I can make it very striking. The call-in is this process of having 16 to 25-year-olds of designated countries just randomly have to call-in, and they become in violation for not doing so upon entry and exiting, and as well while they are here. And so you make criminals out of people who are literally just frightened out of their shoes.

And I think this is a tragedy of what we are doing. Mr. Rooney, I would like to know about the special interest cases that are handled in closed proceedings. According to your statement, 611 aliens

had closed hearings following 9/11. If you can tell me how many of them were linked to terrorist activities.

And, Mr. Dougherty, you mention in your statement that BICE let an initiative to review 2,500 assylum files related to Iraqi nationals to exploit these files for potential threats. I would like you, too, to tell me how much data did you get out of that, and how many lives we saved with that kind of information.

And, Mr. Ahern, with respect to your statement on separation of high risk from low risk is critical because searching a hundred percent of the cargo people that enter the United States would unnecessarily cripple the legitimate flow across the borders. I appreciate that.

Can you tell me how you avoid racial, national and religious profiling, and how do you determine high-risk and low-risk individuals. I went through that very quickly, because I would appreciate your answers.

Mr. Rooney, it is good to see you again.

Mr. ROONEY. Thank you, Ms. Jackson Lee.

There were 611 hearings, as you said. We have no current cases. While there is information discussed in those hearings that was of sensitive nature that would, if released, damage ongoing law enforcement efforts, none of the aliens were charged with terrorism-related immigration objections.

Ms. JACKSON LEE. Thank you. Mr. Dougherty, I think you remember your question.

Mr. DOUGHERTY. Congresswoman Lee, you asked me about the review of the assylum files during Operation liberty Shield. A review of the assylum files pursuant to Operation Liberty Shield was a prudent action in our judgment to take, to review the information contained in these files, much of it by the self-disclosed information in those files, to gain an understanding about the people who had claimed asylum, who they were, their activities—.

Ms. JACKSON LEE. How many were declared terrorists? How many did you find and identified as terrorists or as a threat to national security or on some other basis?

Mr. DOUGHERTY. Well, there have been no declarations as to any of them with respect to terrorism, nor would there be. I would say that the process of the review phase of that procedure was completed on or about May 5th.

The operations pursuant to it continue. I can only tell you, in this forum, that useful information was obtained. I can also say in a large number of the cases, no useful information was obtained. But, there really has been no public disclosure with respect to the outcome.

Ms. JACKSON LEE. Have you detained any of those individuals, taken them out of the asylum process and detained them because of what you discovered?

Mr. DOUGHERTY. The—not to my knowledge. I would, of course, would like to reserve the opportunity to come back to the Committee with the specific statics of the enforcement actions and any potential—.

Ms. JACKSON LEE. I would appreciate it if you would.

Mr. Ahern, please. Thank you very much and welcome.

Mr. AHERN. Thank you very much. Relative to your question about how we make determinations of what is high risk and low risk, historically in the U.S. Customs, now Customs and Border Protection, we have used a concept called risk management.

Part of that is also building an automated targeting system that has a variety of different factors there. In our view, it is all very nondiscriminating, looking at a lot of patterns.

Due to the open nature of the hearing, I am not going to get into the various factors that are the targeting aspects of our systems. But we use those very thoughtfully, both for cargo and conveyances, people coming into this country.

We would be happy to provide some more information for the record afterwards. But I think it is very important for us to consider again the whole layered approach in enforcing rules, regulations procedures at the borders. It needs to start before the transaction actually occurs. We pushed the borders back, not only for container movements, things of that nature, but it starts with information that we can then run through those targeting systems.

Ms. JACKSON LEE. I appreciate that. I will close my comments, Mr. Chairman, just quickly and just add I appreciate it, I would like to know a direct response on the racial profiling. And I just might be encouraged by this hearing to write legislation just by the overall questioning to actually strike this administrative interpretation on the call-ins, because I don't see any basic statutory premise for doing so.

As far as I am concerned, it is injurious and unhelpful, and I don't know where we have discovered any terrorists out of this process. So I thank the gentlelady and all of the witnesses.

Thank you very much, Mr. Chairman.

Mr. HOSTETTLER. Thank you, Ms. Jackson Lee. The Chair now recognizes Mrs. Blackburn for 5 minutes.

Mrs. BLACKBURN. Thank you, Mr. Chairman. And I thank all of you for taking the time to be here and be with us today addressing the war on terrorism, and what happens within our borders is something that is important to each and every one of us.

And I do have a few questions that I would like to pose very quickly. Mr. Ahern, for you, how many people have been caught crossing our borders and have had in their possession multiple matricular consular cards.

Mr. AHERN. I don't have those statistics at this point. We can certainly take a look at our records to find what we had. I am aware of the matricular consular issue, though.

Mrs. BLACKBURN. I would appreciate knowing that. I certainly would.

Mr. Dougherty, going back to the matricular consular cards and, the whole issue. I want to know if you all have found that this is something that encourages illegal immigration or encourages illegal aliens in trying to obtain documents, driver's licenses, public services, things of that nature?

Mr. DOUGHERTY. Again, I don't have the statistics available to me today. But, I am aware of some cases, and there is one that I had the opportunity to review not long ago, where a—this is a small example, where a smuggler actually had a car accident with smuggled aliens, and there were some injuries related to that.

That particular smuggler was found to have a number, my recollection I think it was seven different matricular cards on his person, and each of the different faces and the same identifying information. It is a small example. We are concerned about the likelihood and the propensity for those cards to be counterfeited and used.

Mrs. BLACKBURN. Okay. Speaking to that counterfeiting issue, are you all aggressively working and interfacing with State agencies to try to address identification of the counterfeit documents, training—

Mr. DOUGHERTY. With respect to the matriculas in particular?

Mrs. BLACKBURN. With all of—especially the matricular consular cards, but also with all documents?

Mr. DOUGHERTY. Through our forensic document lab here, we routinely issue what we call document alerts. They are intelligence summaries of commonly forged or altered or counterfeited documents. They are available to the law enforcement community, to States, and they are available to, for example, the Departments of Motor Vehicles as well in States.

We also have an outreach program—to State and local governments regarding this. With respect to the particularly to the matricular card, I do not know of cases where we have worked directly with a State government, for example, but it is an area of particular concern to us.

Mrs. BLACKBURN. Okay.

Well, it has been of concern to us in Tennessee. We have a lax driver's license law. I am sure you are aware of some of the situations that have arisen there. One other question for you, Mr. Dougherty. When will Homeland Security begin requiring NSEERS registration of all foreign visitors of countries other than the terrorist-sponsoring ones?

Mr. DOUGHERTY. I think to answer that question, I have to understand if you are speaking of at the port of entry versus domestic?

Mrs. BLACKBURN. Yes.

Mr. DOUGHERTY. With respect to the port of entry, I may defer to Mr. Ahern. But I will, before I do that, I will point out that the registrations that occur historically and that continue today at the port of entry are—although there are some country characteristics related to that—those registrations occur through a variety of factors, including the travel pattern of the arriving person.

And I would point out, as I said in my testimony, in excess of 150 countries are represented in the population that have registered. Not just the specific list of commonly known source countries for terrorism.

I anticipate, and my understanding is, that program will continue using the same parameters.

Mr. AHERN. Well, I think one of the things we will have to defer on and see as far as what will be developed under the Department of Homeland Security, now that it is going to be rolled into the U.S. Visits Program, what actually will be occurring at the ports, as well as the entire enrollment process for entry and exit control.

Mrs. BLACKBURN. Okay. Thank you very much.

Thank you, Mr. Chairman.

Mr. HOSTETTLER. Thank you. The Chair now recognizes the gentlelady from California, Ms. Sánchez.

Ms. SÁNCHEZ. Thank you, Mr. Chairman. And thank you again to the witnesses for providing testimony today. I will try to make my questions brief, as everybody has tried, and I have noticed used up all of their time.

Mr. Dougherty, increasingly the indicators are that local and State law enforcement are being asked to enforce immigration laws. Do you foresee that trend continuing in the future?

Mr. DOUGHERTY. I think it is the policy of this Government that the most comprehensive approach to immigration law enforcement possible is the ultimate goal. There is an initiative in certain circumstances to provide for State and local law enforcement officials, in some limited way, to enforce the detection provisions of immigration law.

For example, should a State police officer somewhere in the United States encounter an alien, after proper checking—and, as you know, we have the Law Enforcement Support Center in Vermont that is readily available 24 hours, 7 days a week, to assist the local law enforcement official in determining the alien age and deportability of anybody they encounter—after going through that process of determination could, under the proposed policy, temporarily detain that alien until a competent authority from ICE would arrive to make the detention.

So I hope that is responsive.

Ms. SÁNCHEZ. In a way that is, but what kinds of training would you foresee that local law enforcement officers might receive in assisting and enforcing immigration laws?

Mr. DOUGHERTY. Training is a critical issue. It is a critical issue. It is not a national program at this time. I think—I believe there is a limited program in Florida and, perhaps, the beginnings of a program in another one of the southern States, which escapes me at the moment.

But, I think the training is a very important issue. The delegation of authority under section 287(G) in the Act really is currently only provided in the State of Florida.

We think in that—or I understand, in that case, that there was a training period of up to 6 weeks provided, which is a pretty extensive period of time. I would point out that historically in the Immigration Special Agent Academy, the core part of the entire special agent course was 8 weeks.

But there was 6 weeks of training provided in that context.

Ms. SÁNCHEZ. In conversation that I have had with members of the LAPD and other law enforcement in my home State of California, it is my understanding that there are—that most police chiefs and most local law enforcement agencies oppose the idea of having to enforce immigration laws. Some of them oppose it because it adds an additional burden on them in trying to carry out their local law enforcement duties, and others oppose it because they fear that would create a rift with the very immigrant communities that they seek assistance from, or information from in helping enforce, you know, local laws, and trying to enforce criminal activity.

How do you propose to address those concerns with adding an extra responsibility onto law enforcement, local law enforcement officers, and also potentially creating this rift with the very communities that they rely on for intelligence and information in doing their jobs?

Mr. DOUGHERTY. I think the first thing I would like to say about that is I have heard different responses from the law enforcement community on this point.

Ms. SÁNCHEZ. I would invite you to come out to California and talk to my folks then.

Mr. DOUGHERTY. I would look forward to the opportunity to actually do that.

The second point I would like to make is that this is not a mandatory program. States can enter into memorandums of understanding with us optionally, and I would think that the States that had a different view from the one you have expressed that you are hearing would do it.

The other thing I think I would point out is, the—in certainly in my experience in immigration enforcement, and from what I know from the agency, we are out there every day doing the work, that there is—there is a great ability to gain information in the immigrant community by an immigration officer today.

There is not that chasm that is perceived to occur between the communities that are subject to immigration enforcement and, of course, there is—I do not anticipate and that—for a law enforcement officer, a State and local law enforcement officer, that having the training, the ability to make a temporary detention would in any way create a chasm.

Ms. SÁNCHEZ. Ms. Murphy, you mentioned in your earlier comments that the actions and enforcing some of the immigration policies that have been created since 9/11 that impact Arab and Muslim and Southeast Asian men, do not solely impact those communities. Can you talk about the other communities that they also impact?

Ms. MURPHY. Well, I think Operation Tarmac is an example of a program announced in the name of fighting terrorism that affects a much broader community than NSEERS does at this point, for example. I think that the decision by Congress to fire anyone who is not a citizen in the airport screening jobs is something that goes much further than, you know, actions affecting Muslims, Arabs and South Asians.

I think some of these programs, although initially targeted at these populations, lay the groundwork for future application to other groups. And I also think that when you have a program like NSEERS, which you know takes personnel that are desperately needed at the border, and have them process these call-in applications, that affects people who are coming into our borders who are not from those countries.

So there are a number of ways that the—and the use of local law enforcement, in particular, is a way that affects a much broader community. So I think a lot of those proposals are done in the name of fighting terrorism, when they are, in fact, major changes to the values that are embodied or were once embodied in our immigration system.

Ms. SÁNCHEZ. Thank you very much.

Mr. HOSTETTLER. Thank the gentlelady.

Just to clarify, Ms. Murphy, some of the testimony that we have heard today suggests that the overall effort with regard to terrorism is focused on religion and ethnicity, but you have just testified that with regard to, for example, to Operation Tarmac, that, in fact, we are talking about a—virtually a universe of potential nations of origin, and not strictly limited to an ethnic group or religious group or specific countries; is that correct?

Ms. MURPHY. Well, no, I think that there are programs that the Department has embarked upon that are overwhelmingly targeted at Arabs, Muslims and South Asians. Yes, they affect a number—there are Christians from these countries, they are not just Muslims. But I do think by focusing on certain regions and countries that are dominated by certain religions, the Muslim religion in particular, that there is a—a disproportionate impact on certain communities right now.

Mr. HOSTETTLER. So just to clarify, are you saying that there is—that the overall war against terrorism is—

Ms. MURPHY. Disproportionally focused on Arabs, Muslims, and South Asians, but has a tremendous systemic effect on other immigrants, because of the use of resources, because of the deployment—you know, there—this is a system that is built on a system that has many flaws, like the whole problem of expedited removal at the border.

I mean, there are—these problems and these structural problems affect a broad range of individuals, but initially the impact is being felt by the communities I highlighted.

Mr. HOSTETTLER. I thank the gentlelady.

The Chair now recognizes the gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman.

I want to talk with Mr. Michael Dougherty and Mr. Jay Ahern for just a little while. I wanted to find out how this program or these various executive directives, laws, the PATRIOT Act, how have all of these things been working from your point of view, and from your responsibilities under the Homeland Security Department?

Mr. Dougherty.

Mr. DOUGHERTY. Thank you, Congressman Conyers.

I appreciate the question, and as I mentioned in my oral statement, I do come to this with a unique perspective, having been on what I will call the sharp end of the business for a while. That there is no greater challenge, particularly in the immigration enforcement context, than effectively investigating the possibility that an individual could be engaged in terrorism or is bent on harming the United States national security interests.

In the days in which I was in the business, there was—the statutory authorities were not what they are today. And the programs are not what they are today. In those days, prior to the steps that are taken for a complete entry-exit system, and it needs to be said frankly, there was very little understanding of who had been entered into the United States legally or illegally, who had departed

the United States, or where they were, what they were doing while they were here.

And compared to where we are today, I would say the United States was relatively insecure then. So when I consider the steps and strides that have been made and the authorities that are available today, I would say it is working well.

I will also say, sir, that it is not without its challenges. As I mentioned, I have been here since March 19th, and charged with the responsibility of integrating 14,000 people from different agencies with different roles and missions, and it certainly is with its challenges. But I would say that we are relatively more secure today than we were before.

Mr. CONYERS. Mr. Ahern.

Mr. AHERN. Well, one of the things that I would certainly underscore is what Mr. Dougherty stated. I mean, we are still moving through with our reorganization and our merger. Certainly, as I stated at the beginning of my testimony, this is day 69 of our reorganization. We are learning more about how to apply some of the aspects of the PATRIOT Act and some of the other rules, policies and directives.

I think that it does give us an opportunity for a safer more secure United States. But one of things that we certainly need to do, is to apply some more discretion, some more risk-based determinations, as opposed to some blanket determinations. I think we need to study it more.

And I certainly would like to go ahead and study the issue more and provide you a more detailed response, sir.

Mr. CONYERS. When you say risk-based determinations, what does that mean?

Mr. AHERN. Risk-based determinations, in my view, this is coming from 27 years in Customs, some of the things we have used as the concept of risk management, to make sure that all of the factors are there when you make final determinations.

So I would like to see how that concept could apply in some of the aspects of the PATRIOT Act that was formerly used by Immigration and Naturalization Service, now that it is over in Customs and Border Protection.

Mr. CONYERS. What does that mean?

Mr. AHERN. What it means is we would like to be able to take a look at the aspects of the PATRIOT Act to see, as far as all of the different aspects to make some risk determinations. I don't know how to better say that to you, sir.

Mr. CONYERS. Well, you think we need another PATRIOT Act?

Mr. AHERN. I don't believe so.

Mr. CONYERS. Okay. What is the budget of Homeland Security?

Mr. AHERN. The overall budget for Homeland Security? I am not sure exactly what it is.

Mr. CONYERS. Who has got that figure? Staff? I can hear the machines whirring downstairs in Judiciary right now trying to come up with it.

Well, let's go on to the next thing. Look, how can I tell my constituents that they ought to feel more secure now that we have got this, the largest department in American history on the books, more money, more people, than any has ever had, a lot of experi-

enced people who are dedicated Government workers? How do I tell them they are more secure?

And that is not denying that there was a lot of things happening that weren't so hot in the old system. I don't mean to pit the old system against the new.

But, gentlemen, we have caught no—not only have we not caught any terrorists, we haven't even prosecuted anybody for terrorism. Maybe that is the best argument we can make. There is—everything is good, nobody is coming through. Is that the claim?

Mr. DOUGHERTY. Sir, I think I can take a stab at responding to that. And also, I point out that my beloved in-laws are from Sioux St. Marie and Garden City, and they feel more secure today.

Mr. CONYERS. Why? Except that their famous relative is in a very high position? But outside of that, I mean, why do they feel any better?

Mr. DOUGHERTY. One of the things I think is in my written testimony, maybe in my oral testimony is, and this figure has been around, I know it may have even been before this Committee before, is that as a result of the NSEERS registration process, in fact, 11 individuals linked to terrorism were encountered.

Mr. CONYERS. Eleven individuals linked to terrorism were what?

Mr. DOUGHERTY. Were identified.

Mr. CONYERS. They were identified. Have they been indicted?

Mr. DOUGHERTY. There were a variety of dispositions in this case. Some of them I can't discuss in this forum. I would be happy to return to the Committee with that information.

Mr. CONYERS. These 11 individuals, what was the incident or circumstance that we got these 11 people?

Mr. DOUGHERTY. Pursuant to the NSEERS registration process.

Mr. CONYERS. These were separate cases? These were all individual matters? Were they 11 individual matters, or was this one incident, in which it netted 11 people, in this process you are talking about?

Mr. DOUGHERTY. To my understanding, these were individual matters. But, of course, in the case of Zacarias Moussaoui, that was an individual matter as well. So often the best thing you can do is get one person first and see what else comes.

Mr. CONYERS. Sure. Well, it isn't a secret that there—they have either been indicted or not. I mean, that is not secret, is it?

Mr. DOUGHERTY. I just don't have all of the information.

Mr. CONYERS. Okay. Would you get those cases and just get back to me, or the lawyers on my staff, to let me know what it is we are referring to?

Look, all I am trying to do, we got a new system, a big one, a costly one. We got veteran, experienced people. We don't have anybody—I guess these 11 people, something bad is going to happen to the ones that have committed crimes, I guess. But, I mean, tell me why your in-laws feel any better about it, outside of the fact that you are one of them?

I mean, what is—what do I take back? I can't tell them Dougherty's in-laws feel better up in Sioux City and you guys ought to do. They say, well, tell me something. What do I tell them?

Mr. AHERN. Let me offer, if I might, and not to speak for Mr. Dougherty or how his in-laws feel about the situation, but I will tell you certainly from our perspective in Customs and Border Protection, over 69 days now we have merged into this new organization. From an operational standpoint, not only does this make good sense to merge all the inspectional components at the border and provide it under a single leadership for the first time in this Nation's history, but also add the component of the Border Patrol, so you have a unified strategy at the ports of entry and between the ports of entry.

We think that is going to be good for the Government, we think that is going to be good for the American people. We also think having that single leadership can also provide, looking at redundancies and rules, regulations and procedures and operational practices.

On September 11th, I was the field director for southern California. And I saw distinct differences between the two organizations that operated at the border. This is a good thing. This will make sense to unify the aspects of each operational entity at the border. So I think that that will have not only positive aspects for improving efficiencies and effectiveness at the border, but I think it will add to a very high level of safety and security as well.

Mr. CONYERS. And you are only 69 days old?

Mr. AHERN. Yes, sir.

Mr. CONYERS. So you are just getting into this?

Mr. AHERN. Yes, sir.

Mr. CONYERS. You will probably want to come back before this Subcommittee Chairman and us as frequently as we need to talk with you and get updated about how things are developing.

Mr. AHERN. I would be more happy to and more than available to do that.

Mr. CONYERS. Good. Now, do people in your family feel good about the fact that you are where you are? Do they feel secure? I know they are proud of you. But do they feel better? Do they sleep better at night?

Mr. AHERN. We don't discuss these issues at home.

Mr. CONYERS. You mean, how they sleep or whether we are more secure?

Mr. AHERN. I think, as I outlined, Congressman, I think that certainly, given what we have started and what we have underway, and with the vision that we have for the future, I think it is a very positive thing for the American public. I certainly believe that my family would support that notion as well.

Mr. CONYERS. And mine does too.

Now, last question, Mr. Chairman. Do you ever have discussions about the protections of Constitutional rights, and due process, and civil liberty-type questions in the course of discharging your responsibilities?

Mr. AHERN. Absolutely. I know in our history within the Customs Service we certainly have. In the first 69 days of this new relationship, it is something, as we certainly begin to start to develop operational procedures and practices, it will certainly be something right in the centerpiece of what we do.

Mr. DOUGHERTY. I would echo that sentiment, as a person as well as speaking on behalf of the organization, one of the things we are trying to do in our reorganization and in how we approach the very serious problems facing the country, is to ensure that the rule of law is upheld.

I think implicit in that is individual rights, the Constitution, protection of liberties.

Mr. CONYERS. I am very glad to hear that. Because, what I wanted to recommend is that if the National Director of the American Civil Liberties Union were to call to ask to meet with you to review issues from their perspective, would you be willing to meet with them?

Mr. AHERN. Certainly I would, from the Customs and Border Protection perspective. Yes.

Mr. DOUGHERTY. I would echo that. And we are—as we are always open and agree to meet with members of any group.

Mr. CONYERS. I am glad to hear that. Thank you for your time.

Ms. MURPHY. Mr. Conyers, may I?

One of the things, since this hearing is leading up to a hearing with the Attorney General, when you asked your question about safety, I just wanted to give you two statistics, or pieces of information, I should say.

A January 2003 GAO report on the Department of Justice's claims of drastically increased terrorism convictions, quote, discovered that DOJ does not have sufficient management oversight and internal controls in place to ensure the accuracy and reliability of terrorism-related conviction statistics, included in its annual performance reports, end of quote.

Of the 288 cases classified by the DOJ as terrorism-related, the GAO found that at least 132, about 46 percent, were misclassified. Even the accuracy of the remaining 156 convictions was difficult to determine for the GAO, given that at the time of review, the national U.S. Attorney's office had not validated the reliability of the data for districts reporting less than four terrorism-related convictions or convictions involving terrorism-related hoaxes or terrorism financing.

And just the last point. Data released in March of 2003 by the Justice Department to Syracuse University's nonprofit Transactional Records Access Clearinghouse show similar statistical distortions, this time by the U.S. Attorney's office in New Jersey. According to the TRAC report, of 62 international terrorism cases in the State for fiscal year 2002, 60 actually involved foreign students suspected of paying native English speakers to take the standardized test of English as a foreign language.

So I think it is important that you ask the question to the Attorney General about his assertions that we are indeed more safe and secure as a result of these policies.

And one last thing. I think that Mr. Dougherty said something that I think is very, very misleading and the Committee could help us with a great deal. The Attorney General issued a secret memo authorizing the enforcement of immigration laws by local police departments that it refuses to release. And this is a national program that goes further than enforcing more than temporary detention of violators. It also puts civil violations in the NCIC database to au-

thorize the arrest of individuals for civil violations. And I think that the statements here have been misleading about the breadth of that program.

I would really like the Committee to look into that, if that is at all possible.

Mr. CONYERS. Well, what I would like to do with our distinguished Chairman of the Committee, and its Ranking Member, is meet with Chairman Sensenbrenner to determine what would be the appropriate time to get the Attorney General himself here. Some of the things that you have raised are in the U.S. Attorney's office, or in the Department of Justice, that they may or may not be accountable for.

And that is the kind of thing that in meetings with your national director, and you and them, we can kind of begin to clear up, so that if and when the Attorney General comes again before the Judiciary Committee, it won't be as, perhaps as muddy as it is now.

I am very glad you raised that.

Mr. HOSTETTLER. I thank the gentleman.

We will now enter a second round of questioning.

Mr. DOUGHERTY. Mr. Chairman, forgive me. I would certainly like to correct the impression that I said anything in my testimony that would be misleading.

Mr. HOSTETTLER. That will be entered into the record.

Mr. DOUGHERTY. Thank you. I certainly have spoken in this hearing and always will, to the best of my knowledge and belief.

Mr. HOSTETTLER. Thank the gentleman. Excellent point.

Mr. Dougherty, some observers have argued that NSEERS is an ineffective way to investigate terrorism in the United States because terrorists would not register with the U.S. Government. How do you respond to that?

Mr. DOUGHERTY. I would respond to that to say that it has been effective. As I mentioned, there were 11 individuals identified with links to terrorism through the program, more than 120 criminal aliens have been arrested pursuant to the program.

So it is certainly serves a national security interest and a public safety interest. Additionally, from my own experience, and from recent experience, that the—often, individuals intent on harming the United States, particularly since there has been more rigorous immigration enforcement, have acted to actually more scrupulously comply with the law and seregulation with respect to this.

So I wouldn't accept the premise that they are unlikely to comply. I think that they would be concerned about showing up on the radar screen of ICE or another enforcement agency if they did not.

Mr. HOSTETTLER. I have a list of the 19 perpetrators of the September 11th, 2001 attacks on the United States. They all either had visas in effect or had obtained visas and three of them overstayed visas. All of these individuals would have been—if they went to the trouble of getting a visa, they would have been in the NSEERS system?

Mr. DOUGHERTY. That is correct. They would have been in NSEERS. To the extent that they weren't going to school where they said that they were, or if they weren't doing the things that they said they would do or were expected to be doing, they would have come up on the screen.

Mr. HOSTETTLER. I have another question, a follow-up to a question made earlier with regard to charges of terrorism against individuals in removal proceedings. Are individuals through—that are going through removal proceedings ever charged with terrorism?

Mr. ROONEY. Mr. Chairman, no. They are not charged with terrorism.

Mr. HOSTETTLER. So they are charged with—

Mr. ROONEY. That probably is—expands upon my response to Ms. Jackson Lee, which, while the idea behind our closing the hearings was not because these were terrorism-related offenses that have been—these individuals have been charged with, but simply that the evidence that would be presented, and information that would come up at the hearing was sensitive information that could damage, if disclosed, the ongoing investigation.

Mr. HOSTETTLER. Very good.

Mr. DOUGHERTY. I would like to expand on that a little bit, speaking outside of the context of closed hearings. There are provisions to remove people from the United States or not admit them at ports of entry because of an underlying ground of terrorism, that they were a member of a terrorist organization, for example, or that they had engaged in terrorism historically, or that they are likely to engage in terrorism after entering the United States.

So there is explicit grounds within the law to do that.

Mr. HOSTETTLER. Very good. Thank you.

Ms. Murphy, I have a question for you, but I want to highlight something. In response to an earlier question that I had, you gave a couple of more examples with regard to individuals you mentioned that were from other countries. You mentioned Zacharais Moussaoui and Richard Reid, Zacharais Moussaoui having a French passport, Richard Reid having a British passport.

Did you mention those for any particular reason? Do you know that both of those individuals are Muslims?

Ms. MURPHY. Well, I just—I know. But—when you have special registration programs that call-in, you know individuals from certain countries, you are bound to miss people who don't have passports from those countries. And, in fact, there has been a great level of confusion in the NSEERS program, because some agents want to question people who are of maybe Arab or Muslim, Arab descent, and they wanted—these people hold Canadian passports, so what constituted the nationality is an area where we have seen a great deal of confusion in the offices.

So that, and the failure of the Department to adequately publicize this, to let people know whether or not they have a right to counsel, this has created a great deal of confusion. So I think that this program, even though we don't like the special focus of it, is a poorly administered program that hasn't given clear directives to its field agencies.

In fact, the headquarters told us that they were going to—that the ACLU was right, these people did have a right to counsel in these interviews, but they refused to tell the field offices and issue a memo to tell the field offices that individuals had a right to counsel.

So I think it is a very, very confusing program that would not necessarily nab, you know, Mr. Reid or Mr. Moussaoui. It certainly wouldn't get John Walker Lind, of course.

Mr. HOSTETTLER. Right. And John Walker Lind also, that gives even a third Muslim that you have mentioned. And so there is no reason for this Committee to assume that you did that in a fashion whereby you would be profiling individuals. You used these examples as examples that would contradict the idea of nations of origin, but you used exclusively Muslims in order to make that point.

And I guess the point that I want to make with that is there is no reason for us to believe that you did that in a way to profile certain individuals similarly, and there is a reason that you used that, because there was precedent with that, and you felt that there was a reason, outside of their religious affiliation, to use that—to believe that they were—.

Ms. MURPHY. I just—I am sorry.

Mr. HOSTETTLER. And all I am saying is, I think that we need to recognize that, from time to time, there are those in the law enforcement community that look at other parameters with regard to bringing someone in for questioning that is important for them. And in that, I would like to ask you a question about—.

Ms. MURPHY. Can I answer your question about profiling? I don't think I was engaging in profiling at all.

Mr. HOSTETTLER. I don't think so either.

Ms. MURPHY. I am talking about the Government's assertion that these people were engaged in terrorist activity. I am merely saying that to focus on particular countries and particular religions will not necessarily yield you individuals who are engaged in terrorist activity.

Mr. HOSTETTLER. Excellent point. One last question for you.

You state that so called "secret detentions" left spouses, children, classmates and employers to wonder where aliens had been taken and who would be next. Were these aliens held on immigration or material witness grounds?

Ms. MURPHY. We didn't know at first. The Government wouldn't tell us. I can get you the statistics of what the people were reported to have been held on, based on what the Government released within the last year. Most of these people have been released. But, some people were being charged with immigration violations, some people were being held as material witnesses.

Some—and not just the Federal Government was involved in detaining these people, some local law enforcement agencies detained these individuals at the behest of the Federal Government. So the reporting about the different circumstances of these individuals was not clear and consistent.

Mr. HOSTETTLER. Were the aliens given access to telephones and counsel?

Ms. MURPHY. We have cases in—reports, especially in the New Jersey detention facility, where people were trying to reach counsel, but weren't able to do so on the first call, and then were not allowed future calls, or they would call home, but because the individual was detained and no longer reporting to work, maybe the home telephone had been cut off.

So I don't think that there was a lot of compassion during this period where the country was, you know, coping with the aftermath of 9/11 for the due process rights of the individuals being detained.

Mr. HOSTETTLER. I am going to ask some of the other witnesses. Is this unusual? The testimony that I hear is that they were given access to telephones and there were circumstances around certain situations that that didn't work out, they were allowed counsel, but, for whatever reason there were circumstances—is that unusual in any standard legal proceeding?

I mean, is that—is that unusual compared to other standard legal proceedings?

Mr. DOUGHERTY. I am not sure I have enough information to comment directly. All I will say is that there are lots of people arrested every day. They are afforded the right to make a telephone call, to have counsel available.

Mr. HOSTETTLER. And there are circumstances whereby if the phone call doesn't go through, they don't reach—

Mr. DOUGHERTY. Certainly. Certainly there are those instances.

Ms. MURPHY. Can I—I want to give you the case of, and maybe you could permit this to be entered into the record, Anser Mehmood, who is formerly of Bayonne, New Jersey, who entered the country or stayed in the country on an expired visa, had two American-born children, who was deported.

He said that he was in a cell for over a month and never questioned by the FBI or the INS, told why he was being detained, was unable to reach his relatives to let them know where he was.

So the ACLU interviewed some of these people who were deported after 9/11, detained and deported. And they—there are some harrowing stories about their treatment in U.S. Custody, and I hope the Committee will not look at just, you know, what we can do to stop terrorists from entering our country, which is a worthy goal, but also look at mechanisms to ensure that people are treated in accordance with how we would want U.S. Citizens treated abroad if they were detained.

So I think that there are several stories here that I would like to bring to your attention.

Mr. HOSTETTLER. Well, would you happen to have this individual's alien number?

Ms. MURPHY. I don't have it with me, but I have this information, this is the best that I have, from the New York Times.

Mr. HOSTETTLER. The Subcommittee would like to hear of that situation.

In closing, I want to thank the members of the panel for, once again, your patience and your presence here today, your testimony. I want to thank you for your service to our country. And there—we are asking you to look for a needle in a hay stack. I think sometimes what we forget is that what we want to happen with the system that Congress has put in place legislatively and the executive branch administers, is that we hope that there is not another terrorist activity in the United States of America.

We hope that when you do your job, and if we give you the proper amount of resources that, in fact, all of the situations will come back with no terrorists, because I classify a terrorist as someone who has actually committed a terrorist act, that, in fact, no ter-

rorism will take place, and that, therefore, we will be talking about mainly immigration.

And so I want to thank you for your service, and say that the Subcommittee will leave the record open for 5 days for Members to have an opportunity to put statements in the record.

And the work before the Subcommittee being completed, we are adjourned.

[Whereupon, at 5:05 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

PREPARED STATEMENT OF CONGRESSWOMAN SHEILA JACKSON LEE

In the wake of the September 11th terrorist attacks on the World Trade Center and the Pentagon, the United States government has taken many steps in its efforts to stop terrorists and other dangerous people from entering the country. These efforts are absolutely essential to the security of our nation. At the same time, it is important to realize that immigrants are not terrorists.

Long-time skeptics of immigration have tried to turn legitimate concerns about security into a general argument against openness to immigration. It would be a national shame if, in the name of security, we were to close the door to immigrants who come here to work and build a better life for themselves and their families. Like the Statue of Liberty, the World Trade Center towers stood as monuments to America's openness to immigration.

Workers from more than 80 different nations lost their lives in the terrorist attacks. According to the Washington Post, "The hardest hit among foreign countries appears to be Britain, which is estimating about 300 deaths . . . Chile has reported about 250 people missing, Colombia nearly 200, Turkey about 130, the Philippines about 115, Israel about 113, and Canada between 45 and 70. Germany has reported 170 people unaccounted for, but expects casualties to be around 100." These men and women from other countries were not the cause of terrorism. They were its victims.

The problem is not that we are letting too many people into the United States but that we are not keeping out the dangerous ones who come to our country with bad intentions. Immigrants come here to realize the American dream; terrorists come to destroy it. We should not allow America's tradition of welcoming immigrants to become yet another casualty of September 11th.

American lives and the quality of life in this country depend to a substantial extent on the security measures that the Department of Homeland Security will provide. You have an enormously important responsibility. Nevertheless, the economic state of this country is vital too, and that can be adversely effected by how your Department handles the millions of legitimate international visitors who come to our country every year.

Visiting international tourists and business entrepreneurs are a valuable component of our nation's economy. Last year, more than 41 million international visitors generated \$88 billion in expenditures and accounted for more than one million jobs nationwide. As the Department of Homeland Security moves forward, you will be faced with many challenges with respect to international traveler facilitation.

I also have concerns about the programs that seem to give too little regard to civil liberties. For example, I am troubled by the methods that have been employed to implement the Special Registration Program. I believe that this program is fundamentally flawed in both design and implementation. It will not enhance our security. It is a needle-in-a-haystack approach. The call-in registration program seeks to identify tens of thousands of law-abiding temporary visitors to our country and require them to come to government offices to be fingerprinted and photographed. The haystack being created by this program is huge.

The persons coming forward to comply with call-in registration are those who are seeking to obey the law. The program is ineffective at seeking out and identifying those in the United States who might actually be intending to harm our nation.

The resources being expended to fingerprint, photograph and interview thousands of people coming forward to comply with this program are staggering. Some offices have turned away would-be registrants because they do not have the staff to cope with the work. This program is diverting resources from the more important work of investigating and prosecuting the people who may truly be dangerous. We need

to implement initiatives that address our security in an effective manner. Effective initiatives would target terrorists, not innocent immigrants. At the very least, they would not so frequently alienate the immigrant communities whose cooperation we need to identify the terrorists in our midst.

In closing, I want to emphasize that I have supported and will continue to support the efforts of the Department of Homeland Security to enhance national security. My objective is ensure that the methods the Department employs to secure our homeland are effective and give due regard to the civil liberties that make this country great.

Thank you.

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS JR.

In the name of "anti-terrorism," the Bush Administration has initiated a witch-hunt on certain immigrants since September 11th through a series of constitutionally dubious actions that place the Executive branch in the untenable role of legislator, prosecutor, judge, and jury.

Through the unilateral policies and actions of the Department of Justice, the FBI and the Department of Homeland Security, the Administration has fought terrorism by using racial, ethnic, and religious profiling, even though the President and the Attorney General have stated publicly that they are against such practices.

The Administration elected to discriminate in granting visas to men from Middle Eastern countries. It has singled out Arab immigrants for speedy deportation based solely on their national origin. The FBI instituted a dragnet to find and question nearly 10,000 men who hail from the Middle East or North Africa about terrorism.

Under Operation Liberty Shield, they recently initiated another dragnet, this time targeted at 50,000 Iraqi's living in the U.S. The dragnet consists mobilizing as many as 5,000 FBI agents to monitor, interrogate and potentially arrest and detain every Iraqi living in the U.S. simply because of their nationality and not because they are suspected of any wrongdoing.

Most recently, Secretary Tom Ridge announced that all asylum applicants from identified Muslim and Arab nations with suspected ties to terrorism would be detained throughout the pendency of their asylum claims. Even infants and children will be detained under Operation Liberty Shield, despite their low national security risk.

Although we have no evidence of terrorists entering the country through the refugee program, that program has enacted security barriers for African and Middle Eastern refugees that make it almost impossible for them to gain admission to the U.S.

While the SEVIS program requires the registration of all foreign students, over 200 colleges reported that they were contacted by either the FBI or INS in an effort to collect personal information about students from Middle Eastern countries. Dozens of students were then singled out on each campus for questioning by the FBI.

By initiating the NSEERS Entry-Exit program as a terrorism-fighting measure, the INS, and now Homeland Security, have required hundreds of thousands of Muslim and Arab men to be registered, interviewed, fingerprinted, and photographed. The program created mass confusion among Muslims who were legally visiting the U.S. and resulted in hundreds of unnecessary arrests, including the arrest of a visiting fellow at the Brookings Institution who is editor of Pakistan's most respected English-language news weekly. As a result, thousands of people - hard working immigrants with American children who have been contributing to our country - have fled to Canada and sought asylum from the U.S. there, fearing the results of the registration process.

Despite repeated requests by my office and the General Accounting Office, has yet to identify a single useful piece of information about terrorism that was adduced as a result of these post Sept-11 detentions and interviews. Yet, this approach has diverted scarce investigative resources that we need so urgently to protect ourselves against terrorist attacks; it has alienated communities whose cooperation is needed in the war on terrorism, and - most importantly - it has eroded constitutional protections for all Americans by expanding the use of racial and ethnic profiling and eroding the civil liberties at the foundation of our democracy.

The Administration's war on terrorism, and its use of immigration as a weapon in that war, has also been characterized by secrecy. Soon after 9-11, the Justice Department began conducting secret immigration trials. They closed immigration hearings from public scrutiny, forbade court officials to even confirm that cases existed, barred relatives from locked courtrooms, provided for armed officers to accompany lawyers into court, made it impossible to determine whether all of the immigrants

in the secret proceedings had access to lawyers, and fostered a general presumption of guilt.

I was even denied the ability to attend the immigration hearings of one of the nation's most prominent Muslim clerics - Imman Haddad - and had to file a lawsuit, which we won in the Sixth Circuit, to open the hearings.

These are just some of the examples of the how the Bush Administration's war on terrorism has been fought against immigrants in America since 9-11. Such clandestine tactics are routinely practiced by dictatorships, not democracies. Surely in 21st Century America we can do better than adopting an immigration policy premised on the theory that if you are Arab or Muslim you are a national security suspect.

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U.S.-Deported Pakistanis: Outcasts in Two Lands

By DAVID ROHDE

KARACHI, Pakistan — For weeks, his only source of information was the shouts of men in the cells around him. There were about 60 of them, according to the prisoners' own count. All were Muslims, he remembers. Many of them, like himself, have since been quietly deported from the United States.

At his home in Pakistan, the former detainee, Anser Mehmood, a 42-year-old truck driver and father of four who lived in Bayonne, N.J., described "that hell": a windowless solitary confinement cell where he spent four months last year at a federal detention center in Brooklyn.

There was no day and night, he said, only two overhead florescent lights switched on 24 hours a day. There was no outside world, only two closed-circuit cameras that relayed his every move to an unseen guard. There was also no interrogation that might explain why he was arrested after the Sept. 11 attacks and treated as a dangerous terrorist.

"In that time, no official from the F.B.I. and I.N.S. came to interview me," he said, referring to his four months in the cell. "They never came to ask me any questions."

Mr. Mehmood is one of six Pakistani men interviewed who were recently deported from the United States for entering the country illegally or overstaying visas. They say they now find themselves stranded between countries and cultures, their lives upended, since being detained and deported under a post-Sept. 11 crackdown. Back in Pakistan, which many had not seen for a decade or more, they are out of place. Many Pakistanis see them as victims of an anti-Muslim witch hunt. But others view them as traitors in a country where anti-Americanism is on the rise.

Justice Department officials say the immigration sweep is intended to thwart terrorist attacks and has produced valuable intelligence information in the campaign against terrorism. "In particular, we focus on criminals," said William Strassberger, a spokesman for the Immigration and Naturalization Service. "This is a way to get leads or locate those who we are trying to find."

The accounts of these men also suggest that the dragnet — one of the largest in American history — has swept up the spouses of American citizens, homeowners and businessmen who had lived in America for seven years or more and were in the process of trying to legalize their immigration status. All said they did not have criminal records.

Government officials later told Mr. Mehmood's lawyer that F.B.I. agents who searched his home had found a license to carry hazardous materials, box cutters, a flight simulator program and three Pakistani passports in his name. But neither he nor any of the other men were charged with terror-related offenses.

Mr. Mehmood said he had explanations. His trucking company required him to have the hazardous materials license, he said. He used the box cutters on the job, he said. The flight simulator program was used by his children, and two of the passports were expired, and one was valid, he said.

Some 1,200 Arab and South Asian men, including Mr. Mehmood, were arrested in sweeps just after Sept. 11.

<http://www.nytimes.com/2003/01/20/international/asia/20STAN.html?ei=5070&en=6b3067549ae82...> 5/20/03

Arguing that the release of information could alert terrorists, the Justice Department has declined to identify the men or describe how and why they were detained. Like Mr. Mehmood, many were held in solitary confinement for months. Ninety-nine were convicted of criminal charges, 281 were freed or are awaiting decisions on their immigration status, and nearly 500 have been deported. About 300 more men were arrested by local law enforcement agencies.

The other five Pakistani men interviewed are among the estimated 10 million people who overstayed their visas or entered the United States illegally. In the past, they might have lived quietly in the United States under the radar of immigration officials, who concentrated most of their efforts on securing borders and rarely pursued aliens once they entered the country. Since Sept. 11, they are being tracked and deported.

The five were among 1,100 people deported under a crackdown begun last spring focusing on 5,900 aliens who officials said had ignored deportation orders and were from countries where Al Qaeda is believed to be active. The government says about 300,000 people from other countries who have ignored deportation orders will be pursued later.

Five of the men interviewed here said that they were unaware of any outstanding deportation order against them and that they believed they had pending appeals or applications still winding their way through the Immigration and Naturalization Service's chronic backlog of cases, but were deported without seeing a judge. Some accused lawyers to whom they had paid thousands of dollars of not informing them of hearings or botching their cases.

All scoffed at the notion that their detention produced valuable intelligence. They described undergoing only cursory interviews by F.B.I. or I.N.S. agents: Do you like Osama bin Laden? Can you fly a plane? Do you pray five times a day?

Interviewed separately in Pakistan, they said they had been given little or no information about why they were picked up or where they were being taken. They were denied contact with families and lawyers for days or weeks at a time, they said.

Immigration officials said that they could not comment on specific cases and that all the people being deported had had an opportunity to see a judge and had either lost in court or failed to show up. "These are all people that have had their day in court," Mr. Strassberger said. "These are people who have already had their chance."

While whatever ordeal they faced after Sept. 11 in America is over, life in Pakistan has offered hardships all its own. American in attitude and manner, they are regarded by some Pakistanis as traitors. Four of them are separated from wives or children who remain in the United States.

Unlike the families of some of the others, Mr. Mehmood's family has come with him. He said his three older boys were failing classes taught in Urdu, which they do not speak. They are harassed and threatened.

"Over there, they call us terrorists," said his 12-year-old, Haris. "Over here, they say they are going to kill us."

When an interviewer, surprised by the thick vowels of Bayonne, told him he sounded as though he was from New Jersey, he tartly replied, "I am from New Jersey."

Mr. Mehmood, his family and the others interviewed complained bitterly that they had been unfairly marked for detention and deportation because they were Muslims. "Americans should apply the laws of the Constitution to everybody all over the world," he said, "not just Christians and Jews."

Anthony Romero, executive director of the American Civil Liberties Union, which interviewed four of the men, said: "The individual cases are the tip of the iceberg. Essentially, the I.N.S. and F.B.I. targeted Pakistanis, Muslims, Arabs and others for greater scrutiny because of their national origin and religion."

Government officials deny this. They say that Muslims are not being singled out, but rather that certain people from certain places where terrorists are active.

By the account of Mr. Mehmood, on Oct. 3, 2001, he was resting in his home when his doorbell rang at 9 a.m. He said he had opened it to find 25 to 30 F.B.I. agents surrounding his home.

He said the agents had searched his home and asked him about his brother-in-law, whom they accused of credit card fraud and manufacturing false documents. The agents told him that he was clear with the F.B.I., he said, but that the I.N.S. wanted him for overstaying the business visa he entered the country under in 1994.

"You'll see a judge," Mr. Mehmood quoted the F.B.I. agent as saying. "You're a property owner, have a business and pay your taxes and that's all in your favor."

"He said that I'll be back home by 11 a.m. the next morning," he added.

Held overnight in a federal building in Manhattan, he did not see a judge the next day, he said. Instead, Border Patrol agents chained his hands and feet, he said, loaded him into a van with four other Muslim men and told him to not ask questions.

Arriving at the federal government's Metropolitan Detention Center in Brooklyn, Mr. Mehmood said he had been pulled from the van and slammed against a wall so hard it bloodied his lip. He said a guard had told him, "You are here as a World Trade Center suspect."

Locked in a cell that night, he would remain there for four months and two days. For the next two weeks, he said, he was blocked from communicating with his family or his lawyer or seeing a judge. "Nothing," he said referring to those weeks. "Just those gray walls."

To fill the blankness, he turned to prayer. Over time, he became a devout Muslim.

Mr. Mehmood was not told at the time what F.B.I. agents had found at this home. The agents also later told him that they had been told that he refused to take a shipment to Washington, D.C., on Sept. 11. Mr. Mehmood said the shipment was canceled minutes after the attack that day.

On Oct. 18, he saw an immigration judge who allowed him to call a lawyer, he said. When he called his family, the line was disconnected. After his arrest, television news crews swarmed his home, and schoolchildren had started calling his sons "terrorists." Stones hurled at his house at night had shattered three windows, his family said.

On Dec. 6, a judge considered a political asylum request Mr. Mehmood filed, citing the burning of his store by a political group in Karachi in 1989 and the shooting of his nephew in 1994. He said he had failed to file the request when he arrived in 1994 because a lawyer advised him to exaggerate the threat or wait. He said he did not want to lie in court and chose to wait.

The judge denied the request and ordered him deported. But Mr. Mehmood remained locked in solitary confinement for two more months while the F.B.I. and other federal agencies completed his security screening, he and his lawyer recounted.

"We have the presumption of innocence turned on its head," said Martin R. Stoller, Mr. Mehmood's lawyer. "Muslim males are presumed to be involved in terrorism and are held there until they are cleared."

On April 2, he was charged with a single criminal offense: using an invalid Social Security card. He pleaded guilty to removing the "not valid for employment" label from the card so he could get a job as a taxi driver, a

common practice among immigrants, he was sentenced to time served.

Mr. Mehmood was transferred to the center's general population on Feb. 6. On April 19, I.N.S. agents escorted him to a passenger flight to Pakistan. He is barred from returning for a decade.

