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WITNESS LIST

Hearing Before the Senate
Committee on the Judiciary
Subcommittee on Immigration

on

"INS Reform: The Enforcement Side"

Wednesday, July 29, 1998, 2 p.m.
226 Dirksen Senate Office Building

Panel I

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service
Washington, DC

Panel II

Mr. Richard Gallo
President
Federal Law Enforcement Officers Association
East Northport, NY

Mr. Ron Sanders
Chief
Chief Patrol Agents Association
U.S. Border Patrol
Tucson, Arizona

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

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STATEMENT OF

RICHARD J. GALLO

NATIONAL PRESIDENT

OF THE

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

BEFORE THE

UNITED STATES SENATE

SUBCOMMITTEE ON IMMIGRATION

JUDICIARY COMMITTEE

ON

JULY 29, 1998

TESTIMONY OF RICHARD J. GALLO, NATIONAL PRESIDENT,

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION (FLEOA)

BEFORE THE

UNITED STATES SENATE, COMMITTEE ON THE JUDICIARY,

SUBCOMMITTEE ON IMMIGRATION

JULY 29, 1998

Good afternoon, Mr. Chairman and distinguished Members of the Subcommittee. I am honored to submit this written statement in support of my oral testimony for such an important and vital hearing. The Federal Law Enforcement Officers Association (FLEOA), is a voluntary, non-partisan professional association.

FLEOA currently represents over 14,000 federal law enforcement officers and is the largest association for federal officers of its kind. Several years ago, FLEOA joined with all of the major state and local police national associations to form the Law Enforcement Steering Committee. The Law Enforcement Steering Committee also includes the following prominent and important organizations: Fraternal Order of Police, National Troopers Coalition, Major Cities Chiefs of Police, Police Executive Research Foundation, National Association of Police Organizations, National Organization of Blacks in Law Enforcement, International Brotherhood of Police Organizations and the Police Foundation. In becoming a part of this group, federal agents were able to add our voices to those of the over half a million state and local officers already commenting on the issues that our Association considers to be of greatest importance. I tell you today, as I have told my membership for the past two years that the continuing revitalization of immigration law enforcement is one of our highest priorities.

As National President of FLEOA, I represent many of the outstanding men and women who enforce our Nation's immigration laws. These men and women risk their lives every day in an ever-increasingly dangerous line of work. In fact, in early July , the first female Border Patrol agent was slain along with a male trainee Patrol agent while attempting to arrest a deranged murderer in San Benito, Texas. Ironically, the INS has yet to implement a key provision of the Immigration Act of 1990 (IMMACT) that would provide general arrest authority to extend protection against legal liability to INS officers in such very situations. That is correct, I said 1990! This tragic anecdote is not a mere criticism of the status quo but rather an indictment. I offer this by way of example of the total inefficiencies of that current bureaucracy. In essence, the work environment for immigration law enforcement has changed drastically; the statutory mandates as well as funding for immigration law enforcement have similarly undergone dramatic changes but yet the INS remains stagnant, at best and highly resistant to those very changes.

The INS representation in FLEOA derives primarily from three organizational divisions: Investigations, Detention & Deportation, and the Border Patrol. These three, along with the Inspections and Intelligence Divisions, represent the enforcement components of the INS. I would ask that you keep them, and the complex bureaucratic framework in which they operate, at the forefront of your thoughts because I believe this is the essence of both the present problem and its potential solution.

I read, with interest, your statements, Mr. Chairman, in The New York Times on January 17, 1997. At that time, you outlined your priorities for the Immigration Subcommittee when addressing the Cypress Semiconductor Corporation in San Jose, California. I could not agree more that it makes "little sense to have a single agency, the Immigration and Naturalization Service, responsible for keeping out illegal immigrants and, at the same time letting in legal immigrants and refugees". Furthermore, you then suggested splitting the INS into two agencies. In August of 1997, The New York Times again quoted you as saying "We should consider splitting the INS up into one law enforcement agency and one legal immigration agency to increase the efficiency of both".

On March 31, 1998, the Honorable Harold Rogers questioned INS Commissioner Meissner regarding the current recommendations for restructuring by Booz-Allen and stated, "Did you look at two different agencies within Justice to achieve on one hand, enforcement; on the other hand, service matters?" Mr. Rogers went on to point out the systemic formula for failure that even the Booz-Allen study would perpetuate when he stated, "There is an inherent conflict with having this all in one agency ... Even though you may have two separate chains of command, it eventually winds up on your desk.'" Mr. Rogers echoed the concerns of both the Republican and Democratic leadership in concluding that the INS had collapsed under the weight of its dual conflicting missions: service and enforcement. Immigrants who apply to become citizens wait up to two years in large cities. The INS deports 112,000 illegal immigrants a year, fewer than half the 275,000 who enter illegally each year or stay after their visas expire.

Representative Rogers captured the essence of the problem in stating "The missions and jobs they're charged with are too big and too important to be botched, and that's what they've done, botched their job".

It is apparent that there is a broad, bipartisan consensus in Washington for the clear separation of immigration law enforcement from benefit disbursement. There has also been a wide spectrum of thought on how best to attack this extremely important problem. Sentiment runs the gamut from the Commission on Immigration Reform (CIR) endorsement of piece-mealing out different functions to State and Labor to affording INS more time to get its house in order with the internal separation recommended by Booz-Allen. I would submit to this Body today that the citizens and the country cannot afford any further delay in rectifying this problem.

FLEOA feels strongly that the solution lies in the middle of that spectrum. As I travel to the numerous FLEOA chapters throughout the country, the topic most on the minds of the more than 600 beleaguered INS special agents who currently belong to FLEOA is the urgent need for a substantive and dynamic reorganization of the immigration law enforcement mission. Immigration law enforcement must be both professionalized and depoliticized. Two separate bureaus within Justice for immigration enforcement and benefit disbursement will provide the essential specialization to resolve "mission overload". At the same time, enforcement and service will have the requisite communication and coordination through oversight by the Justice Department. This will avoid a constant budget battle between the totally different, but equally important, missions of enforcement and service. In addition, law enforcement management officials will not be in a position of influencing benefit decisions and vice-versa, thereby eliminating the possibility of a "tilt" in emphasis by a single administrator or top agency management toward, or against, either function.

WHAT SHOULD IMMIGRATION ENFORCEMENT DO WELL

A 1991 General Accounting Office (GAO) General Management Report entitled Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems, identified changes in the evolving INS enforcement mission. The report noted, "During this period INS saw its enforcement mission evolve from one aimed primarily at interdicting aliens at or near the border to one with increased emphasis on investigative work and drug interdiction." GAO recommended the consolidation of " ... all field enforcement functions, including

Border Patrol and District enforcement functions under a single official within a geographic area."

The consolidation of enforcement functions will not only alleviate the problem of overlapping enforcement programs, but will enhance the ability to maintain consistent service and enforcement postures throughout the United States. The variances in District Office policies relating to service functions should be greatly reduced when District Directors are relieved of the responsibility of carrying out simultaneous enforcement efforts.

Enforcement efforts will be more uniform in application, and the overlapping functions of the Border Patrol and Investigations can be substantially reduced or eliminated altogether. This can be accomplished through development of Enforcement Sectors and the integration of enforcement components within that structure.

ENFORCEMENT SECTOR COMPONENTS:

The establishment of integrated sub-units at the field level would ensure an appropriate level of specialization while maintaining flexibility, and would facilitate a cooperative and balanced approach. Frankly, the establishment of a Chief Enforcement Officer who supervises all enforcement components in a particular field enforcement sector and reports to the Bureau of Immigration Enforcement Headquarters Director, is an idea whose time has come. This concept begs for congressional attention. It is needed to overcome the inefficient and incredibly confusing status quo – or even the half-steps that are envisioned under an internal benefits-versus-enforcement split within INS.

BORDER PATROL:

The Border Patrol is the largest enforcement component within INS, with considerable growth in the recent past to approximately 8,000 agents on duty. The INS is now the largest federal agent force at 12,403 total immigration officers, with more armed agents than either the Bureau of Prisons or the FBI. The Border Patrol has accounted for roughly two-thirds of that fiscal growth.

The traditional responsibility of the Border Patrol is patrolling the border between ports of entry. In recent years, the span of Border Patrol activities has extended to include drug interdiction and tactical operations. Under the new immigration law enforcement bureau concept, a Deputy Chief for Border Patrol Operations would report to the Chief within a respective Enforcement Sector.

INVESTIGATIONS:

The Investigations Division is the general and criminal investigative arm of the "Enforcement Sector," and should be responsible for all complex, protracted investigative activities. It is FLEOA's recommendation that the Investigations component operate in a manner similar to that of most major federal investigative agencies and detective bureaus. Investigative activities should place more emphasis on proactive criminal investigations in the following functional areas: anti-smuggling, benefit application fraud, document fraud, "sensible" worksite enforcement, and participation in multi-agency task forces including OCDETF, Joint Terrorism Task Forces, Violent Gang Task Forces, and INS-led Community Based Criminal Alien Task Forces. This division would be overseen by a Deputy Chief for Investigative Operations, reporting to the Chief of the Enforcement Sector.

The Investigations Division employs approximately 2,000 special agents today for the entire interior of the United States. The Administration, itself, estimates that for every one alien apprehended by the Patrol, two get through and that approximately 42% of the current 5,000,000 illegal alien population entered the country with a valid visa and simply overstayed that visa. Budget increases for the Division under the Administration's priority emphasis on immigration have been modest, by anyone's standards. While the aforementioned increase in INS Border Patrol positions was appropriated and paid for by the Congress -- the same was not true for increases for the Investigations Division. The addition of 1,200 special agents under the Illegal

Immigration and Immigrant Responsibility Act (IIRAIRA) of 1996, (300 visa overstayer Special Agents / investigators in FY 1997 -- 300 anti-smuggling and employer sanctions Special Agents / investigators in FY 1997, FY 1998 and FY 1999) was authorized but not appropriated for by the Congress. In short, no agents at all.

Congress must begin to strike a balance between enforcement on our borders and enforcement in the interior. A total focus on the first line of defense will lead to only a hollow victory with word of mouth rapidly travelling back to the source countries that one must merely make it across the border in order to attain this new form of unsanctioned amnesty.

Prompted by a current estimate of 5,000,000 illegal aliens in the country, The Wall Street Journal wrote that "immigration is becoming an issue deep in America's heartland as legal and illegal immigrants are pulled well beyond the border areas in search of employment." The article illustrated one of the most frequently traveled routes used by alien smugglers -- I-80 from the California coast through the Mid-West and on to Chicago. An analysis of that route reveals the shortage of INS criminal investigators in the interior states through which that route passes:

*Nevada - eleven special agents

*Utah - six special agents

*Wyoming - one special agent

*Nebraska - fourteen special agents

*Indiana - four special agents

While it is true that California and Illinois have relatively large contingents of INS Special Agents, even those numbers are insufficient to cope with a problem of this magnitude. The latest Census Bureau figures list 1,875,000 illegals in California or 4,630 per agent. In order to be effective, it is necessary that immigration law enforcement be comprehensive and balanced.

Pursuant to a directive by the Subcommittee on Commerce, Justice, State and Judiciary of the House Appropriations Committee, the INS is developing a long overdue comprehensive, mission-oriented integrated interior enforcement strategy that, together with its border control strategy, would effectively determine the application of enforcement priorities and resources throughout the United States. The required report was due on April 1, 1998 and has still not been received due to tinkering by an INS political appointee who has no law enforcement background. That strategy would focus around an integrated effort to deter and remove unlawful presence and unlawful activities in the United States. The mission would be achieved by prioritizing operational activities. For example, "sensible" worksite enforcement should and would be tied into the current anti-smuggling strategy that targets notorious and/or abusive employers who contract for smuggling loads with identified criminal syndicates. This is a common sense approach to create a deterrent effect through successful criminal prosecutions of the most egregious violators. In the weighing contest with the current extremely limited interior resources, it is evident that those resources should be utilized first and foremost against criminal aliens and other criminal violators of the Immigration and Nationality Act (INA),

DETENTION / DEPORTATION:

The Detention / Deportation component is responsible for the care and custody of the alien population detained by the Enforcement Sector; it is responsible for managing the alien docket and bond control, and for arranging removal of aliens from the United States. FLEOA believes that this component should also be responsible for the processing and removal of all foreign nationals incarcerated in federal, state, and local correctional institutions or jails. The Deputy Chief for Detention and Deportation Operations would oversee this unit, and would report to the Chief Enforcement Officer.

INSPECTIONS:

The Inspections component is responsible for the inspection of applicants seeking admission to the United States at air, land and sea ports of entry. The Inspections Division facilitates an integrated approach to border management and promotes cooperation with other inspectional agencies such as the Customs and Public

Health Services. As with the others, the Deputy Chief for Inspections Operations would report to the CEO.

INTELLIGENCE:

The Intelligence component within the Enforcement Sector should play an integral role in support of the other enforcement components. Intelligence officers should be integrated into each field enforcement component unit. The Deputy Chief for Intelligence and staff would be responsible for the collection of information, analysis of information, and reporting of intelligence product upward through the organization and outward to other components. The Deputy Chief would also serve as a primary liaison point with the Directors of Adjudications Service Centers, Directors of Asylum Offices, and any enforcement units remotely posted to the field benefits offices, adjudications service centers or asylum offices, to assist in their anti-fraud efforts. The Deputy Chief for Intelligence Operations would report to the CEO.

Mr. Chairman, I would respectfully submit that upon creation of the stand-alone enforcement bureau, it is not necessary to reinvent the wheel but merely adopt tried and true successful practices of modern day law enforcement entities. For example, virtually all municipal, county and state law enforcement organizations of significant size are composed of distinct investigative and patrol divisions -- the Los Angeles County Sheriff's Office provides an excellent example of a well respected law enforcement organization that centralizes command and control over the divergent functions of patrol, investigations and detention. Even the Royal Canadian Mounted Police (RCMP), although operating in a different national and enforcement environment, is structured similarly at the national and field level.

Implementation of Enforcement Sectors would facilitate a cooperative and balanced approach to enforcement of our nation's immigration laws. In turn, you will then begin to see the accountability and productivity that our citizens not only deserve but are demanding of immigration enforcement.

THE STEPCHILD OF JUSTICE

For many years, the INS was derisively referred to as a stepchild within the Department of Justice. In the 1980s, a Main Justice official told The Washington Post that the Department had "no idea what they do over there" -- a reference to the physical distance between the Main Justice Building and the INS Headquarters in Washington, D.C. More importantly, this aside expressed the apathy and perhaps disdain with which many prior Administrations regarded the immigration issue. All that has changed and the Main Justice bureaucracy must change at the same time that the independent immigration enforcement bureau is created through legislation.

On May 21, 1998, I testified before the House Subcommittee on Immigration and Claims regarding this same topic of reorganization. At that time, I was joined on the panel by Dr. Demetrios G. Papademetriou of the Carnegie Endowment for International Peace. I would like to compliment Dr. Papademetriou for his scholarly testimony on that date and strongly urge this Subcommittee to further legislate one of his suggestions -- namely, to "Elevate the Function Within the Department of Justice".

Dr. Papademetriou's written testimony stated, in part, "The INS is in but not really of the Department of Justice. Traditionally, the Department has exercised supervisory authority over the INS, but frequently it has ignored the agency's day-to-day functioning unless an issue has hit the front page of the newspapers or has come to the attention of a congressional office. More importantly, there is no office at the Justice Department specifically charged with immigration policy development.

This uneasy bureaucratic relationship does not well serve the formulation and implementation of immigration policy. The Department of Justice clearly has the clout to serve as a major forum for policymaking, but it rarely exercises such authority. The office of the INS Commissioner does not occupy a position high enough in the Executive Branch to fill such a role effectively -- the Commissioner ranks at about the Assistant Attorney General level. (And although the INS is now larger than the FBI, both in terms of personnel and budget, the Commissioner has a lower rank than the FBI Director.)"

Mr. Chairman, FLEOA strongly endorses Dr. Papademetriou's recommendation to elevate "the immigration function within the Department of Justice through the creation of an Office of Associate Attorney General for Immigration (AAGI). The AAGI would be charged with the formulation of immigration policy and also the supervision of immigration enforcement and service functions... The Executive Office for Immigration Review and the Office of Immigration Litigation also would report to the Attorney General through the AAGI, thereby combining oversight of all the department's immigration functions within one office."

Mr. Chairman, FLEOA strongly urges Congress, through the appropriate Subcommittees, to examine and then to adopt into legislation, the above recommendations for a meaningful reorganization of the INS. INS District Directors face severe pressure to provide services for aliens, and when confronted with inadequate resources, have frequently used enforcement agents as a labor pool to perform non-enforcement duties. This practice has continued for over twenty years and shows no signs today of diminishing. We believe that diversion damages the professional image of immigration law enforcement officers, it diminishes their capacity to provide assistance to other federal, state and local law enforcement agencies and the communities they serve, and it fails to provide protection for our society at large.

INS , as did the IRS until very recently, struggles under an obsolete and confused organizational structure. Without the creation of a distinct bureau for immigration law enforcement with the requisite federal law enforcement chain of command, it is unlikely that the legislative innovations passed by the 104th Congress in 1996 will ever be used to their full potential. Only through streamlining the bureaucracy, overcoming institutional inertia, and establishing balance through a separation of functions, can modern day immigration law enforcement be successful.

The separation of immigration benefit disbursement from law enforcement would allow immigration agents in the interior and on the border to focus solely on enforcement activities, in accordance with a standard federal law enforcement chain of command. Repeated headlines in newspapers throughout the country on alien smuggling, foreign narcotics trafficking and international terrorism demonstrate that our nation cannot afford anything less. I ask this Subcommittee to do everything within its power to effect this change for the good of our nation and the preservation of the world's most generous system of legal immigration. The creation of a new Bureau of Immigration Enforcement will allow this to pass.

On behalf of FLEOA, and the many dedicated men and women who risk their lives enforcing our immigration laws, I appreciate your time and attention, and the opportunity to share our views. Thank you.

TESTIMONY OF

RON SANDERS
CHIEF PATROL AGENT
TUCSON SECTOR

BEHALF OF
CHIEF PATROL AGENT'S ASSOCIATION

BEFORE THE

SUBCOMMITTEE ON IMMIGRATION
COMMITTEE ON THE JUDICIARY
U.S. SENATE

CONCERNS

INS REFORM: THE ENFORCEMENT SIDE

JULY 29, 1998
226 DIRKSEN SENATE OFFICE BUILDING
2:OOPM

Good afternoon Mr. Chairman and distinguished members of the Senate Subcommittee on Immigration. I appreciate the opportunity to share with you the views of the membership of the United States Border Patrol Chief Patrol Agent's Association. The Association consists of 160 top field managers and collectively has more than 3,000 years of experience in dealing with Border Enforcement issues.

Accomplishments

During the past couple of years, Congress has given us part of the resources that we need to enforce the immigration laws of this country. We have developed a long-term strategy to deal with the enforcement issues on the Southern Border and have enjoyed success with operations such as "Hold the Line" in El Paso, Texas and "Operation Gate Keeper" in San Diego, California. We have cloned these successful operations and expanded them to other areas of the border including Arizona.

So far this fiscal year the Tucson Sector has arrested 287,511 illegal aliens (Exhibit 1). Since Fiscal Year 1994 we have arrested 1,320,559 illegal aliens in the Tucson Sector (Exhibit 2). Based on past performance, it is anticipated that the Tucson Sector will make 383,000 arrests during Fiscal Year 1998 (Exhibit 3).

Our agents often times arrest groups of 50 to 100 aliens while working alone in remote locations. If 50 to 100 arrests were attempted by local police in a metropolitan area, the situation would probably be referred to as a "mob" or a "riot." The job is becoming more dangerous each year and three of our officers have been murdered during the past two months.

After receiving additional resources in Arizona, we witnessed a decline in crime in the border cities. We have also been able to provide law enforcement to the rural farms and ranches in the area that depend on us to prevent drug smuggling, property damage, and provide a safe environment for the families to conduct the day-to-day activities associated with the raising of crops and livestock.

<u>What Needs To Be Done</u>

I believe we need to do a better job with interior enforcement. We need to ensure that illegal immigrants detained by local police are not released as a result of INS agents not being able to take custody of the detainees. By providing adequate coverage to certain choke points in the Midwest, we can significantly disrupt illegal immigrant traffic. We need to tie the Northern Border into the activities of the Southern Border and provide them with the necessary staffing to do their job.

We need to look at structural inefficiencies and duplications of effort that hamper us from doing effective law enforcement work. The Regional structure at INS makes this difficult because it lengthens the lines of communications and fosters duplication of effort. Other programs, such as our anti-smuggling programs, are duplicated at the District level. The Office of Internal Audit is duplicated at the Office of Inspector General level. Delegations of authority should be accomplished down to the lowest level to ensure that enforcement and administrative actions are being taken in a timely matter.

Having the Border Patrol Training Academy report directly to the Chief of the Border Patrol would result in several operational benefits and enhance effectiveness. It would shorten lines of communications, improve administration and budget requirements, ensure that the training program meets operational commanders' needs, allow for the more rapid integration of new technologies, and ensure that the Academy receives improved management support. At the present time, the field is responsible for utilizing its resources to staff the Academy on a detail basis and this hurts the field and the Academy. It takes the resources that we need to accomplish our law enforcement activities out of the field and it does not provide the permanent instructors needed by the Academy.

The law enforcement and criminal justice systems in our border counties are overburdened with the impact of criminal illegal aliens. The same problems relate to state-mandated health care and criminal justice programs. State and local officials must take measures that are costly to local taxpayers in order to continue financing services for criminal illegal aliens. In many cases they are forced to raise property taxes and sales taxes to pay for the necessary services.

I believe the Federal Government should do more to relieve the burden placed on local governments by illegal aliens. I believe Congress should establish "high impact illegal alien areas" and provide funds to these areas. These funds would be managed by an Executive Partnership Committee made up of federal, state, and local law enforcement officials. This cooperative effort would ensure that funds are spent to meet the needs of the local communities in dealing with the illegal alien problem.

The Border Patrol should have the statutory authority to prevent the unlawful importation of narcotics into the United States and the statutory authority to confiscate such narcotics. If we prevent the drugs from crossing our borders, we will be successful in keeping drugs out of the schools in America. At the present time we are operating under delegated authority. Over 70 percent of illegal drug trafficking takes place on the Southwest Border. In the state of Arizona, the Border Patrol seizes 52 percent of all drugs confiscated by all agencies (federal and state). During the past four years, the Tucson Sector seized

685,428 pounds of marijuana (Exhibit 4) valued at almost one billion dollars (Exhibit 5). The Border Patrol agents are on average, three grades lower than those of other agencies and are in effect the front line on the war on drugs without the grade structure and the statutory authority to deal with the problem. The Chief Patrol Agents are also some of the lowest-graded positions in the government when compared to other field managers in INS and in other agencies. The "Border Protection and Infrastructure Act of 1998" (HR 3858) introduced by Rep. Duncan Hunter (R-CA) corrects some of the problems dealing with the statutory authority issue, however, the grade structure problems appear to have no solution in the near future.

Once illegal aliens enter the United States, many of them assume a false identity so that they can work, collect social benefits, go to tax supported schools, vote, etc. False documents are a big problem in this country and identity theft is one of the nation's fastest growing financial crimes. Senator Kyl has authored federal legislation that would make the theft of someone's identity a crime. This bill is called "The Theft and Assumption Deterrence Act of 1997". We believe this is an enforcement tool that will benefit many law enforcement agencies.

Allowing illegal immigration to go unchecked can have some severe consequences for the American people. The gap between Arizona's rich and poor is widening faster than any other state.

The poorest 20 percent of Arizona families earned an average annual income of $9,339 from 1994-96, compared with $113,920 for the top 20 percent, (According to the Corporation for Enterprise Development, a Washington, D.C. based research group). This means the wealthiest one-fifth of Arizonans earned 12 times more than those in the bottom 20 percent. Arizona, New Mexico, California, and Texas all share a border with Mexico and all have widening income gaps because illegal aliens are willing to work for lower wages with no benefits and this places a downward pressure on average salaries, particularly among our legal residents that are unskilled laborers. If this trend continues, the gap between the rich and the poor will resemble that of third world countries.

Illegal immigration has a major impact on the census, the distribution of federal funds, and the distribution of the 435 U.S. Representatives allocated to the states based on their percentage of the overall population. Because of a lack of enforcement in certain parts of the country, the illegal alien population has increased. The large increase in illegal aliens in California, Texas, and Florida will result in these states becoming big winners in the next census. States like Iowa, Kansas, and Indiana could be the big losers as some of their representatives may be lost and allocated to states with large illegal alien populations. It seems ironic that people in this country in violation of the law can be counted to increase representatives in a certain part of the country.

Conclusion

Mr. Chairman, the agents of the United States Border Patrol are proud to be serving their country and we believe that we are doing a job that needs to be done. Thank you for allowing me the opportunity to appear before you today.

Border Patrol Apprehensions on the Southwest Border

October 1997 thru June 1998

Source: INS G-23.13 Line400

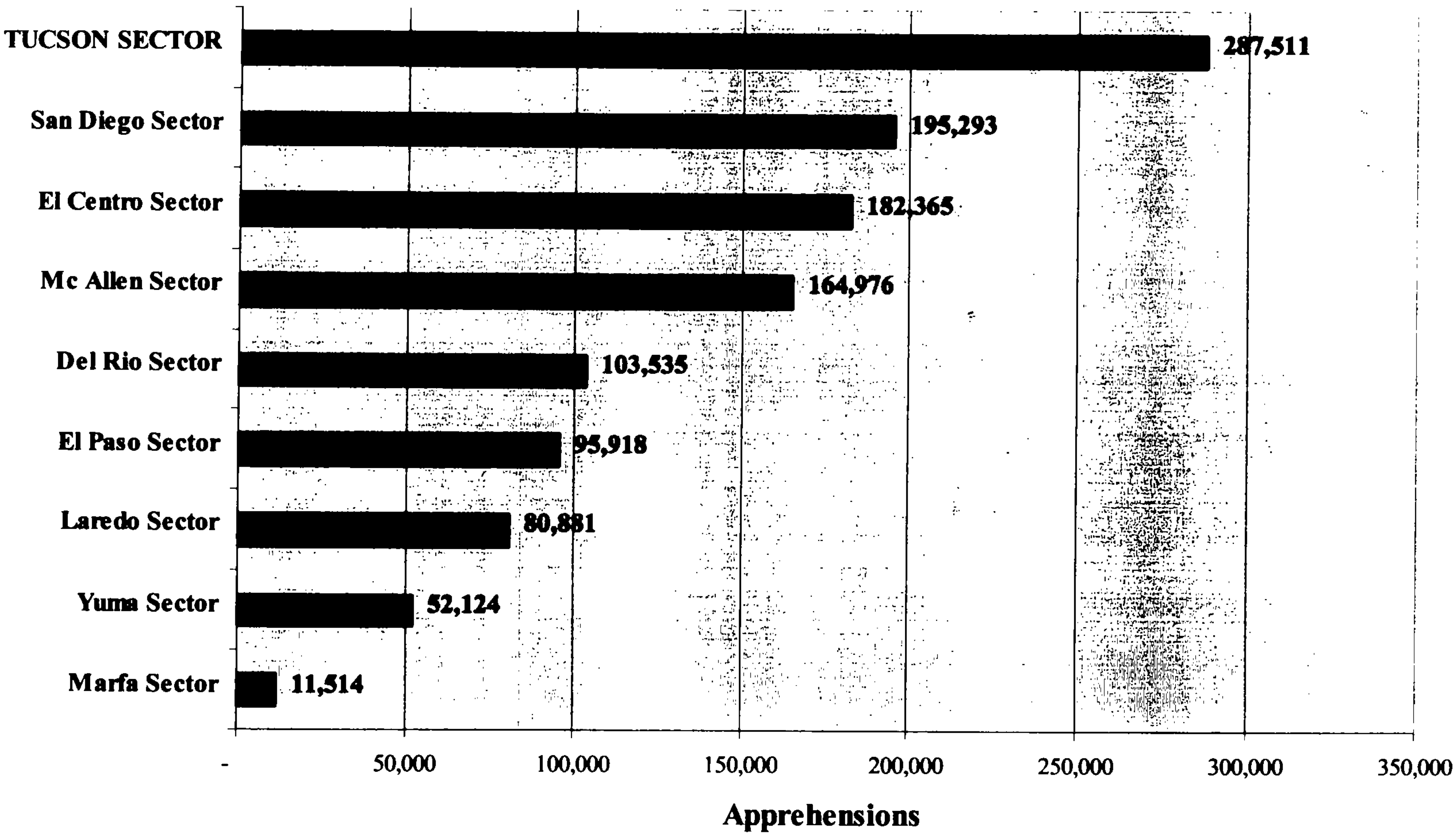
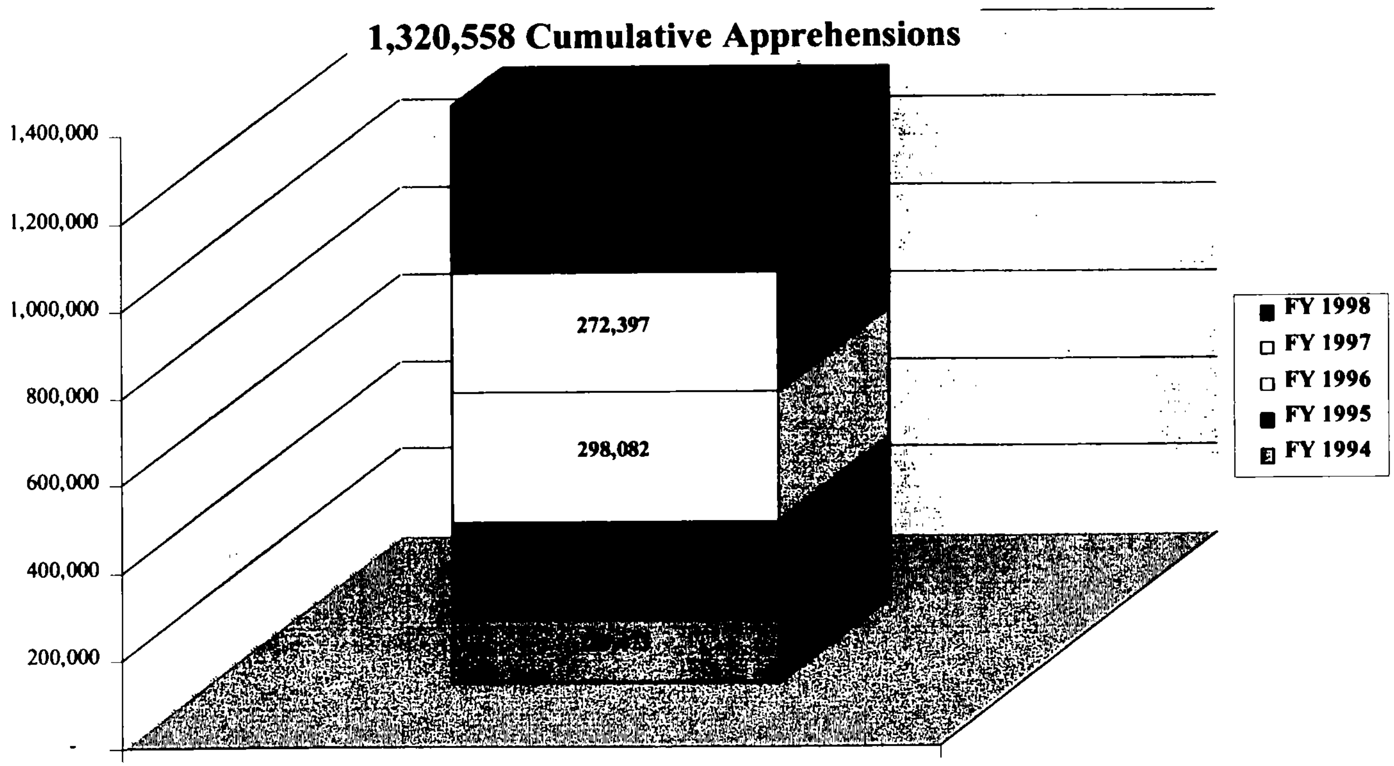


Exhibit 1

Tucson Border Patrol Sector

1,320,558 Apprehensions Since 1994



Source: G23.13 Line 400 FY 1998 is estimated from 9 months of data.

Exhibit 2

Tucson Border Patrol Sector Apprehensions

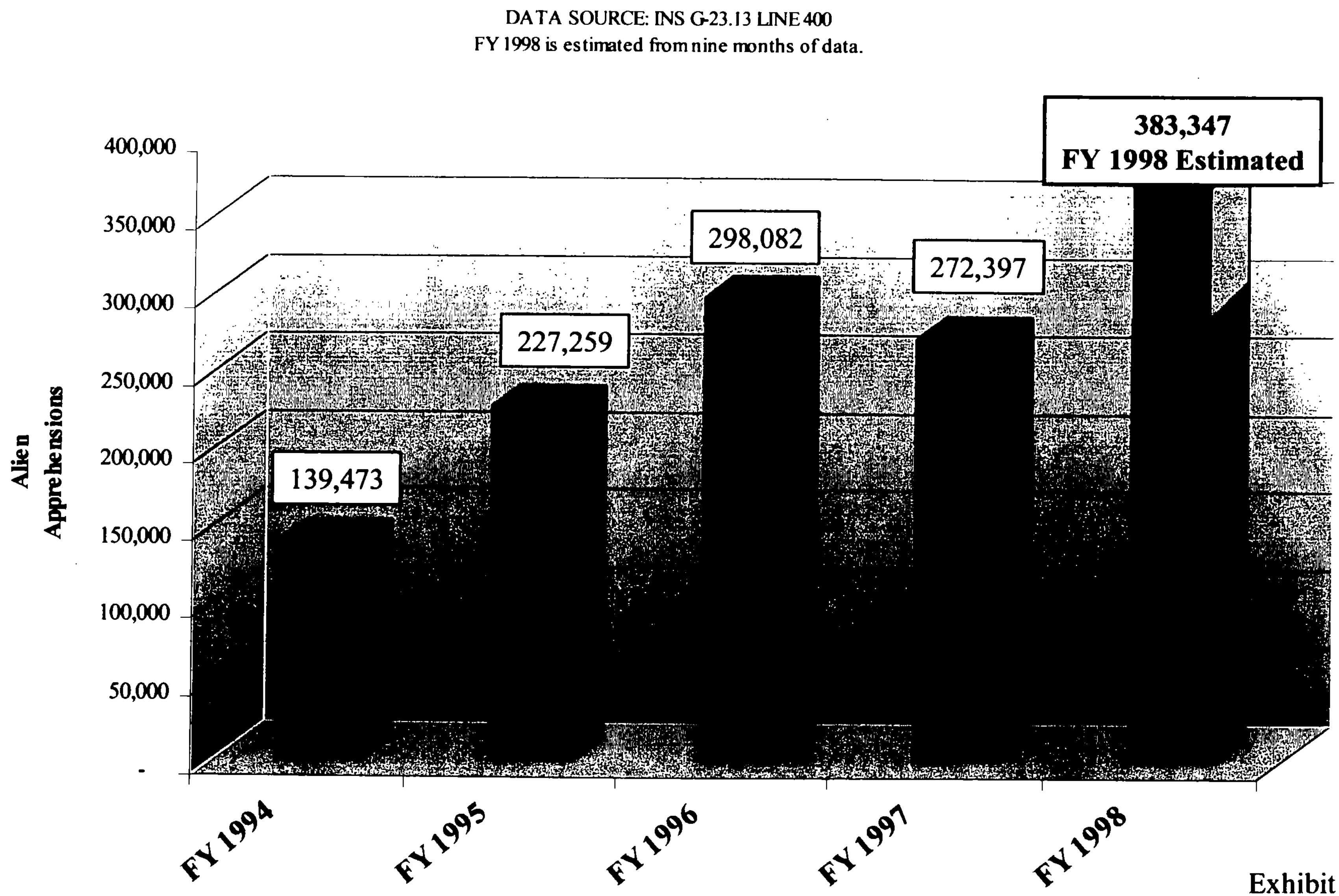


Exhibit 3

Tucson Border Patrol Sector

685,428 Pounds of Marijuana Seized from FY 1994 thru FY 1998

Source: G-623 FY 1998 is an estimate based upon nine months of data.

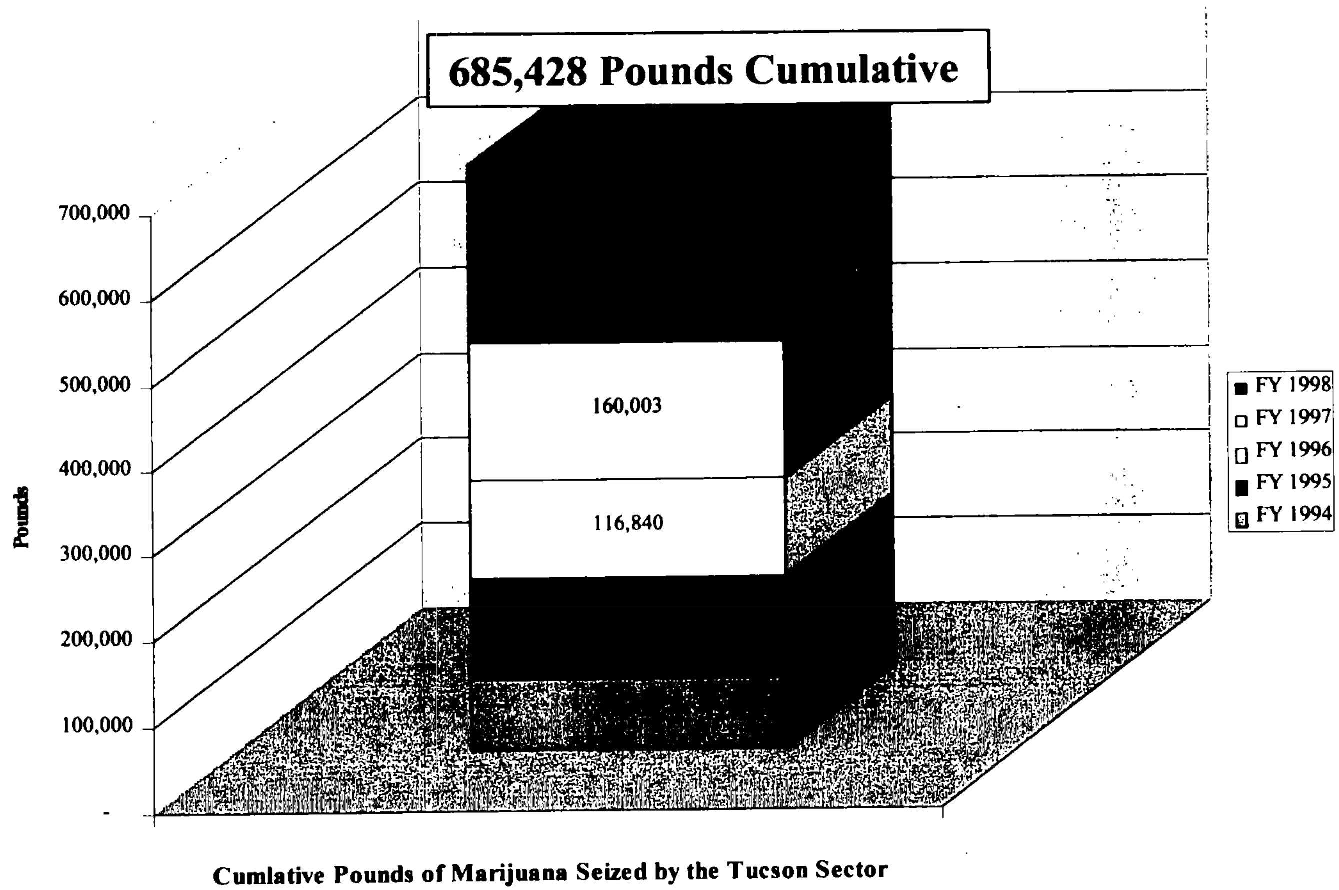
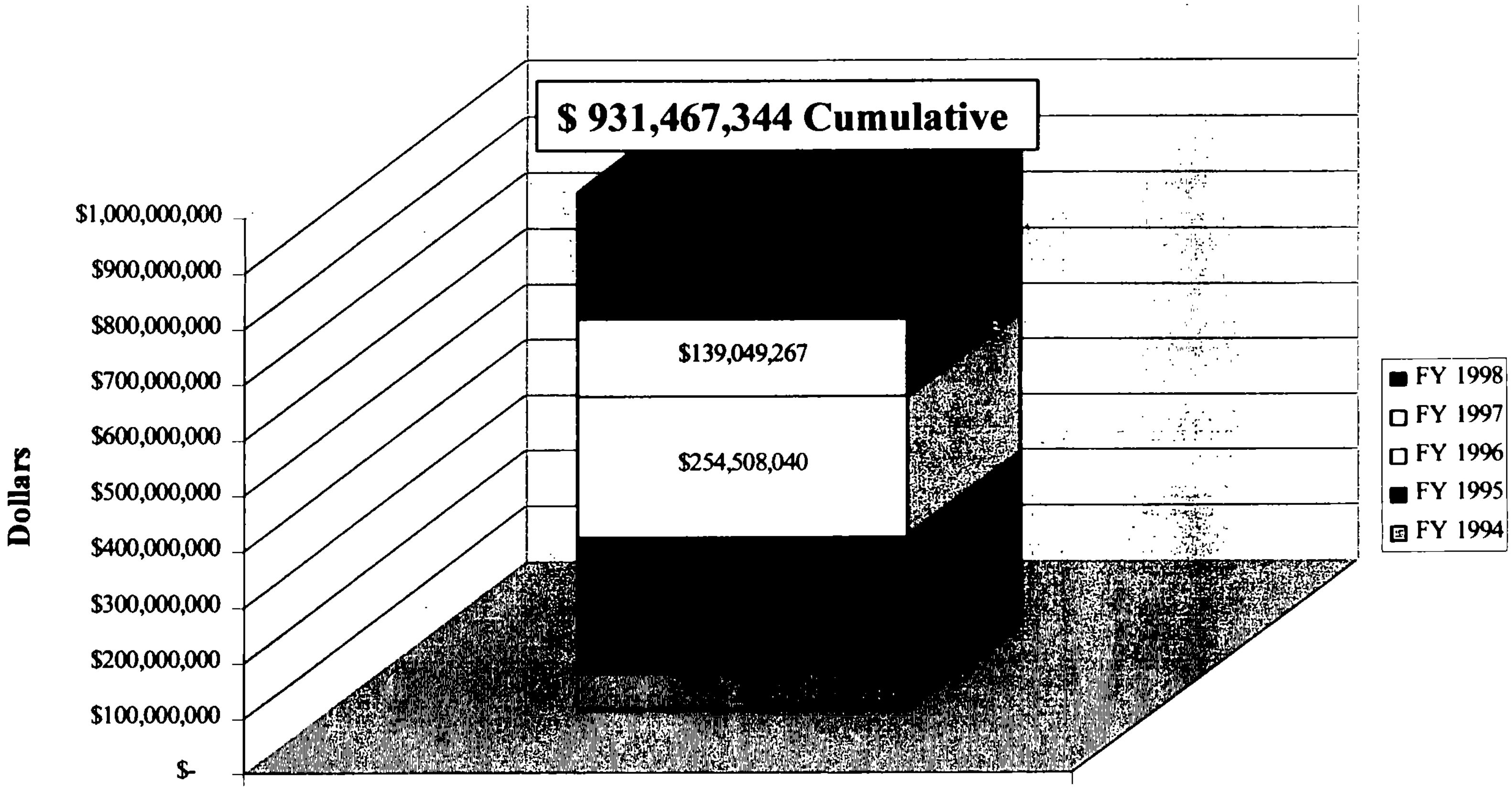


Exhibit 4

Tucson Border Patrol Sector

Cumulative Narcotics Seizures Equate to Approximately $930,000,000 from FY 1994 thru FY 1998

Source: G-623 FY 1998 is an estimate based upon nine months of data.



Cumlative Dollar Value of All Narcotics Seized by the Tucson Sector

Exhibit 5

AMERICAN IMMIGRATION LAWYERS ASSOCIATION
AN AFFILIATED ORGANIZATION OF THE AMERICAN BAR ASSOCIATION

STATEMENT OF
MARGARET H. MCCORMICK, PRESIDENT
AMERICAN IMMIGRATION LAWYERS ASSOCIATION

ON
THE U.S. IMMIGRATION AND NATURALIZATION SERVICE
AND ITS PROVISION OF SERVICES

BEFORE THE
IMMIGRATION SUBCOMMITTEE
JUDICIARY COMMITTEE
UNITED STATES SENATE

June 11, 1998

An Affiliated Organization of the American Bar Association
National Office • 1400 Eye Street, NW • Suite 1200 • Washington, DC 20005 • (202) 371-9377 • FAX (202) 371-9449

Mr. Chairman, Distinguished Members of the Subcommittee:

My name is Peggy McCormick, and I am pleased to be here today to testify on the ability of the Immigration and Naturalization Service to provide services to the thousands of deserving immigrants, visitors, and intending citizens each year. I will summarize AILA's views briefly and ask that my remarks be submitted in their entirety for the record.

I. Introduction

I am honored to be here today in my capacity as President of the American Immigration Lawyers Association, a bar association of over 5,000 attorneys who represent the entire spectrum of applicants for immigration services. We appreciate this opportunity to present AILA's views concerning the current framework of the Service and its ability to provide immigration services to its clients. We are perhaps the one group of people who can give you a sense of the magnitude of the challenges facing the INS today as it struggles to accommodate growing numbers of people seeking to come to or remain in this country. We see the entire picture—at the local, regional and national levels; for employers seeking to obtain needed workers, for families attempting to reunite with loved ones, for asylum seekers fleeing persecution, and others who must deal with the agency.

I am not here today to make open season on the INS. The agency makes a serious effort to meet what can only be called a schizophrenic mission with the limited resources that are available to it, particularly in its service functions. There are many dedicated individuals, from Commissioner Meissner down to the lowest clerks, who work to meet the agency's goal of providing services efficiently and fairly. However, this is at best a limited effectiveness, and continues to grow more and more strained, as more people enter the system to obtain immigrant benefits. Furthermore, recent legislative changes, inconsistent mandates in service and enforcement, and growing delays in Congressional reprogramming needed funds have strained the Service's abilities and test its infrastructure.

While the agency has struggled to fulfill its mandate in response to the increasing challenges, its ability to do so within the status quo must be reexamined. The quick fixes the agency has been able to implement are insufficient given the increasing burdens. In fact, such fixes only serve to emphasize the need to thoughtfully reexamine the agency's role and structure. AILA thus welcomes this hearing and commends this Subcommittee's measured and balanced approach to the issue.

Our association has been examining the INS's dual and schizophrenic role of service and enforcement. We recognized as early as 1989 that these functions were incompatible and needed greater separation. This past year, in light of the Commission on Immigration Reform's recommendation to this body that the functions be dismantled and scattered throughout the government, we reexamined the issue in depth. We disagreed with the Commission and are recommending a new and independent agency, with Cabinet-level access that would combine all immigration functions now at the INS and at other agencies. We also recommend that the agency functions not be scattered, but be separated into service and enforcement components under one roof, each with a clear mission and goals.

AILA's examination of the separation of functions has been based on the view that the Service and -- to the extent necessary -- Congress must recognize that the service functions of the agency need to be given the same authority and resources that the enforcement functions have been given. The unequal distribution of agency resources is, we believe, the root of the problem of the current organization. That the provision of services appears as an afterthought to the agency is reflected in many aspects of the agency's functions: from its management structure to its career development paths, from its allocation of resources to the substantive policies that emphasize enforcement protections. Any changes undertaken by the agency or by its Congressional authorizers must first remedy this essential inequity in order to accomplish anything more than the status quo.

AILA believes strongly that certain goals (explained further in the attachment to this testimony) must be incorporated in any restructuring of the agency from its current framework:

- The agency needs to incorporate a customer service orientation, defining customer service goals, rewarding employees who meet those goals and not rewarding those who do not.
- The services bureaucracy of the agency must be implement those customer service goals.
- Finally, it needs to include improved communication at all levels so that policies will be consistently applied.

II. AILA's Recommendations for Meeting the Basic Goal of Service

A. The INS must become a customer service organization.

1. Customer service goals must be incorporated into agency functions.

We believe that the first step the agency needs to undertake to successfully provide services is to become a customer service organization. To that end, the Service must incorporate customer service principles and goals into its functions at every level -- from the attitude of its intake personnel to the accountability of its top management. A customer service orientation must infiltrate the agency's service providers.

The primary goal of the INS's service delivery should be that the product of the service delivery-- the adjudication of a request for an immigration-related benefit -- be timely. This is the only way for a service organization to meets its primary function effectively. Reasonable production time goals must be incorporated and adhered to. If you are a large Midwestern university and need to hire a foreign professor to teach a class, for example, and the commencement date of that class comes and goes, but the professor cannot come into this country because the INS has not been able to adjudicate his request to enter and work for you, your need can no longer be met, and there is no point in the INS providing the adjudication.

The very mentality of the Service, at least of the side that provides immigration benefits, should be one of service. Many times the INS is conflicted within itself not because of the law, but because of its own actions in interpreting that law, that require it to take an enforcement stance. This activity causes the agency to needlessly engage in additional enforcement activity that could be avoided. The necessity of obtaining advance parole for applicants seeking adjustment who need to leave and reenter the United States during the application process is but one example of a situation where the INS injects enforcement requirements on those who reasonably seek benefits, creating more work for the agency where it should not exist, and unfairly and permanently penalizing those unaware of its necessity.

2. Resources -- human resources as well as monetary -- must be adequate.

In order to be able to adjudicate applications in a timely fashion, the agency requires an adequate allocation of resources, from human resources to infrastructure. This is an area where improvement cannot come too soon. Naturalization is only the most recent and extreme example of the difficulty the agency is experiencing under its current structure and resource allocation to adequately process the mounting stacks of applications. In this regard, the agency is in crisis mode at all times. When it responds to pressure to reduce backlogs in one area of its adjudications, the most recent being naturalization, it must do so at the expense of its other adjudications responsibilities. Indeed, the agency's current focus on naturalization has led to increasing backlogs in other areas, such as adjustments of status to permanent residence, employment authorizations, and nonimmigrant petitions.

In addition, the agency's most precious resource – its human element – must be provided in sufficient quantity and quality to perform its activities properly. Human resources must be maintained at a professional level, retaining sufficient flexibility to be responsive to need. There must be sufficient autonomy and training at the adjudications level to deploy personnel where needed, whether to meet geographic shifts in benefits applications or shifts in subject matter. In other words, there should be sufficient flexibility among INS personnel to meet increased demand from city to city, or from type of application filed.

In turn, in order for the financial resources to be adequate to its needs, at minimum, the fees that are collected on immigration service delivery should be spent on that function. The funds that are collected as user fees, which are meant for adjudicating petitions, should be retained by the service providers to perform that function. They should not be made available for enforcement functions, but should be devoted to that activity to which those seeking the services entrust them and for which they have paid. Currently, the examinations fees that are collected are used not only to finance application adjudications but also for other activities, such as removal proceedings, and even consulting contracts on reworking the agency's activities, that would be more appropriately funded by Congress. This practice serves to drive down the importance of the services side of the agency and accelerates the call for fee increases. Ending this sharing of fees would also go a long way toward keeping fees reasonable and affordable by the public who must pay for them.

3. Procedures need to be standardized.

No less important is the need to standardize the procedures used in adjudicating benefits. INS makes heroic efforts under its current strained structure to ensure that its adjudications efforts are uniform and consistent. In particular, the adjudication of applications by the four Regional

Service Centers generally apply consistent guidelines and standard procedures that are reasonable and correspond to the relevant regulations.

Unfortunately, in some respects the INS misses opportunities to further this goal in any but the simplest of cases. For example, the initial adjudication of an application for adjustment of status, as an application for permanent residence status filed in the U.S. is called, is conducted at one of the Service's Service Centers. The centers have consistent standard operating procedures to adjudicate applications such as this, to determine the applicant's eligibility. These adjudications are undertaken by officers whose primary role is the determination of eligibility for benefits, and who are well versed in the law and its implementive criteria.

However, under current Service practice, in many cases a personal interview, which takes place at a local district office, is also required. In the context of the interview, the application is typically readjudicated to redetermine eligibility. Only this time, an adjudications officer who does not necessarily know or choose to apply those same standards undertakes review of the application. That adjudications officer, moreover, has spent much of his or her career in enforcement situations, questioning the credibility of applicants. This result in duplicative and sometimes inconsistent processing at the local or regional level. This duplication of effort needlessly spends additional resources and human capital (both the INS's and the applicant's) in reprocessing the same information.

In addition, production and responsiveness standards must be institutionalized. Formulation of policy goals must be accompanied by reasonable expectations that they will be incorporated at all levels. Customer service goals and policies must be incorporated into all activities, from information intake to final adjudication.

B. The bureaucratic structure must implement customer service orientation both in goals and in accountability.

The service branch of an immigration service agency offers the first opportunity to advance a customer service orientation. Applicants deserve to experience a customer service atmosphere as they wade through the application process, whether it be for an initial immigrant or nonimmigrant petition, an asylum application, or naturalization. All personnel should be made to understand and act according to the principle that applicants are entitled to respect as they seek the service for which they have paid.

Unfortunately, this is not the present case in many aspects of INS processing. To be fair, this is not the fault of those involved, but a by-product of an agency in which the enforcement culture predominates and where the benefits providers are considered to have a lesser stature than their enforcement colleagues do. Enforcement personnel are given precedence at every level, from preferred training and advancement to greater autonomy in decision making. Any changes, even the most minor, must remedy the inequity of this preference for the enforcement function.

Elevating the stature of providing services must necessarily include elevating the personnel who undertake this function. We believe that any recommendations to restructure the agency must include specific proposals to enhance the human resources capital. This enhancement must include attention to career development, pay equity, and increased training opportunities.

To this end, the INS should devote additional attention to developing a professional corps of adjudications officers for all immigration benefits, in the same way they already have done in the asylum context and have achieved in the Regional Service Centers. These professional corps of officers in the agency already demonstrate that they can maintain enforcement priorities in determinations requiring them (such as questions of admissibility and eligibility) but do not put gate keeping ahead of the primary mission of providing a benefit to those who qualify. A separate career path, equally rewarding as the enforcement career within the agency, would enhance the function of service and wold help in attracting individuals committed to government service in immigration.

In conjunction with a competent and trained workforce, service providers must have sufficient independence and authority to develop benefits policy and carry out its implementation. Service providers must also have the ability to oversee their own day-to-day processes, making policy on the little things that enable them to function. INS has already begun to incorporate such systems and should be encouraged to expand them to adjudicate all benefits. In 1994, for example, the agency established an asylum branch dedicated to timely and thoughtful adjudication by fully trained professionals of asylum applications. The Regional Service Centers have gradually taken on more adjudication of high-volume, low-fraud applications and petitions. In both cases, there is a clear line of authority and accountability, with established corps of workers who are fully trained in specialties. The top management is given wide discretion but is fully cognizant of policy implemented by the national office. In fact, the Regional Service Centers have significant independent authority but communicate constantly with the national office, which provides policy and budgetary guidance. These systems work, by and large, because they have autonomy and corresponding accountability within the system.

With the tools to develop consistent and competent adjudications, however, must come accountability. Implementation of customer service standards must be accompanied by a system where failure to meet those goals is penalized, and success in meeting them is rewarded. While this may sound overly simplistic, remember that the INS currently has no such system. Congress and the agency appear to focus much less on how many immigrants a district office employee helps; it's the ones that he or she puts into proceedings, or deports, that are remembered and rewarded.

C. Communication Improvements Are also Necessary to Provide Better and More Consistent Service

As attorneys, we often experience instances (whether individually or collectively) where the INS has failed to communicate adequately some policy that affects us, whether internally or externally. As an organization, we have worked over the last several years to improve communication with the INS at local and national levels. The agency, particularly under the tenure of Commissioner Meissner, has been a willing partner in much of this effort. It therefore amazes us when we disseminate information we receive from INS Headquarters to our members, who in turn share it with local INS offices, who then tell us that they are seeing it for the first time.

It appears to be standard operating procedure that local offices do not adequately disseminate policy to their staff, or that HQ and local offices do not share communication. One of the easiest improvements INS could undertake right now is to standardize its information dissemination, so that national policies are always shared at the local level, giving all those charged with implementing it equal access. In fact, the national structure has tried to ensure this standardization. One reason this appears to fail now is the current reporting structure at the local level; INS district directors can choose how they disseminate information at the local level. Another is the antiquated infrastructure for information delivery at the agency; offices cannot even share needed file information on applicants. Prompt and effective communication, however, is essential to marked improvement and should be a hallmark of any changes the agency seeks to make.

Better communication with and to the public is also needed. I'm thankful to say that the INS generally acknowledges this at the national level, and in many places at the local level. We have seen increased outreach from the agency to all interested parties as it struggles with its increasing workload. Such outreach and interaction should, however, be standard operating practice.

Attorneys and community service agencies that help applicants with a range of areas requiring INS involvement, from extending tourist visas to obtaining naturalization, are well aware of the problems faced by the agency. When the agency engages in a dialogue with us, all too often it views much of what we or any other outside agency has to offer with suspicion. But in helping ourselves we are trying to make the process work. We have been frustrated in the past when the INS announces an initiative without prior consultation, or consults with outsiders and then ignores the advice, usually ending up with the very problems we foresaw or could have helped it foresee if we had been consulted. When the agency does consult with its clients on a national or local level, it usually leads to more consistent and effective policies or procedures, or at least better communication of the policies on which it has decided. Regular interaction with service intermediaries and attorneys also improves how new policies, new procedures, and new forms are implemented. Regular contact provides a forum for making the processing of applications more efficient. The perspective of agencies and associations like AILA may be from the outside, but sometimes that is a clearer place to be.

III. Conclusion

As I have noted above, many of these improvements could be incorporated by the Agency without any formal restructuring. The incorporation of customer service goals, for example, is already part of some adjudications aspects of the agency, and can be expanded. However, some of the most significant advancements that need to be undertaken -- the separation of functions, for example, or the elevation of service provision to a level equal to enforcement -- requires Congressional intervention. These are the changes most critical to reverse systemic problems of culture and accountability. For this reason we believe that major, Congressionally-approved changes would be the most practical and effective way to institute permanent change.

In view of the importance of immigration issues, and the need for not only high-level coordinated policymaking but also the authority to carry out those policies, AILA has come to believe that the best road would be creation of a new agency to be charged with all immigration policy and functions. It would combine all the functions currently scattered among several federal agencies, dividing those functions dealing with enforcement from those of providing services. Ideally, this agency should be given Cabinet-level authority. By providing the stature and resources of an agency changed with all immigration policy implementation, we can ensure that the dual goals of our national immigration policy -- keeping out of the country those who are not eligible to enter, while allowing those who are eligible to come to this country -- can be achieved.

Thank you again for this opportunity to share AILA's general observations on the agency. I am pleased to answer any questions you may have.

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ABOUT AILA

The American Immigration Lawyers Association ("AILA") is the national bar association of over 5,000 attorneys and law professors practicing and lecturing in the field of immigration law.

AILA member attorneys represent thousands of U.S. businesses and industries that sponsor highly skilled foreign workers seeking to enter the United States on a temporary or – after having proven the unavailability of U.S. workers – permanent basis. AILA members also represent many U.S. families who have applied for permanent residence for their spouses, children and other close relatives to lawfully enter and reside in the United States, or who seek the privilege of U.S. citizenship. In addition, AILA members represent foreign students, entertainers, athletes and asylum seekers, often on a *pro bono* basis.

Founded in 1946, AILA is a nonpartisan, nonprofit organization that provides its members with continuing legal education, information, professional services, and expertise, through its 35 chapters and over 50 national committees. AILA is an Affiliated Organization of the American Bar Association and is represented in the ABA House of Delegates.

AMERICAN IMMIGRATION LAWYERS ASSOCIATION:
Statement of principles and goals that must result from any restructuring of the INS

Please see attached Resolution adopted by the American Immigration Lawyers Association on October 25, 1997. AILA opposes the Commission on Immigration Reform's proposal to dismember the INS, and supports increasing the authority and independence of the Benefits branch of INS.

Benefits

1. The benefits side of INS must be given the resources it needs to complete adjudications in a timely fashion. Immediate improvement is needed as backlogs are growing exponentially in all benefits functions: nonimmigrant petitions, immigrant petitions, adjustments of status, and naturalization. These backlogs must be resolved immediately, as clearly qualified applications are delayed in some instances several years.

2. The benefits branch should retain 100% of funds generated by user fees, and user fees should be kept reasonable and affordable. Resources should be allocated in a balanced fashion between business, family, and naturalization applications.

3. The benefits branch should have sufficient independence and authority, including budgetary authority, to develop immigration policy, and to direct the implementation of benefits and services programs.

4. Any restructured INS should include provision for greater protection for career advancement of employees of the benefits branch.

5. Restructuring plans must include improved training and supervision of the adjudications branch to ensure consistency in decision-making. Prompt, effective communication to Service Centers and District Offices of policies established by Headquarters will be an essential step in improved consistency.

6. Duplicative readjudication of petitions by the Department of State should be eliminated.

7. Admissions determinations now conducted by Inspections must continue to be made by personnel from the Examinations/Benefits branch of INS with emphasis on fairness and due process considerations.

Enforcement

1. Steps must be taken to improve professionalism of the Border Patrol, including enhanced training, and better communication of Headquarters policies to the field.

2. Enforcement priorities should be set at the national level, and applied consistently by all INS offices. INS enforcement efforts should be closely coordinated with other law enforcement agencies to target the most egregious violations.

3. Protection of individual rights and due process is paramount in the enforcement context. Current practices must be improved through enhanced professional training.

4. Responsibility for and control of detention centers, including public and private facilities under contract with INS, must be maintained by INS to insure protection of rights and consistency of policy. Facilities must be maintained with the understanding that immigration violators are not criminal offenders, and should not be detained in criminal facilities.

5. The right to counsel must be protected in a meaningful way through access and ability to communicate with detained aliens.

RESOLUTION OF THE AMERICAN IMMIGRATION LAWYERS ASSOCIATION ADOPTED OCTOBER 25, 1997

RESOLVED

1. That AILA opposes the U.S. Commission on Immigration Reform's proposal to dismember the Immigration and Naturalization Service.

2. That AILA supports the restructuring of INS to give the benefits branch increased budgetary authority, increased authority to develop immigration policy on benefits and services, increased authority to direct the implementation of benefits and services programs and greater protection for career advancement to ensure adequate funding and independence of the benefits branch.

RESOLUTION ON INS REFORM
Adopted by the AILA Board of Governors
Washington, D.C.
March 21, 1998

1. The Immigration and Naturalization Service is failing in its mission. It is not providing timely and consistent adjudications to those filing nonimmigrant or immigrant petitions, adjustment applications, employment applications, or seeking naturalization. Nor is it effectively enforcing immigration laws through nationally set priorities, applied consistently and professionally.

2. AILA opposes the Commission on Immigration Reform's report, which proposes dismembering the INS, and considers this purported "solution" even worse than the present situation.

3. In view of the importance of immigration and migration issues, and the need not only for high-level coordinated policymaking, but also the authority to carry out those policies, AILA urges the creation of a new, independent, cabinet level department or agency which would combine all current immigration functions now undertaken by INS and the Department of Justice, the Department of State, and the Department of Labor. Further, consistent with AILA's past resolutions, AILA urges two divisions within the new agency, separating services from enforcement functions.

4. Should the creation of a new, independent agency be infeasible, then AILA urges the creation, within the Department of Justice, of two separate agencies for services and enforcement. AILA further urges the establishment of the position of Associate Attorney General for Immigration Matters, reporting directly to the Attorney General, whose sole responsibility will be to oversee the two new agencies.

In addition to this resolution, the following "sense of the Board" was adopted:

The AILA Board of Governors advocates incorporation of all immigration-related functions presently performed by the Department of Labor and the Department of State into the two agencies to be established within the Department of Justice.

1BG8009

WITNESS LIST
COMMITTEE ON THE JUDICIARY
SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

Date: May 21, 1998
Time: 9:30 A.M.
Room: 2237 Rayburn
Re: Oversight Hearing on Alternative Proposals to Restructure the Immigration and Naturalization Service

Witnesses

Panel I

The Honorable Harold Rogers
A Representative in Congress from the State of Kentucky

The Honorable Silvestre Reyes
A Representative in Congress from the State of Texas

Panel II

The Honorable Doris Meissner
Commissioner
Immigration and Naturalization Service

Panel III

Robert L. Brown
Chairman
Immigration Directors' Association

Susan Martin
Former Director
Commission on Immigration Reform

Demetrios Papademetriou
Senior Associate
International Migration Policy Program
Carnegie Endowment for International Peace

Richard Gallo
First Vice-President
Federal Law Enforcement Officers Association

Diana Aviv
Director
Council of Jewish Federations

Testimony of Representative Harold Rogers
before the House Subcommittee on Immigration and Claims
May 21, 1998

Mr. Chairman and Members of the Subcommittee, thank you for holding this hearing, and for giving me the opportunity to share my views on the pressing need to reorganize the U.S. immigration system.

The INS has been charged by the Congress with very difficult and very diverse responsibilities, and the law requires that it carry out them out effectively and fairly. But its history is one of mismanagement, waste, failure, and unfortunately, abuse. Lack of adequate resources has been the excuse given by both Democratic and Republican administrations for over a decade, and it has not gone unheeded.

But a massive infusion of money has done little to prevent the disasters we face today. In the fifteen years I have served on the Subcommittee which funds the INS, its budget has grown from $510 million in 1984, to $3.8 billion in 1998, an increase of over 600 percent.

In that time, the only thing that has changed is the magnitude of the failures. With an ever increasing stream of both legal and illegal aliens into the U.S., the problems of the INS have become easier to see and more difficult to solve.

In fact, I have seen no evidence to suggest that more money will enable the INS to effectively accomplish its many missions. In just my three years as the chairman of the appropriations subcommittee, the nation has witnessed the appalling Citizenship USA program, where naturalization cards were handed out absent legally required background checks; it has witnessed the deception of Members of Congress inspecting the Krome Detention Center in Miami; it has witnessed the utter failure to protect our land borders in the Southwest and elsewhere; and it has witnessed the abdication of any accountability by officials and employees responsible for these actions.

What we are left with, than, is the following, condemning legacy:

- **First: Each year, more illegal aliens get into the U.S. than are removed by the INS.** About 40% of these are aliens who enter on tourist visas and illegally remain in the country. Illegal aliens continue to enter and remain in alarming rates without fear of removal. Over five million illegal aliens are in the U.S. and about 250,000 additional ones are added each year. By contrast, only 112,000 illegal aliens were removed in FY '97.

- **Second: Resources have been increased by over 94% in the past three years for enforcement activities, including the border patrol, detention and removal, and investigations.** Yet the number of illegal aliens residing is the same peak level as over ten years ago, when Congress was urged to enact an amnesty of millions of illegal aliens as a means of solving our illegal immigration problem.

- **Third: Intending immigrants who legitimately seek green cards, asylum, naturalization, and other benefits are not getting adequate service due to slow and inefficient INS processing.** These applicants pay fees intended to cover the processing costs and deserve timely service. But waits are excessive, files are lost, and conflicting instructions are given. In short, dealing with the INS is an extremely frustrating experience for most applicants.

- **Fourth: Resources have been increased by 150% in the past three years for service activities, including the processing of citizenship, immigrant and non-immigrant petitions.** The award of naturalization benefits are supposed to be funded entirely from fees. However, because of the deficiencies discovered during Citizenship USA, the Congress has added money beyond the current fees in order to fix the system and reduce the backlog. And in spite of the increased funding, the average wait to process a naturalization application is now 14-15 months --- an *increase* from one year ago when the wait was 8-10 months. New application levels, while still high, have begun to decline. The number of applications received in December of 1997 (99,300) has decreased by 39 percent from December of 1996 (60,500).

- **Fifth: Applications for immigration benefits based upon fraud are frequently not investigated.** The current processing is inefficient and time-consuming and lacks sufficient safeguards to detect fraud. As border controls tighten, more aliens will resort to fraud to enter the country. Therefore, the current application process must be modified to better provide for fraud detection and investigation --- an increasingly used route for illegal immigration.

Mr. Chairman, the bipartisan Commission on Immigration Reform, chaired by the late Barbara Jordan, was tasked with looking closely at the management issues facing the INS in this period of high immigration. The Commission conducted exhaustive hearings and interviews before reporting their findings and recommendations to Congress last September. I believe that the Commission has performed the most comprehensive study of INS structure and management issues to date and that their recommendations deserve to be enacted. That is why I have introduced a bill that embodies the Commission recommendations.

My bill provides that: 1) an immigration enforcement agency be established; 2) the State Department process immigration benefits, including applications for nonimmigrant and immigrant visas and U.S. citizenship; and 3) the Department of Labor identify illegal aliens in the workplace and determine whether an employer sponsoring a visa applicant has met labor standards set out in U.S. immigration law; and 4) an independent agency for review of administrative decisions be established.

I would just like to highlight why I think that these recommendations make sense.

- First, by establishing a law enforcement agency whose sole mission is to control our borders, and to investigate, apprehend and remove illegal aliens from the country, we will have stronger enforcement against illegal immigration.

- Second, by consolidating the decision-making responsibility into the State Department, applications for visas, green cards, citizenship and other immigrant benefits can be processed more efficiently, effectively, and fairly and still be detected for fraud.

- Third, by consolidating responsibility for immigration-related activities at worksites into Department of Labor, eliminating current duplicative efforts of INS and DOL. It would also produce stronger enforcement efforts against employers hiring foreign workers, jobs being the primary magnet for illegal immigration.

- And fourth, by consolidating all review procedures into one independent review agency, decisions can be consistently and fairly made.

Taxpayers and intending immigrants deserve a well-managed, effective immigration system. While adequate funding is certainly necessary, it most certainly will not cure what ails INS. We can have the most sound, credible and fair immigration policies, with all the money to fund them, but without the ability to effectively manage and implement them, the system, as it stands, is destined to fail.

The Commission's report was a serious effort to comprehensively address these fundamental problems and to produce fundamental, long lasting changes on behalf of both citizens and citizens-to-be.

I hope that your panel, Mr. Chairman, will review them carefully and continue to work with me and my subcommittee to address these very difficult issues.

Mr. Chairman and Members of this Subcommittee, thank you again for this opportunity to share my views with you.

Testimony of Congressman Silvestre Reyes
Immigration and Claims Subcommittee
Judiciary Committee
Thursday, May 21

Good morning Mr. Chairman, Ranking Member Watts, members of the subcommittee. Thank you for providing me with the opportunity to speak on this issue. As a former Border Patrol Chief, I believe this is a critically important issue for our nation. More important, as a Member of Congress representing a border community, I am deeply interested in the effectiveness of the INS and the service it provides. We must ensure that this agency serves effectively serves those applying for citizenship and serves our citizens who rely on them to protect our borders and keep our communities safe.

After more than 26 years of service with the INS, I have practical, realistic solutions to the complex problems facing the INS. Last fall, I introduced legislation to separate the enforcement components of the INS from the service components of the agency. Since first arriving in Congress, I have consulted with my colleagues in the House and my former colleagues in the Border Patrol to develop a plan that will improve on our existing immigration policy. I believe that as soon as we separate the enforcement components from the service components, our national immigration policy will possess two vitally important aspects crucial to success — responsibility and accountability.

At the request of the Administration and the Commissioner, I did not aggressively push my legislation. I waited for them to develop a plan, a restructuring of the INS that would address my concerns. Unfortunately, their plan falls far short of my expectations. Their reorganization proposal will create a bottleneck at the top — much like the proposal we had under former Commissioner McNary. To subscribe to this INS proposal is to subscribe to a plan that we already know will not work. Former Commissioner McNary's proposal came at a time when the agency's size was much smaller and much more manageable than the current size of the agency — and that plan failed miserably.

My legislation is necessary and essential to ensure that we will be able to control our borders and deal with the influx of legal immigrants. It is my belief that the separation of service and enforcement will relieve the INS of a counterproductive mission. INS has a track record of not being able to effectively deal with its conflicting missions. We currently have more than five million illegal immigrants living in our nation. That is unacceptable. More than two million immigrants throughout the country are waiting to become citizens of the United States, the largest backlog of naturalization applications since the federal government began keeping records at the turn of the century. The issue of background checks has been exhausted and I will mention it only to highlight some of the problems the INS is still trying to correct. The INS has delayed issuing at least 75,000 green cards for legal immigrants due to the failure of equipment installed during 1997. Is this an example of the "high-tech" equipment that is designed to reduce the massive backlogs our legal immigrants must deal with?

My legislation addresses the inherent problem of our immigration service — management. Removing the enforcement components from the INS will make their managers accountable for only naturalization and benefits adjudication. The gift of citizenship is precious and should be treated as such. The Director of the new enforcement agency will be held accountable for enforcement — period. This new agency will consist of the Border Patrol, Inspections, Deportation & Detention, Investigations, and Intelligence, all maintaining their autonomy yet focused on one common goal. My legislation will improve service by limiting the scope of responsibilities and creating greater accountability. We must create an independent enforcement agency, with its funds and resources dedicated to enforcement. No longer will a lack of resources be an acceptable reason for not controlling our borders and removing those aliens deemed removable.

The INS has neglected its enforcement duties in the past. Congress authorized, as a part of the 1996 Immigration Reform Act, an additional 1,000 Border Patrol agents each year until 2001. Yet last year, much to the disappointment of Congress and the American people, the INS requested only 500 additional agents. Members of Congress got involved and insisted that the INS hire the fully authorized amount. It is this type of situation I am seeking to avoid. My legislation eliminates the need for an agency to have to choose between conflicting priorities.

The bill I introduced last fall will change the way the INS functions by relieving them of their enforcement duties and allowing them to focus on naturalization and benefits adjudication. By doing so, we are placing the responsibility of providing timely service to those seeking legal admission to this country squarely with the INS. A backlog of more than two million people waiting on the INS is unacceptable. This legislation will create a more accountable adjudication process resulting in more efficient and better determinations of these benefits.

The problems associated with the service components of the INS cannot be solely attributed to a lack of resources. We cannot overlook the inherent problem with our immigration system -- management. During 1996 and 1997, the INS has grown by 52%, as a result of Congress providing unprecedented increases in resources for INS -- over $500 million each year in 1996 and 1997 -- and the largest growth in any Department of Justice agency during this period. Congress has also provided the INS with increases of more than $95 million during the last two years for INS to handle an expected surge in naturalization applications.

To improve service delivery we must address the management failures on the service side of the INS. There appears to be a serious lack of accountability and even less discipline within the managerial ranks at INS with respect to implementing policies and procedures that are vital to maintaining integrity in the naturalization system. For example, after new policies and procedures were established to provide safeguards in the naturalization process and ensure that persons, including criminals, were not improperly provided citizenship, a follow-up audit revealed that only one of twenty-four field offices reviewed was complying with the new procedures. In addition, there were four versions of the memo outlining the new directives circulating at the different levels within INS. Again, this is unacceptable.

An important point to stress is that under my plan, the INS would retain data and record keeping components of the immigration service. As the caretakers of immigration data, they would be compensated by the enforcement branch in a yet to be determined manner — perhaps on a per query basis or an allocated, specified lump sum. In addition to the natural and necessary interactions between the service and enforcement branches, allowing the INS to maintain the records will further strengthen the relationship.

As we enter the 21st Century and face new challenges, we must ensure that our law enforcement community is up to those challenges. The role of the U.S. Border Patrol and INS Inspectors in fighting narcotics trafficking and terrorist activities along our borders should not be overlooked or downplayed. They are our nation's first line of defense.

I am an original cosponsor of legislation introduced by Congressman Hunter which would increase the size of the Border Patrol to 20,000. This legislation will also provide the men and women of the Border Patrol with more flexibility while doing there jobs. I have introduced legislation which provides additional funding, personnel, and technology to the U.S. Customs and INS. These additional inspectors and high tech equipment will assist the INS and Customs in expediting traffic at our ports of entry while improving our enforcement efforts at the border and interior checkpoints.

I am continually working with my colleagues to improve our immigration system. For far too long, the U.S. border has been neglected and we are now paying the price for that neglect. I continue to work to find ways to improve the INS, to improve the services our nation's immigrants receive, to improve our efforts on the border, and to improve the morale of our agents.

Increasing the physical presence of Border Patrol agents on the Southwest border to deter illegal crossings has been an integral part of our border control strategy but we must do more. In addition to placing agents in the field we must ensure they are properly equipped to control our borders. Last year alone, there were more than 1.5 million apprehensions of illegal aliens attempting to enter the United States along the Southwest border. As if this isn't enough, Border Patrol agents are asked to play an integral role in our nation's drug control strategy. Drug traffickers, attempting to supply the drugs to feed America's fifty billion dollar a year drug habit, have been increasingly dangerous and sophisticated. The men and women of the Border Patrol are out-manned and out-gunned.

The INS, with its mission overload, is forced to fund programs depending on the priority of the moment despite an unprecedented increase in resources. The priorities vary from border control, interior enforcement, or naturalization. It is time to correct this unacceptable style of management and misuse of funds. We cannot expect our Border Patrol agents to effectively combat illegal immigration and drug trafficking without providing them the means to do so. This newly created agency will be enforcement-oriented and will dedicate the necessary resources to control our borders.

I want to state very clearly that I do not believe that we should dismantle this agency. I introduced my legislation to improve an agency I devoted most of my adult life to. I do not want to abolish this agency. I do not believe our nation's immigrants would be well served by cutting and pasting our immigration services into a number of federal agencies and creating a bureaucratic mess. I'm concerned that they would be lost in the shuffle. I fear that they would be further neglected.

I have real answers to serious problems facing our immigration service and I would be happy to answer any questions the committee may have. Thank you for your time.

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

P.O. Box 508, East Northport, NY 11731-0472

STATEMENT OF

RICHARD J. GALLO

NATIONAL PRESIDENT

OF THE

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

JUDICIARY COMMITTEE

ON

MAY 21, 1998

TESTIMONY OF RICHARD GALLO, NATIONAL PRESIDENT,

FEDERAL LAW ENFORCEMENT OFFICERS ASSOCIATION

BEFORE THE

HOUSE OF REPRESENTATIVES, COMMITTEE ON THE JUDICIARY,

SUBCOMMITTEE ON IMMIGRATION AND CLAIMS

MAY 21, 1998

Good morning, Mr. Chairman and distinguished Members of the Subcommittee. I am honored to submit this written statement in support of my oral testimony for such an important hearing. The Federal Law Enforcement Officers Association (FLEOA), is a voluntary, non-partisan professional association.

FLEOA currently represents over 14,000 federal law enforcement officers and is the largest association for federal officers of its kind. Several years ago, FLEOA joined with all of the major state and local police national associations to form the Law Enforcement Steering Committee. The Law Enforcement Steering Committee also includes the following prominent and important organizations: Fraternal Order of Police, National Troopers Coalition, Major Cities Chiefs of Police, Police Executive Research Foundation, National Association of Police Organizations, National Organization of Blacks in Law Enforcement, International Brotherhood of Police Organizations and the Police Foundation. In becoming a part of this group, federal agents were able to add our voices to those of the over half a million state and local officers already commenting on the issues that our Association considers to be of greatest importance. I tell you today, as I have told my membership in the recent past, that the continuing support of immigration law enforcement is one of our highest priorities.

As National President of FLEOA, I represent many of the outstanding men and women who enforce our Nation's immigration laws. The INS representation in FLEOA derives primarily from three organizational divisions: Investigations, Detention & Deportation, and the Border Patrol. These three, along with the Inspections and Intelligence Divisions, represent the enforcement components of the INS. I would ask that you keep them, and the complex bureaucratic framework in which they operate, at the forefront of your thoughts because I believe this is the essence of both the present problem and its potential solution.

With the passage of the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), INS was given specific new authorities -- including wiretap, RICO, and undercover investigative authorities. This very important legislation highlighted the congressional expectation that INS must play a larger and increasingly critical role in law enforcement activities. I know that I speak for all INS enforcement agents when I commend this Body, and your counterparts in the Senate, for what my members tell me is the most dramatic piece of immigration enforcement legislation of the 20th Century. However, as this century rapidly comes to a close, I respectfully recommend that the Subcommittee's work must continue. In order to properly use the new tools it has been given, we believe there must be a dynamic change in the INS organizational structure.

On April 23, 1997, I had the privilege to speak before this Subcommittee on alien smuggling and illegal immigration, from the border into the interior of the United States. At that time, I called for more INS resources for interior enforcement. I also called for a structural split between INS enforcement and service components. At that time, FLEOA supported the idea of an intra-agency separation, due to the nexus between immigration benefit services and immigration law enforcement. Since my testimony, Mr. Chairman, we have come to recognize that our earlier position recommending an internal partition between benefits and enforcement did not go far enough. While INS interior enforcement still requires additional resources and greater emphasis, I am absolutely convinced that a more profound structural change of the organization is necessary.

I respectfully submit that the time has come for INS to be split into two separate bureaus within the Department of Justice (DOJ). Immigration law enforcement must be professionalized and depoliticized. Creating two separate bureaus within DOJ is essential. It:

would provide the specialization necessary to resolve "mission overload;"

would eliminate the intense competition for resources between service and enforcement components within the same agency; and it

would eliminate the possibility of a "tilt" in emphasis by a single administrator or top agency management toward, or against, either function.

Conversely, placing the two functions under one Cabinet Department -- as opposed to subdividing and scattering a host of the INS's current components among several different agencies -- would assure continuity of communication, coordination, and oversight within the Executive Branch and the Congress. Cooperation is critical in such areas as continued access by the immigration enforcement components to data and benefits records. This could be ensured as a part of reorganization legislation. Establishing two separate enforcement and benefits bureaus through legislation would avoid a constant budget battle within the same agency between the two different, but equally important, missions. It would also eliminate reprogramming of funds from one side to the other by a single agency administrator with a bias toward one or the other function.

Mr. Chairman, just as the Congress has constructively revised the provisions c the Immigration and Nationality Act in recent years, so must it mandate revision of the INS organizational structure. There have been several recent bills and reports recommending a stand-alone bureau for enforcement with realigned geographical areas. FLEOA supports establishing a separate immigration enforcement bureau within DOJ somewhat along the lines in H.R. 2588 proposed by Congressman Reyes of Texas during this Congressional Session.

During the 103rd Congress, former Congresswoman Molinari of New York recommended a reorganization of the field enforcement operations of INS into multi-state geographical areas to be known as "enforcement sectors". FLEOA recommends that the

Congress and this Subcommittee explore the possibility of combining the elements of these two bills to establish an immigration enforcement bureau that fully integrates enforcement functions within the new agency's structure. As you know, the present structure encompasses both immigration districts and border patrol sectors whose jurisdictions overlap, and whose top officials report through different chains of command.

A 1991 General Accounting Office (GAO) General Management Report entitled Immigration Management: Strong Leadership and Management Reforms Needed to Address Serious Problems, identified changes in the evolving INS enforcement mission. The report noted, "During this period INS saw its enforcement mission evolve from one aimed primarily at interdicting aliens at or near the border to one with increased emphasis on investigative work and drug interdiction." GAO recommended the consolidation of " . . . all field enforcement functions, including Border Patrol and District enforcement organizations, under a revised field structure that would centralize all INS enforcement functions under a single official within a geographic area." We heartily endorse the GAO recommendation which, after seven years, has never been seriously examined by the INS leadership.

We believe that immigration law enforcement functions should be integrated within a single set of geographic boundaries, eliminating overlap and establishing a clear and efficient national law enforcement chain of command. This direct line structure would be more effective in carrying out a uniform national enforcement program and would also better meet the needs of other federal, state and local law enforcement agencies. One bureau for immigration enforcement, with field components reporting to the agency headquarters, would ensure proper allocation of enforcement personnel, equipment, and funding. Employee morale would be significantly enhanced because agents would have a clear sense of mission, and the knowledge that their superiors would support their efforts and accomplishments. A more uniform application of enforcement efforts would inevitably result from (1) the separation of enforcement from benefit services functions, and (2) the development of enforcement sectors with integrated components.

SPECIFIC RECOMMENDATIONS:

In 1992, the INS produced a report describing the Investigations Division's participation in the Organized Crime Drug Enforcement Task Force (OCDETF). This INS OCDETF Pilot Project Report detailed a step by step process for reinventing the administration of immigration law enforcement. The time has come to reexamine some of these recommendations...and to take them a step further.

The OCDETF Pilot Project Report recommended that the Headquarters enforcement elements of the INS, currently made up of the Border Patrol, Investigations, Inspections, Intelligence, and Detention & Deportation, be separated internally from the immigration benefit services programs. Under the approach taken by the report, both the immigration benefits services and immigration law enforcement functions and components would remain within the existing bureau, the INS. However, as discussed earlier, it is

FLEOA's opinion that a separate agency is the preferred course of action. We also believe that the interrelationships between immigration benefits services and immigration enforcement activities can be maintained by enacting a requirement within any reorganization legislation, providing that enforcement components would have continued access to immigration data, benefits records, and statistics or intelligence produced by the benefits component. Concurrently, that component would be authorized by statute to retain its ability to refer applications to the enforcement component for follow-up investigations.

Under the changes proposed by HR 2588, the newly created bureau would be headed by the Director of Enforcement and Border Affairs, a career law enforcement officer who would have a status in rank equal to that afforded the heads of other federal law enforcement bureaus such as the Marshals Service, the Bureau of Prisons, the Federal Bureau of Investigation, or the Drug Enforcement Administration.

We believe that the different enforcement components within a Bureau of Immigration Enforcement could be integrated within a single set of geographic boundaries at the field level called "Enforcement Sectors." These Enforcement Sectors would operate domestically (but could also be extended overseas to include Western Hemisphere, Europe/Africa, Asia/Pacific enforcement sectors). The Enforcement Sectors would be managed by a "Chief Enforcement Officer" (CEO), with branch managers under the Chief for the following components -- Border Patrol, Investigations, Inspections, Detention/Deportation and Intelligence. The Chief would oversee all enforcement activities within his or her respective Enforcement Sectors; would ensure coordination among the enforcement components; and would conduct ongoing liaison with the separate immigration benefits service bureau's field directors and asylum offices within that Sector's geographical area. The Chief would report to the Director, Bureau of Immigration Enforcement Headquarters.

ENFORCEMENT SECTOR COMPONENTS:

The establishment of integrated sub-units at the field level would ensure an appropriate level of specialization while maintaining flexibility, and would facilitate a cooperative and balanced approach. Frankly, the establishment of a Chief Enforcement Officer who supervises all enforcement components and reports to the Headquarters Director, is an idea whose time has come. This concept begs for congressional attention. It is needed to overcome the inefficient and incredibly confusing status quo -- or even the half-steps that are envisioned under an internal benefits-versus-enforcement split within INS.

BORDER PATROL:

The Border Patrol is the largest enforcement component within INS. Its traditional responsibility is patrolling the border between ports of entry. In recent years, the span of Border Patrol activities has extended to include drug interdiction and tactical operations. Under the new immigration law enforcement bureau concept, a Deputy Chief for Border Patrol Operations would report to the Chief within a respective Enforcement Sector.

INVESTIGATIONS:

The Investigations Division is the general and criminal investigative arm of the "Enforcement Sector," and should be responsible for all complex, protracted investigative activities. It is FLEOA's recommendation that the Investigations component operate in a manner similar to that of most major federal investigative agencies and detective bureaus. Investigative activities should place more emphasis on proactive criminal investigations in the following functional areas: anti-smuggling, benefit application fraud, document fraud, worksite enforcement, and participation in multi-agency task forces including OCDETF, Joint Terrorism Task Forces, Violent Gang Task Forces, and INS-led Community Based Task Forces. This division would be overseen by a Deputy Chief for Investigative Operations, reporting to the Chief of the Enforcement Sector.

DETENTION/DEPORTATION:

The Detention/Deportation component is responsible for the care and custody of the alien population detained by the Enforcement Sector; it is responsible for managing the alien docket and bond control, and for arranging removal of aliens from the United States. FLEOA believes that this component should also be responsible for the processing and removal of all foreign nationals incarcerated in federal, state, and local correctional institutions or jails. The Deputy Chief for Detention & Deportation Operations would oversee this unit, and would report to the Chief Enforcement Officer.

INSPECTIONS:

The Inspections component is responsible for the inspection of applicants seeking admission to the United States at air, land and sea ports of entry. The Inspections Division facilitates an integrated approach to border management and promotes cooperation with other inspectional agencies such as the Customs and Public Health Services. As with the others, the Deputy Chief for Inspections Operations would report to the CEO.

INTELLIGENCE:

The Intelligence component within the Enforcement Sector should play an integral role in support of the other enforcement components. Intelligence officers should be integrated into <u>each</u> field enforcement component unit. The Deputy Chief for Intelligence and staff would be responsible for the collection of information, analysis of information, and reporting of intelligence product upward through the new organization and outward to other components. The Deputy Chief would also serve as a primary liaison point with the Directors of Adjudications Service Centers, Directors of Asylum Offices, and any enforcement units remotely posted to the field benefits offices, adjudications service centers or asylum offices, to assist in their anti-fraud efforts. The Deputy Chief for Intelligence Operations would report to the CEO.

CONCLUSION:

Mr. Chairman, FLEOA strongly urges Congress, through the appropriate Subcommittees, to examine and then to adopt into legislation, the above recommendations for reorganization of the INS. INS District Directors face severe pressure to provide services for aliens, and when confronted with inadequate esources, have frequently used enforcement agents as a labor pool to perform non-enforcement duties. This practice has continued for over twenty years and shows no signs today of diminishing. We believe that diversion damages the professional image of immigration law enforcement officers, it diminishes their capacity to provide assistance to other federal, state and local law enforcement agencies and the communities they serve, and it fails to provide protection for our society at large.

INS struggles under an obsolete and confused organizational structure. Without the creation of a distinct bureau for immigration law enforcement, it is unlikely that the legislative innovations passed by the 104th Congress in 1996 will ever be used to their full potential. Only through streamlining the bureaucracy, overcoming institutional inertia, and establishing balance through a separation of functions, can modern day immigration law enforcement be successful. I ask this Subcommittee to do everything within its power to effect this change for the good of our nation and the preservation of the world's most generous system of legal immigration. The creation of a new Bureau of Immigration Enforcement will allow this to come to pass.

On behalf of FLEOA, and the many dedicated men and women who risk their lives enforcing our immigration laws, I appreciate your time and attention, and the opportunity to share our views. Thank you.

U.S. Department of Justice
Immigration and Naturalization Service

IMMIGRATION DIRECTORS' ASSOCIATION

30501 Manhassett
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TESTIMONY

OF

ROBERT L. BROWN
DISTRICT DIRECTOR CLEVELAND
CHAIR, IMMIGRATION DIRECTOR'S ASSOCIATION

BEFORE

THE HOUSE SUBCOMMITTEE
ON IMMIGRATION AND CLAIMS

REGARDING

ALTERNATIVE PROPOSALS TO RESTRUCTURING THE
IMMIGRATION AND NATURALIZATION SERVICE

MAY 21, 1998
9:30AM
ROOM 2237 RAYBURN HOUSE OFFICE BUILDING

Testimony of the Immigration Director's Association

Good Morning, Mr. Chairman and distinguished members of the Subcommittee. I appreciate this opportunity to share with you the views of the membership of the Immigration Director's Association (IDA) on "Alternative Proposals to Restructure the Immigration and Naturalization Service."

The IDA membership consists of the senior field managers at the INS Districts, Suboffices and Services Centers. Membership is limited to Directors, Deputy Directors and Officers in Charge.

Simply stated, the IDA association supports a plan which keeps the Immigration Service integrated at both the central office and field levels. The functions performed by the immigration service are too interdependent and necessary to each other to be separated into competing agencies or cosmetically split internally by building "walls" and then putting "windows" in the walls.

Lest you think we favor the status quo with regard to the need for change, let me make clear that nothing is further from our position. The IDA agrees with Chairman Rogers and those persons that have pointed to our lack of responsiveness, failure to be accountable, need for improved services to the public, need for enhanced enforcement and in general a need to improve our performance commensurate with our growth and growing responsibilities.

We also agree that interest groups on both sides of the "enforcement" and "benefit" programs should expect stronger commitments to those respective functions both as to funding and to the "culture" which befits those activities. To that end, we support further recognition of the development of a more equitable application of resources by being responsive to the needs of our clients on both the "enforcement" and "benefit" aspects of our work.

Without exploring each and every reason which has brought this restructuring issue to the forefront of this honorable committee, I would like to examine with you one area of concern which I believe has generated much interest to illustrate why the INS should remain joined.

The naturalization of persons in the United States is one of the important functions of the INS. To the average person outside INS, naturalization is viewed as a "benefit" function rather than an "enforcement" function. In 1996 faced with a substantial increase in naturalization applications the INS put great emphasis on speeding up the naturalization application process. This speeded up process in large measure was taken out of normal district operations where "benefit" and "enforcement" are joined together. The naturalization process was placed in an environment where timeliness of processing was first and foremost. Because there was not the "enforcement" emphasis present in this new environment the normal proper scrutiny may have been shortchanged.

It was the absence of "enforcement" in the process which precipitated the current naturalization challenges.

All of the INS officers by necessity of the work they perform wear two hats - one of providing service to the public while at the same time being ever mindful of their responsibility to enforce the Immigration laws of this country as set out by Congress.

Much as a police officer is called upon to be both a law enforcement officer and service provide so are the women and men of the Immigration Service.

-- Asylum officers must of necessity, for failure to state a credible or fradulent claim, deny more applications for asylum then they approve.

-- Immigration Inspectors rapidly admit many more people to the United States then they turn back, yet it is the terrorist they are trained to intercept.

-- Adjudicators responsible for the integrity of the application for permanent residence and naturalization, must continually be on the lookout for fraud and criminal conspiracies.

-- Investigators often are the only avenue of protection for those who are the victims of criminal enterprise.

If the agency is split into various other agencies or even of there is an internal cosmetic split with "walls" and "windows" there is substantial concern the current balance between "benefit" and "enforcement" will be lost. Conflicts between the two will arise with the benefit manager interested in rushing cases to closure to reduce backlogs while the enforcement manger's concern will not be tempered with the compassion needed when dealing with persons who are the victims of a criminal enterprise.

The stated advantage of having a field manager focus on benefits and a separate field manager focus on enforcement in the same geographic area in reality is a real disadvantage. With separate organizational structures these managers will of necessity spend much of their productive hours in conflict with each other, with no one empowered to resolve the conflict.

Historically District Directors have worked closely with Congressional Offices as well as with other local organizations to insure the best possible immigration service. If INS is split into various agencies or split by an internal "wall" with "windows" the public and Congress will no longer know who is responsible nor who they can turn to for help.

The IDA knows much criticism has been leveled in recent months on the fact that our backlogs are unacceptable, that our processes are flawed, and that we have become less accessible, less responsive, and less accountable. The IDA agrees that changes should and must be made. However, a radical change in structure or "splitting" up of INS will probably only add to our shortcomings. Much of our current condition stems from rapid growth of the agency as well as the volume of work. Having said that, the IDA believes our problems are surmountable.

The IDA believes the necessary changes have less to do with structure and have more to do with providing strong, enlightened leadership, and direction at all levels of the INS. Many of the Booze Allen recommendations are valid, however, even Booze Allen agrees processing and policy changes are much more important then a restructuring and none of them need be accompanied by a wholesale structural change.

With a wholesale restructuring of INS there will be a significant increase in costs associated with separate, parallel and stovepiped "enforcement" and "benefit" activities and facilities. The IDA believes the funding increase could be better spent on the operations of the INS rather then building new organizations.

Much has been written and spoken concerning the need to separate the "enforcement" and "benefit" functions of INS in order to enhance the respective functions and to better serve its objectives and clientele. The proponents of breaking up the INS, or separating the functions apparently believe that these enhancements cannot occur without dismantling or drastically rearranging the long standing organizational structure of INS, a structure which was ironically designed to keep these functions together as a means to balance and complement one with the other.

Indeed, each of those advocates who favor separating the functions argues that their interests, "benefit" or "enforcement" are suffering because of the affiliation with the other. "Enforcement" advocates say they are inadequately funded and less professional than if they were made autonomous, while the "benefit" supporters believe the INS culture is too enforcement minded resulting in a less kindly attitude on the part of our employees in one or more aspects of dealing with applicants. We need not point out those occasions when circumstances have driven the affairs of Immigration policy as well as our workloads to major reprogramming and reprioritizing of INS resources and emphasis. Certainly, the dynamics of hundreds of thousands of unanticipated additional citizenship applicants, brought to light the need for wholesale policy changes and an introspective review of our practices on a national level with tremendous impact on local operating practices and personnel not to mention the public. Cubans, Haitians, amnesty, asylum, terrorism, sanctuary, Chinese family planning, Salvadorans, Guatemalans, Nafta, fingerprints, counterfeit proof green cards, protect jobs for Americans, all words and terms heard in recent months, have meant change, reaction, reprogramming, and sometimes disruption to INS management.

Thus, the IDA supports the suggestions put forth by the firm of Booze Allen, to 1. Develop clear lines of accountability; 2. Create customer-oriented capabilities; 3. Build professional capabilities in law "enforcement" and "benefit", and to 4. Uphold the immigration laws of the U.S. as intended by Congress.

However, we believe each of the above goals can be readily achieved as proposed by Booze Allen and others by addressing clearly identified lines of communication, processing, accountability, training and if necessary retraining, and related management deficiencies at all levels, without restructuring. Nothing in restructuring, will facilitate the changes necessary, nor will a restructuring better accommodate the changes necessary. Restructuring will be costly and have other negative effects, such as duplication of supervisory levels. Restructuring will only place further obstacles in the way of implementing effective efficiencies.

The IDA believes that reducing backlogs, improving our effectiveness in "enforcement" and "benefit" becoming more responsive and efficient and in general becoming a better managed agency, can be best accomplished by concentrating our efforts on those factors.

Some of the practical problems associated with a restructuring which go beyond change for change sake include:

- By INS's own estimates, a restructuring will take 3-5 years.
- Present processes and procedures, already in need of improvement will be fraught with uncertainty and confusion during any restructuring thus translating to more inefficiencies and frustrations to the public for several years.

- Major efforts in INS to solve the Citizenship situation - our current top priority - will lose focus and in fact extend backlogs and delays.
- Technological information and support systems already behind schedule will be drastically impacted.
- Congressional and other public inquiries to local offices on individual cases will necessarily have to be duplicated, redirected or rerouted to separate organizations having related but bifurcated responsibilities.
- Jurisdiction and turf issues will be intensified.
- Flexibility in the management of resources necessary to meet local demands and crises will be eliminated with the creation of separate "stove pipe" organizations with separate reporting lines.
- Consideration of equities in the "benefit" side of INS in connection with an "enforcement" case will be extraordinarily difficult to coordinate for example presently an apprehended illegal alien with a claim to an entitlement or benefit is processed with a view of all areas of INS. Restructuring will separate such related decision processes and complicate such consideration.
- Fraud will not be emphasized because the adjudicator's concern with the reduction backlogs will turn the focus from detecting fraud.

- "Enhancing" enforcement under the guise of making it more professional by limiting crossed opportunities for other employees will have the opposite effect of eliminating a very large applicant pool of qualified persons who are now eligible for those career opportunities.

- Multiple spokespersons for INS in a geographic jurisdiction will result in confusion for outsiders, the media, the Congress and our own employees.

- Enforcement tempered with compassion which is what our present structure provides, will give way to separate single-mindedness; for example recognition that present worksite enforcement is intended to be cooperative in nature with employers and that the illegal alien is often a victim will be less apparent in a pure enforcement culture.

- The notion that investigators must be in an organizational chain of command that is uncontaminated by non-investigative management personnel handling "benefit" functions conjures up images of a law enforcement entity without restraint.

- Large scale reprogramming of funding from "enforcement" to "benefit" or vice versa needs to be curtailed but it is not necssary to split INS to accomplish this.

- Management problems created by managers should not be attempted to be solved by organizational structure changes. Instead managers at all levels should be the focus of where the solution lies; and they must be held accountable for their actions.

- Resources need to be fairly dispensed to all field offices.

- Develop a cadre of career managers to assist in the management of INS at the

central office level.

An INS which has a long standing, time tested and effective organization providing essential balance and flexibility to the management of our INS laws and regulations during several past changes and world events, should not hastily be changed in response to contemporary problems. Instead we need to fine tune, not take a meat cleaver to the existing management structure at all levels.

A low cost simple, efficient, and ready to go now approach to insure proper emphasis be placed on "enforcement" and "benefits" within INS is needed. The IDA recommends that the a dual deputy concept be utilized at all organizational levels. One deputy to oversee enforcement operations and a second deputy to oversee benefits. This should be established at the Headquarters, Regional and District levels of the INS.

This organization will not require a major overhaul of the INS but will be responsive to many of the present concerns. "Benefit" and "Enforcement" will be independently administed but not independently of each other. Maintain a moderating level manager over both will recognize that a "benefit" officer is an enforcement oficer when looking for a terrorist or other criminal and that an "enforcement" officer is a benefit officer when dealing with those who cannot fend for themselves.

The Immigration Director's Association feels very strongly that the very essence of our present structure with "enforcement" and "benefit" together, is what ensures the proper balance and flexibility within our organization essential to our ability to be responsive to the incredible dynamics of Immigration policies. The flexibility both locally and nationally is what over the years has been sought and encouraged by those persons external to INS as necessary to address constantly changing needs. Whether it be on a very narrow issue or single case or in a wide sweeping policy issue, INS's present structure under one roof has been seen as more accessible and able to be responsive to such needs. Indeed, this often means that the Agency is pulled in different directions by interest groups whose missions are much more focused and frankly more narrow that the Agency's overall responsibilities. It is precisely on those occasions that INS must maintain a balance within its overall responsibilities of both "enforcement" and "benefit".

Testimony Concerning the Restructuring of the United States Immigration and Naturalization Service

Presented Before the Subcommittee on Immigration and Claims
House Judiciary Committee
May 21, 1998

Diana Aviv
Associate Executive Vice President for Public Policy
Council of Jewish Federations

Mr. Chairman, Congressman Watt, members of the Subcommittee -- thank you for the opportunity to present the Council of Jewish Federations' views concerning the potential restructuring of the U.S. Immigration and Naturalization Service. This issue is of great importance to my community since the efficiency of this institution has a direct impact on the lives of those in our community who have come to the United States as legal immigrants or refugees and look forward to the great privilege of becoming American citizens. We appreciate your holding hearings to review the current status of INS operations and consider some recommendations for improving an agency that has not operated effectively, accountably or efficiently for decades.

Founded in 1932, the Council of Jewish Federations (CJF) was created to be the national association of local Jewish Federations. It now represents 189 local Jewish Federations which among other functions, support and facilitate the provision of health and social services to vulnerable and frail members of our community living in approximately 800 localities. The Federation system represents the largest base of Jewish communal involvement and action in this country. Financial support is provided to thousands of community-based programs including refugee resettlement services, family service agencies, vocational services, community centers, hospitals, elderly housing facilities and nursing homes.

The Federation system has been deeply involved in U.S. immigration policy for over 100 years. Federations and their affiliated agencies assist thousands of refugees, asylees, and legal immigrants every day by helping them with their business before immigration officials, providing vital services that will facilitate their integration and acculturation into our society, and guiding them in their efforts to become U.S. citizens. Since its inception, a core mission of the Federation system has been the rescue and protection of Jews and others faced with persecution in their countries of origin. Along with other Jewish organizations, especially our national migration agency the Hebrew Immigrant Aid Society (HIAS), we have resettled refugees and immigrants in over 200 communities throughout the United States. Since the end of World War II, in cooperative effort with the United States Government, we resettled nearly one million refugees and immigrants. We also have worked with the Congress and federal agencies to create programs and enact laws that reflect our national humanitarian values and provide the necessary resettlement assistance to those who come to this country with little, but are prepared to start anew and contribute much.

Over the past 50 years, the Federation system has rescued and resettled people displaced by World War II, assisted Jews escaping from Iran, Syria and elsewhere in the Middle East, aided in the rescue and resettlement of refugees from Hungary, Poland, Romania, and other communist countries in Eastern Europe, and, of course, helped bring hundreds of thousands of Jews and others fleeing religious persecution in the former Soviet Union to safety and freedom in the U.S. and in Israel. Over the past two decades, our community has resettled approximately 440,000 refugees from the former Soviet Union, Iran, Bosnia, Indo-China and other parts of the world, including many non-Jewish refugees.

Through these activities, we have learned a great deal about immigration matters. We have deep and long-standing experience with the Immigration and Naturalization Service and other federal agencies involved with immigration policy and program. Many of our resettlement and social service agencies are accredited by the Board of Immigration Appeals. Through the years, we have had first hand experience with local INS offices across the country and with national headquarters on a broad range of issues. Our experience includes the INS's management of the adjudication process, refugee admission and naturalization of legal immigrants, refugees and asylees. Through our work with colleagues in other religious organizations and ethnic groups we have also come to appreciate some of the problems with INS concerning enforcement of our immigration laws.

Mr. Chairman, there are few who are familiar with the workings of the INS who will disagree that this agency has not functioned properly for decades. Our complaints of poor service date back to as long as we have had contact with the INS. Almost anyone who has had firsthand experience with this agency can report examples of poor service, including not having inquiries responded to, loss of documents, incorrect processing of applications, incomprehensible decision making, unfriendly customer service, personnel who were unable or unwilling to trouble shoot and operational decisions that were neither effective nor sensible. In the areas in which we have had a great deal of experience, refugee admissions to the United States, adjustment of status and naturalization processing, problems in recent years appear to have increased as a result of the very large numbers of new applicants seeking to become naturalized because of the immigration related legislation enacted over the past couple of years. When INS Commissioner Meissner came into office she inherited a broken agency and noted that one of her objectives was to pay greater attention to operations related to naturalization. We supported this worthy objective.

To date, some efforts have been made to improve various areas of INS operations. However, given the magnitude of the problems even with the changes that have been initiated, our local community service agencies who assist legal immigrants and refugees continue to be frustrated by INS' processes and procedures and believe that a band-aid approach that only superficially addresses some of the outstanding problems will not produce the kind of fundamental changes that are necessary to make this agency well able to perform the important responsibilities and functions that are its mandate. With over two million immigrants waiting to become citizens and with backlogs resulting in a two-year wait in some districts, change is necessary and urgent. We have a moral obligation to make the changes at the earliest possible opportunity that will enable the INS to become effective. These newcomers are people who have entered the United States legally, have dutifully waited their turn and in an orderly way begun the process of naturalizing only to find that the agency charged with the responsibility of naturalization is all too often part of the problem rather than part of the solution.

While we may all be able to describe unhappy experiences at the hands of INS officials, we caution and urge you not to jump to the wrong conclusions about what needs to be done. We are most anxious to see changes to the current structure and operation, yet the wrong changes will most certainly do more harm than good. For that reason, the Council of Jewish Federations convened a working group of Jewish organizations concerned with immigration and refugee issues, including many with broad experience working with the INS, to analyze the problems and consider possible remedies. This testimony includes the analysis and recommendations of these deliberations undertaken by the Council of Jewish Federations, the Hebrew Immigrant Aid Society (HIAS), the American Jewish Committee (AJC), the New York Association for New Americans (NYANA), and the Jewish Federation of Metropolitan Chicago.

The major problems with the naturalization process that we have confronted include: though are not limited to, poor service at the local service centers, delays in criminal background checks, and problems with the new disability waivers. The INS simply does not have enough trained staff to process and interview applicants fast enough to reduce the growing backlog. In spite of the huge increase in the number of naturalization applications received in 1995 and subsequent years, the number of workers assigned to naturalization declined between 1996 and 1997 from 289 to 194 in New York; 269 to 231 in Los Angeles; 73 to 57 in Chicago, and 127 to 118 in Miami. According to a recent report by Gary Rubin of NYANA, INS acted on 37% fewer applications in 1997 than in 1996 in New York; 76% fewer in Miami; and 67% fewer in Los Angeles as a result of these staff reductions and new political pressures.

Criminal background checks are delayed so long that fingerprint cards expire and applicants have to be re-fingerprinted, further delaying the process, adding another burden for the applicant, and costing the INS an estimated $19 million.

The new system of disability waivers is causing increased delays instead of expediting processing because the INS has not provided doctors with adequate instructions to complete the disability waiver form and field offices have yet to be given guidelines or training concerning the provision of reasonable accommodations for the elderly and disabled.

Many local offices are reported to be unresponsive to inquiries and uninterested in providing adequate service to applicants, local agencies, or those representing them. Those who deal with local offices complain bitterly that many of the INS staff dealing with the naturalization process do not treat immigrants or their representatives and families with respect and courtesy. The prevailing impression given at many sites is one of distrust and suspicion of the applicant. Our local agencies point out that it is not logical or reasonable to expect INS staff associated with enforcement and keeping unauthorized newcomers out of the U.S. to be the best equipped to help facilitate the naturalization process for qualified applicants.

Problems also can be found in INS' adjustment of status process. The lack of resources, human and other, also create delays in adjustment of status. We are hearing from clients who need to have their status adjusted and are eligible to do so that they are facing increasingly lengthy delays for interviews. This is true even though the number of applicants has remained relatively stable, unlike the situation with naturalization applicants which had a huge surge over the past three years.

We have also noted serious problems with INS operations overseas. For example, as part of the U.S. refugee admissions program in the former Soviet Union (FSU), all refugee applicants must still travel to Moscow for their interviews -- the only INS interviewing site in a region encompassing 15 countries and 11 time zones. The financial and physical hardship of this travel is exorbitant. In most other countries, "circuit rides" are done in order to facilitate access for those unable to reach the site. In Haiti, INS had three refugee processing sites. For over five years, we repeatedly called this to INS' attention, but to date no changes have been implemented.

We are pleased to note that the INS has made substantial progress in dealing with problems that were undermining the credibility of our asylum system. Specifically, the January 1995 regulations ended most abuses in the asylum system. In spite of this success, however, Congress enacted the expedited removal provisions of the Illegal Immigration and Immigrant Responsibility Reform Act of 1996 (IIRIRA) which we fear may result in the return of qualified asylees to their persecutors. A recent study by Karen Musalo and Deborah Anker, two of the nation's leading experts on asylum, raises serious concerns about the way expedited removal is being implemented including sharp inconsistencies based on nationality and port of entry. Their data is drawn from information gathered by interviewing asylum seekers and non-governmental organizations, because the INS has refused access to the Secondary Inspection Process to anyone outside its own staff.

These concerns are only heightened by the fact that enforcement inspectors now have sole discretion to make the decisions to remove aliens from our shores, a power which makes them arresting officer, prosecutor and judge. Without any of the traditional avenues of appeal available to the applicant, errors in judgement, personal prejudice, mistreatment or simple misunderstandings can go unchecked -- with potentially disastrous consequences. Any restructuring of the INS must remove all adjudicatory powers from inspectors and other enforcement officers. These powers should be reserved for immigration judges and trained immigration examiners.

Overarching all of these problems is the fact that the INS has failed to learn the basic lesson that businesses and others mastered years ago -- customer service is key. When walking into an INS office, people are still often greeted by long waits; uncomfortable chairs; few, if any, translation services and staff who cannot or will not take the time to answer questions. Of course, these problems just magnify the frustration of applicants who pay substantial fees for low quality services. Amazingly, despite these quality and timeliness issues, the INS plans to increase significantly several of the fees it charges for naturalization services in the coming months. What appears to be missing in these offices is a system of accountability so that poor performance, lack of responsiveness and unnecessary delays are reported and acted upon by managers in charge. More training of INS officers dealing with naturalization is necessary in order to ensure a more customer friendly environment. Additionally there should be consequences for INS officers who fail to perform their duties and meet the basic requirements of the job.

Of the 26,000 employees of the INS, 19,000 are involved in enforcement. In fact, the INS now has more armed agents than any other federal enforcement agency. For decades, INS' enforcement efforts have focused on controlling the borders and rightfully stopping smugglers of immigrants and drugs. In the past several years the Administration and Congress have placed an increased emphasis on the presence of INS agents in the interior of the nation.

There are very valid concerns that the work of the interior enforcement units has resulted in instances of abuse and violations of civil rights of ethnic minorities, particularly Latinos, who are legally living in the US, many of them native born citizens, because they have the appearance of immigrants. It is quite unacceptable that INS agents would target certain ethnic communities or conduct raids without "reasonable cause." Special steps must be taken to avoid this kind of stereotyping and targeting.

There have been incidents recently of Border Patrol and INS agents who were complicit, if not actively participating, in violations of the 4th and 5th amendment rights of immigrants and ethnic minorities based on their appearance or language. Having reviewed INS statistics on removals, the National Council of La Raza and other organizations report that INS agents are increasingly targeting Latinos and have been detaining and mistreating U.S. citizens and lawful permanent residents in the process.

Immigrant and civil rights organizations have been appalled by accounts of unprofessional behavior and, on occasion, unlawful action during immigration raids across the country. Eyewitness accounts and newspaper reports have detailed stories of abuse and ethnically selective enforcement of immigration laws in Latino communities, such as those noted in Katy, Texas in 1994; Crescent City, Florida and Chandler, Arizona last year and in southern Maryland, Seattle and in Miami just last week. These incidents speak to the need for increased training and clear procedures that are vigorously adhered to by INS enforcement agents. Any effort to reform the INS would not be credible if it did not address these problems by establishing a clear chain of command in the enforcement hierarchy and requiring greater personal accountability for misdeeds.

Under its current structure, the INS has been unable to focus adequately and evenhandedly on its dual responsibilities of enforcement and service. At the local level, the enforcement side is generally the predominant culture and INS district directors have not uniformly seen to it that their employees treat applicants with courtesy, provide them with timely information, or process applications efficiently and in a reasonable amount of time. Moreover, to some local INS offices, not-for-profit agencies and religious organizations such as ours are seen as an inconvenience and as meddlers. Some offices do not respond to our inquiries and have simply ignored requests for meetings. This is not to say that there aren't some local offices that do a good job. Unfortunately, though, these offices are the exception than the rule.

INS headquarters has an institutional history of being unable to provide effective guidance to the districts on managing the dual priorities of enforcement and service. Until the INS no longer has to contend with the conflict between service and enforcement policy priorities and confusion of mission by its personnel, customer service will be severely short changed.

The guiding objective that should frame any reforms associated with the INS is that any changes must enable the new structure to meet its mandate efficiently, effectively and fairly. We are very much aware that change in structure might involve additional public expenditures and have sought to take those additional costs into consideration. This Congress has frequently expressed a strong commitment to ensuring that government be part of the solution and not the problem. Any solution that exacerbates the complexity of the bureaucracy should be regarded with great scepticism. While fundamental change is called for, such change must be achievable and in the long run be cost effective.

Mr. Chairman, we believe that the following seven principles should guide the restructuring of the INS. In order to be brief, I will not fully detail every aspect of the recommendations, but I request that my full statement, including a copy of our proposal be included in the record.

These recommendations are the basic components we deem necessary in any restructuring of the INS functions in order to ensure that services to new arrivals and those seeking naturalization, adjustment of status, or asylum are accessible, efficient, timely and fair and that those applying for these services are treated with courtesy and respect. Enforcement functions also must be properly and fairly implemented without violating the civil rights of any individual or group.

I The culture of INS offices must be one of service.

The overriding change needed in the provision of all INS services is one of attitude: immigrants, refugees and asylees seeking services must be treated as customers, not adversaries. INS employees, from desk clerks to interviewers, must have a "customer service" orientation so that applicants are treated with respect and courtesy. Assistance should be provided wherever possible whether responding to a phone call or an in-person request. The atmosphere in local and district INS offices should be welcoming, not intimidating. This includes, but is not limited to, ensuring that there are chairs to sit in; clean, attractive waiting areas; easily accessible information in several languages about various services available; staff who are knowledgeable and responsive to questions; and available of forms and written information about the process and its timetable. All personnel should understand that customers are entitled to information, assistance and respect at every stage of the process.

Of primary importance is that the end product of service, that is, a processed application and adjudication, must be timely without undue waiting either for an interview or a determination.

Any restructuring of the INS must address personnel training, maintenance and appointment of physical office space, accessibility of information and applications and reasonable time frames for the service provided. There must also be opportunities to report about inadequate service and there must be appropriate actions taken with personnel who fail to meet basic standards of service. Customers must be given clear information about timetables and procedures and any changes there to must be widely announced.

INS local and regional offices must be willing to meet on a regular basis with not-for-profit agencies assisting people who have business with the INS. This should be both a matter of policy and of regular practice. Information about procedural changes, forms and other relevant data should be available immediately to these community agencies. Such agencies should not be viewed by the local offices with suspicion, but rather as partners in the important function of helping eligible people to become naturalized citizens and helping others with a broad array of issues requiring INS involvement.

II There must be a clear separation between service and enforcement personnel and functions.

In order to assure that the service requirements are attained, INS personnel cannot be considered interchangeable. Personnel on the service side should not come from the Border Patrol or other enforcement divisions of the INS. The inherent adversarial nature of enforcement positions makes it difficult to develop the attitude and skills required to perform the service functions.

In order to ensure that both service and enforcement at INS are adequately attended to, the two functions should be totally separated in terms of chain of command and career tracks from the Deputy Commission level to local field staff. Each area should have staff at equal rank and Deputy Commissioners who report directly to the Commissioner.

At the local level, the service and enforcement functions should each have their own district director and should not be co-located. Two separate career paths need to be developed for immigration law enforcement and services. Job descriptions in the latter category should include previous experience in the delivery of services. Such a dual structure may add cost and numbers to the bureaucracy, but it will increase efficiency and productivity and alleviate many of the problems faced by immigrants seeking service. Adequate levels of federal funds should be authorized and appropriated to make this possible.

III While this separation is necessary, it should not be absolute, the wall separating the two functions needs to have windows.

INS examiners and enforcement personnel need to work together and share data in order to investigate and prosecute immigration fraud, particularly when perpetrated by alien smugglers and document vendors. INS should look to the police/prosecutor relationship as a model of how two separate agencies could work together in this way, and should study how other federal agencies use separate enforcement agencies to investigate and prosecute fraud.

IV Communication and shared data must be available between enforcement and service officers.

Although the skills and attitudes are very different for law enforcement officers and service adjudicators, the information they each gather can be critical to the other's work and should be shared. An enforcement officer who detains a foreign national at a port of entry must be able to check the detainee's claim that she or he is a lawful permanent resident of the U.S. entitled to re-entry after a trip abroad. A naturalization interviewer likewise must be able to verify that no violations of immigration law have occurred. There needs to be a single accurate data base that is accessible to both divisions.

V There must be consistency in the implementation of policy in all INS offices.

National policies need to be clearly presented to all INS offices, here and abroad, so that all relevant personnel, not just the directors, are familiar with and apply in an even handed manner these national policies. Regional/district directors as well as local office directors, line staff and interviewing officers need to have access to the most recent regulations and directives from Washington. Oversight of the implementation of national policy here and abroad should be made a top priority of the national office.

In addition, structures for better day-to-day supervision and quality assurance also need to be clearly established. Any reorganization of the services side of INS must include a clear line of authority, clearly defined areas of discretion on the part of local directors and a system of checks on uniformity in the U.S. and abroad. Waiting periods for those in the naturalization process or for any other service provided by the INS local office should be the same across the country. Accordingly the INS should deploy resources to ensure a more uniform waiting period nationwide and the appropriate location of offices that are easily accessible through public transportation.

VI There must be a structure for appealing decisions and recourse for other problems.

Within whatever service structure emerges, it is essential that there be an easily accessible appeals process for those who believe the decision on their application was in error, and a "complaint office" where grievances can be heard in a timely and fair manner. Data on appeals and grievances should be made available to not-for-profit organizations assisting individuals with matters before the INS.

Additionally, all complaints regarding civil and human rights violations must be swiftly reviewed and appropriate action taken. Special steps must be taken to ensure that the civil rights of any group is not violated by agents of the INS. To achieve this goal, we recommend that training programs take place on an ongoing basis. Enforcement procedures must be monitored on a regular basis to ensure that such violations do not recur. Should such violations repeat, there must be consequences for the personnel involved.

VII All fees collected for services must be expended on services.

All fees collected by the immigration service should be spent on service delivery and improvement. These fees should be used to supplement, not replace, direct annual appropriations from Congress and should not be made available for enforcement purposes. At this time, a number of INS "services," such as examinations receive no appropriations from taxpayer funds and are fully self-financing. Indeed, some of the fees result in excess revenue that is diverted by Congress to pay for asylum adjudications, denaturalization proceedings, and removal proceedings. Thus, applicants pay for services that they do not receive and that are the proper domain of the federal government. As the organization is restructured, Congress should commit to ceasing this diversion its examination fees to the enforcement sector, and should appropriate money at least to subsidize those service functions for which no fee is charged as well as those functions which benefit both the enforcement and service sectors (i.e. automation, information management and new sites for naturalization and enforcement offices). Similarly, the INS should be granted the discretion to subsidize these programs with fee income until Congress provides an adequate level of appropriations, so long as it is not at the expense of naturalization and legislative action is taken in a timely manner.

A national fee waiver policy also must be in place to assure that everyone who is eligible for a service can receive it regardless of their ability to pay. This policy must be implemented consistently in all offices.

The immigration services agency should have the authority to determine the allocation of fee income in order to enhance the integrity and efficiency of the services consistent with the law and the intent of Congress.

Furthermore, appropriations for enforcement must be totally separate and apart from any federal funds for service provision.

We believe that any reform proposal should also incorporate the following three concepts.

No matter how the organization is restructured, its visibility within the Administration should be elevated.

The complexity and the breadth of the work undertaken by this institution calls for a much higher level status while still being accountable for its activities. Whether this be a cabinet level agency or whether the Commissioner reports directly to the Attorney General and has equal rank as that of the Director of the FBI, the INS must have a higher level status within the Administration. To better facilitate communication and to enhance accountability we recommend that an office be created in the Department of Justice specifically charged with immigration matters. The office of the Associate Attorney General for Immigration should include senior personnel , who should also supervise the Executive Office for Immigration Review (EOIR), which oversees all immigration judges and the Board of Immigration Appeals (BIA) . The Associate Attorney General should work with the Commissioner, Deputy Commissioner and the two Associate

Commissioners for Enforcement and for Services.

When service and enforcement are separated, it will be essential to distinguish between their respective functions.

Since the passage of IIRIRA, the lines between enforcement and service have been further blurred. As indicated earlier, immigration inspectors, who carry guns and traditionally have acted as airport border guards, have been empowered by IIRIRA to also act as prosecutor, judge, and jury. Inspectors may now summarily detain and exclude individuals from the United States without a possibility of appeal.

Enforcement personnel should be directed to identify individuals to be removed from the United States, but only an adjudicator from the "service side" should be permitted to make the decision concerning the removal. This would *not* require a substantive change to IIRIRA but, rather, a technical amendment so that all primary inspections be done by enforcement (inspectors), and the "secondary inspection" and final determination concerning exclusion and removal be made by the service division (examiners).

Finally, there must be greater inter-agency coordination and White House involvement in immigration policy and priority setting.

To accomplish this, we propose that the White House co-convene along with the INS Commissioner a council that includes senior representatives of all government agencies involved in immigration related matters to facilitate the work of all such departments and ensure a coherent national immigration policy and program.

Mr. Chairman and Mr. Watt, we carefully reviewed various proposals that have been offered to restructure the INS and concluded that some would do more harm than good. We believe that it would be regrettable to embark upon the worthy course of reforming this agency only to find ourselves worse off than we were when we began.

We are grateful to the Congress for initiating this process of review several years ago, and making it possible for the Commission on Immigration Reform to review the situation and make recommendations as appropriate. There is much about the Commission's analysis about the problems characterizing the INS with which we wholeheartedly agree. However, we believe their conclusions would head us precisely in the wrong direction. For this reason, I would like to take a few moments to share our deep concerns of where we respectfully believe that they are in substantial error.

As you know, the Commission on Immigration Reform's (CIR) recommends that the INS essentially be dismantled and its functions be dispersed among different federal agencies. Under this proposal, immigration enforcement would remain under the jurisdiction of the Department of Justice (DOJ) but in a newly created Bureau of Immigration Enforcement. Adjudications of eligibility for non-immigrant and immigrant related petitions and applications and requests for naturalization would be administered by the Department of State (DOS) under a new section headed by an Under Secretary for Citizenship, Immigration and Refugee Admissions. Enforcement of immigration related employment standards would be handled by the Department of Labor (DOL). Finally, a new independent administrative agency, the Agency for Immigration Review, would be created to review various immigration decisions.

In our view, the CIR's recommendations would dramatically increase the size of the bureaucracy involved in the immigration function without necessarily addressing the basic problems confronting the Service. Anyone who has had to deal with a number of different federal agencies on one matter knows how complicated it is. Intra-agency work is challenging enough. This proposal calls for interfacing with three different cultures, three sets of operational styles, turf questions, differing legal opinions and more. The Department of State in our experience has hardly had a sterling reputation in the administration of their immigration related functions.

The principle function of the Department of State is to carry out foreign policy, yet the adjudication of applications and petitions for immigration benefits is not a foreign policy issue. While mass and unexpected migrations throughout the world do have an impact on the national security and may have an impact on our foreign policy considerations, they have very little to do with the adjudication of immigration applications. Moreover, DOS views its current immigration responsibilities in a truly "plenary" manner and has always resisted formal reviews of its consular decisions.

Historically, the DOS has not given priority to consular services and has been opposed to administrative and judicial review of its consular decisions. It is unlikely that the status and culture of the consular service would improve with the addition of new adjudicative responsibilities for a broad variety of complex cases. Similarly, there is little reason to believe that the 5,000 INS and DOL staff that the CIR recommends transferring to the DOS would be able truly to integrate into the organization. It is unlikely that the culture and mission of each agency would permit a seamless and effective incorporation of these functions because they simply are not compatible.

The transfer of the labor-related enforcement functions to the DOL also will be subject to mission and culture conflicts that would make employment related enforcement ineffective. In fact, the DOL continues to express concern over its ability to enforce labor and wage standards if they are also made responsible for immigration enforcement. For example, it would be difficult for the DOL to develop relevant information on wage and labor abuses if the sources of that information are threatened with deportation. Consequently, the plan advanced by the CIR is unlikely to enhance the enforcement of the labor standards or even the effective removal of illegal aliens, and in fact may promote an increase in labor and immigration violations.

Mr. Chairman, no doubt you will hear about other proposals that seek to divide the INS and place these functions separately in different federal agencies. As we have attempted to point out, these functions are distinct and should be carried out by different personnel, but a lot of the information is organically linked and should be available through one integrated technical system managed by a high level Administration official. All aspects of the system must have built in checks and balances and must be accountable. We do not believe that dividing the Agency into two or three splintered parts with no organic relationship among those parts managed by senior officers in the same agency accountable to one director will solve the problems that need to be addressed. We believe that such an arrangement, while satisfying some anger and frustration will exacerbate the situation. We rue the day that we may have to work with two or three time as many agencies on the same tasks.

Mr. Chairman, I would like to conclude my remarks by again thanking you and the members of the Subcommittee for this opportunity. It is my hope that the Subcommittee will take these recommendations under advisement when formulating a plan to restructure the INS. Immigrants, refugees, and asylees who have come here legally and played by the rules deserve the chance to be able to become an American citizen in a timely, efficient manner. Their transition to American citizenship should be a positive experience working with an agency that affirms their decision to become a citizen of this great country.

ATTACHMENT:

RESTRUCTURING THE IMMIGRATION AND NATURALIZATION SERVICE: PRINCIPLES AND POLICY RECOMMENDATIONS

I. PRINCIPLES

This paper reflects the positions of the Council of Jewish Federations (CJF), Hebrew Immigrant Aid Society (HIAS), American Jewish Committee (AJC), New York Association of New Americans, Inc. (NYANA), Jewish Council for Public Affairs (JCPA) and the Jewish Federation of Metropolitan Chicago regarding the restructuring of the Immigration and Naturalization Service (INS). These recommendations are the basic components we believe necessary in any restructuring of the INS functions in order to insure that services to new arrivals and those seeking citizenship (naturalization, adjustment of status, asylum, etc.) are accessible, efficient, timely and fair and that the those applying for these services are treated with courtesy and respect.

1) The culture of INS offices must be one of <u>service</u>.

A) The overriding change needed in the provision of all INS services is one of attitude: immigrants, refugees and asylees seeking services must be treated as customers, not adversaries. INS employees, from desk clerks to interviewers, must have a "customer service" orientation so that applicants are treated with respect and courtesy. Assistance should be provided wherever possible whether responding to a phone call or an in-person request. The atmosphere in local and district INS offices should be welcoming, not intimidating. This includes bu is not limited to ensuring that there are chairs to sit in; clean, attractive waiting areas; easily accessible information in several languages about various services available; staff who are knowledgeable and responsive to questions; availability of forms and written information about the process and its timetable. All personnel should understand that customers are entitled to information, assistance and respect at every stage of the process.

Of primary importance is that the end product of service, that is, a processed application and adjudication, must be timely without undue waiting either for an interview or a determination.

B) Any restructuring of the INS must address the issue of personnel training, maintenance and appointment of physical office space, accessibility of information and applications and reasonable time frames for the service provided.

C) INS local and regional offices must be willing to meet on a regular basis with not-for-profit agencies assisting people who have business with the INS. This should be both a matter of policy and of regular practice. Information about procedural changes, forms and other relevant data should be available immediately to these community agencies. Such agencies should not be viewed by the local offices with suspicion, but rather as partners in the important function of helping eligible people to become naturalized citizens and helping others with a broad array of issues requiring INS involvement.

2) There must be a <u>clear separation between service and enforcement personnel</u>.

In order to assure that the service requirements are attainable, INS personnel must not be considered interchangeable. Personnel on the service side should not come from the Border Patrol or other enforcement divisions of the INS. The inherent adversarial nature of enforcement positions makes it difficult to develop the positive attitude and interpersonal skills required to perform the service functions. The law enforcement training, experience and attitude are not appropriate to service provision and are not easily altered even with new training.

Two separate career paths need to be developed for immigration law enforcement and services. Job descriptions in the latter category should include previous experience in the delivery of services. While such a dual structure may add cost and numbers to the bureaucracy, it will increase efficiency and productivity and alleviate many of the problems faced by immigrants seeking service.

3) <u>Communication and shared data</u> must be available between enforcement and service officers.

Although the skills and attitudes are very different for law enforcement officers and service adjudicators, the information they each gather can be critical to the other's work. An enforcement officer who detains a foreign national at a port of entry must be able to check the detainee's claim that she or he is a lawful permanent resident of the U.S. entitled to reentry after a trip abroad. A naturalization interviewer likewise must be able to verify that no violations of immigration law have occurred. There needs to be a single accurate data base that is accessible to both divisions.

4) There must be <u>consistency in the implementation of policy</u> in all local offices.

National policies need to be clearly presented to all District and local offices so that <u>all</u> officers, not just the directors, are familiar with national policies. Regional/district directors as well as local office directors, line staff and interviewing officers must have access to the most recent regulations and directives from Washington. Oversight of the implementation of national policy must be a major component of national office responsibility. Local offices must be able to appeal to appropriate staff at headquarters for specified concerns if problems are not adequately addressed by the regional/district office.

In addition, structures for better day-to-day supervision and quality assurance also need to be in place. Any reorganization of the services side of INS must include a clear line of authority, clearly defined areas of discretion on the part of local directors and a system of checks on national uniformity. The waiting period for those in the naturalization process or for any other services provided by the INS local office should be the same regardless of where they live. Accordingly the INS should deploy resources to ensure a more even waiting period and that the location of offices are easily accessible through public transportation. Local offices must be easily accessible to customers.

5) There must be a structure for <u>appealing decisions and recourse for other problems</u>.

Within whatever service structure is reengineered or reorganized, there needs to be an easily accessible appeals process for those who believe the decision on their application was in error, and a "complaint office" where those who feel they have been unfairly or inappropriately treated can go to redress their grievance. Appeals must be completed within a reasonable time frame. Such information should be available to the not for profit organization working with the individuals having business with the INS.

6) <u>All fees for services must be expended on services</u>.

All fees collected by the immigration service should be spent on service delivery and improvement. None of these funds should be available to the enforcement structures. A national fee waiver policy must be in place to assure that everyone who is eligible for a service can receive it regardless of their ability to pay the fee. This policy must be implemented consistently in all offices.

The immigration services agency should have the authority to determine the allocation of fee dollars in order to enhance the integrity and efficiency of the services consistent with the law and the intent of Congress.

Direct annual appropriations from Congress are appropriate and necessary for a variety of immigration services especially non-fee based services such as asylum adjudications and refugee services. Special appropriations would be required for large scale efficiency enhancements such as major computerization improvements, hiring of additional personnel, and processing unanticipated large caseloads in a given year.

Appropriations for enforcement must be totally separate and apart from any federal funds for service provision.

II. COMMENTS ON THE U.S. COMMISSION ON IMMIGRATION REFORM FINAL REPORT

- In September of 1997, the Commission on Immigration Reform (CIR) issued a final set of recommendations on the future of the immigration policies with a special focus on the structure that would accommodate the implementation of these policies. The CIR concludes that the immigration system is broken, that INS should be dismantled and its functions be dispersed throughout the federal government. CIR recommends that immigration enforcement at the border and in the interior of the United States remain under the jurisdiction of the Department of Justice (DOJ) but in a newly created Bureau of Immigration Enforcement. Adjudications of eligibility for non-immigrant and immigrant related petitions and applications and requests for naturalization would be transferred to the Department of State (DOS). The CIR also recommends creation of a position of Under Secretary for Citizenship, Immigration and Refugee Admissions within the Department of State. Enforcement of immigration related employment standards would be transferred to the Department of Labor (DOL). Finally, the CIR recommends the creation of a new independent administrative agency that would be responsible for the review of various immigration decisions, and this agency would be called the Agency for Immigration Review.

- These recommendations reflect a general sense of frustration expressed by key legislators, editorial boards, the public and applicants for immigration benefits who are calling for a fundamental reform of how the federal government carries out its immigration functions. Among those who follow immigration policy there is a general consensus that the INS is in need of significant improvement and a strong sentiment to change INS operations.

- The CIR report asserts there is "mission overload," where the INS is unable to address adequately a range of priorities that deserve its equal attention. In fact the problem has been less a question of mission overload and more a lack of clarity of purpose and focus combined with structural weaknesses that rendered the Service unable to meet adequately its mandate. While the INS has taken significant steps to address programmatic and administrative challenges set by Congress in the last three years, nevertheless the agency has become so overwhelmed that the focus on one set of priorities undermines its ability to carry out equally important commitments associated with other priorities, particularly in the field of adjudications that recently have become subject of extraordinary political scrutiny.

- The agency remains confronted by a set of complex and divergent responsibilities and priorities that at times appear to compete with one another. The view advanced by the CIR is that the immigration function has two components: enforcement and service. The CIR finds that these functions are incompatible within one agency. Noting the history of the INS with its emphasis and institutional development as the "enforcement agency" the CIR essentially gives up on the possibility that the INS can be reformed within its present structure. For this reason it recommends that the "service" and some enforcement functions be divided up among the DOS and the DOL.

- Adjudication and enforcement functions of balanced and comprehensive immigration policy implementation require adherence to the principles of due process and the rule of law. Because enforcement and adjudication functions require a combination of these elements, scattering some of these functions may be too drastic. While the enforcement mentality does invade the service end of the INS, it is also true that the service side to some degree has a moderating effect on enforcement.

- It is questionable whether comprehensive policy determination and equitable implementation will be enhanced if immigration related functions and responsibilities are dispersed throughout the executive branch. Effective implementation of policy requires that responsibility for the immigration enforcement and adjudication of benefits remain within one agency but with some structural adjustments that would enhance the importance of each function. A unified focus would lead to accountability, effective and streamlined oversight and responsiveness to the needs of the American people, who have the most to gain or to lose be they employers, asylum seekers, legal residents or citizens.

- There is much in the CIR's analysis and observations that is worthy of further consideration. For example, the Commission notes the challenges associated with rapid and unprecedented growth of a federal agency, along with the overwhelming changes in the law that have an enormous impact on enforcement and adjudication priorities that, as parts of the comprehensive policy implementation, require equal levels of attention.

- In the last three years, Congress passed two massive immigration laws and a welfare reform law that fundamentally alter significant portions of immigration enforcement and adjudication procedures. Implementation of the hundreds of pages of new laws requires promulgation of thousands of pages of new regulations that cut across agency lines. How quickly and properly these changes are implemented depends on the complexity and the clarity of the laws. Vague and imprecise legislative language necessarily leads to confusion, misunderstanding and delays.

- The singular thrust of the laws -in this case on enforcement - can further erode genuine efforts to implement a truly comprehensive immigration policy. In short, the legislative focus on enforcement and restrictions can undermine agency's efforts to fulfill its obligations in the area of benefit adjudications. In this sense, the CIR report is not complete because it fails to note in detail that the level of Congressional frustration at unmet expectations is, to a certain extent a reflection of shortcomings in the legislative drafting and cannot be placed entirely on the steps of the implementing agency.

- The CIR also notes the urgent need for development of timely extensive and accurate analysis of the immigration trends along with other detailed statistical and analytical information on all aspects of migration that are essential for planning, policy development and policy implementation. The implementation would require an integrated data collection with uniform and consistent set of guidelines. However, under the CIR's proposal where major immigration functions are scattered throughout several agencies, collection and dissemination of such information will turn into a complex undertaking.

- The principle function of the Department of State is to carry out foreign policy, yet the overall adjudication of applications and petitions for immigration benefits is not a foreign policy issue. While mass and unexpected migrations throughout the world do have an impact on the national security and may have an impact on our foreign policy considerations, they have very little to do with the actual adjudication of immigration applications. Moreover, DOS views its current immigration responsibilities in truly "plenary" manner and has always resisted any formal review of its consular decisions. If refugee and asylum adjudications are transferred entirely to the DOS, the process may become more politicized. Processing of asylum requests for Salvadorans, Guatemalans and Nicaraguans in the 1980's comes to mind. There should be substantial concern for consequences of foreign policy considerations and humanitarian and legal due process responsibilities coming under one umbrella of the DOS.

- The DOS historically has not given required priority to consular services, and has been opposed to administrative and judicial review of its consular decisions. It is unlikely that with additional adjudicative responsibilities for a broad variety of complex cases, this culture of resistance could be easily overcome. The prudence of transferring these functions to DOS becomes even more problematic if the focus is on the role of the DOS in the post-cold war era, rather than what is in the best interest of the well functioning adjudication system.

- The CIR proposes that approximately 5,000 INS and DOL staff be transferred to the DOS. It is unlikely that the culture and mission of each agency would permit a seamless and effective incorporation of these functions because they are not totally compatible with either of the proposed new functions.

- The transfer of the labor-related enforcement functions to the DOL will also be subject to mission and culture conflicts that would make immigration enforcement ineffective. For example, DOL continues to express concern over its ability to enforce labor and wage standards if they are to be responsible for immigration enforcement. Their concern is the same as that of law enforcement and benefit agencies that question their ability to prevent crimes and disease if they are engaged in immigration enforcement. It would for example, be difficult for the DOL to develop relevant information on wage and labor abuses if the sources of that information are threatened with deportation. Consequently, the plan advanced by the CIR is unlikely to enhance the enforcement of the labor standards or even the effective removal of illegal aliens, and in fact may promote an increase in labor and immigration violations.

- Much of the CIR's proposal is premised on the concept of improving "service" with the view of an immigrant shifting from an applicant to a customer. While improving adjudication function remains a crucial priority, it is essential to ensure that the emphasis on service accommodations will not lead to perception that adherence to due process and the rule of law are sacrificed in the name of the service. For this reason, benefit adjudication function should remain with the DOJ with a greater emphasis on "efficiency" rather than just service.

III. RECOMMENDATIONS

The following recommendations on the restructuring of INS are offered as an *integral package*. If only *some* of the recommendations below are adopted, the immigration bureaucracy's poor track record of providing fair, friendly and efficient customer service will likely continue unabated.

(1) INS Needs to be Restructured

Under its current structure, the Immigration and Naturalization Service (INS) has been unable to focus adequately and evenhandedly on its dual responsibilities of enforcement and service. At the local level, the enforcement side is generally the predominant culture, and INS District Directors are unable to ensure that their employees treat applicants with dignity; provide them with timely information; or process applications efficiently. INS Headquarters has an institutional history of being unable to provide effective guidance to the districts on managing these priorities. Until INS no longer has to contend with the conflict between service and enforcement policy priorities, INS will not be able to provide an acceptable level of customer service.

(2) INS Needs to Build a Wall Between Enforcement and Service

In order to ensure that both service and enforcement at INS are adequately attended to, the two functions should be totally separated in terms of chain of command and career tracks. At the local level, the service and enforcement functions should each have their own district director and should not be co-located. Adequate levels of federal funds should be authorized and appropriated to make this possible. Once this separation is in place, INS must concentrate on developing a culture of customer service through improved management and training.

(3) The Wall Between Service and Enforcement Should be Created from the Local Offices Through Headquarters

The enforcement and service functions of INS currently compete for the attention of the INS' top management as well as that of district and local directors. The separation of service from enforcement should continue through to the Commissioner and the Deputy Commissioner. Each area should have staff at equal rank and report directly to the Commissioner.

(4) The Wall Between Service and Enforcement Needs to have Windows

While the two conflicting functions of INS should be separated, INS Examiners and INS Enforcement personnel need to work together and share data in order to investigate and prosecute immigration fraud, particularly when perpetrated by alien smugglers and document vendors. INS should look to the police/prosecutor relationship as a model of how two separate agencies could work together in this way, and should study how other federal agencies use separate enforcement agencies to investigate and prosecute fraud.

(5) The INS Should be Accountable

Many blame INS' inadequate performance, in part, on its lack of visibility within the Department of Justice. There is, however, some benefit to having INS held accountable to a higher source, such as the Attorney General.

The complexity and the breadth of the work undertaken by this institution calls for a much higher level status while still being accountable for its activities. Whether this be a cabinet level agency or whether the Commissioner reports directly to the Attorney General and has equal rank as that of the Director of the FBI, the INS must have a higher level status within the Administration. To better facilitate communication and to enhance accountability we recommend that an office be created in the Department of Justice specifically charged with immigration matters. The office of the Associate Attorney General for Immigration should include senior personnel , who should also supervise the Executive Office for Immigration Review (EOIR), which oversees all immigration judges and the Board of Immigration Appeals (BIA) . The Associate Attorney General will work with the Commissioner, Deputy Commissioner and the two Associate Commissioners for Enforcement and for Services.

(6) If Service and Enforcement are to be Separated, it will be Essential to Distinguish Carefully Enforcement Functions from Service Functions

Since the passage of the Illegal Immigration and Immigrant Responsibility Reform Act of 1996 (IIRIRA), the lines between enforcement and service have been blurred. For example, immigration inspectors, who carry guns and traditionally have acted as airport border guards, have been empowered by IIRIRA to also act as Prosecutor, Judge, and Jury. Inspectors may now summarily detain and exclude individuals from the United States without possibility of appeal. (Prior to IIRIRA, the Executive Office for Immigration Review (EOIR), which is a division of the DOJ separate from INS, had exclusive authority to exclude aliens through EOIR's immigration judges and Board of Immigration Appeals (BIA)).

Enforcement personnel should be directed to identify individuals to be removed from the United States, but only an adjudicator from the "service side" should be permitted to make the decision concerning the removal. This would not require a substantive change to IIRIRA but, rather, a technical amendment so that all primary inspections be done by Enforcement (inspectors), but that the "secondary inspection" and final determination concerning exclusion and removal be made by the Service division (examiners).

(7) Funding of Service and Enforcement Should be Separated. "Fees for Service" Must Truly Become "Fees for Service"

At this time, INS Examinations functions receive no appropriations from taxpayer funds and are supposed to be self-financing through "fees for service." Indeed, much of the fee money is, in fact, diverted by Congress to pay for asylum adjudications (there is no fee to apply for asylum), denaturalization proceedings, and removal proceedings. Therefore, applicants are paying a fee for service but aren't getting the service for which they paid. Rather, they are subsidizing non-fee applications, enforcement activities, and facing huge backlogs. As Service is separated from Enforcement, Congress should commit to ceasing its diversion of examinations fees to the enforcement sector, and should appropriate money to at least subsidize those service functions for which no fee is charged (i.e. asylum), as well as those functions which benefit both the enforcement and service sectors (i.e. automation and information management).

While taxpayer funds should be appropriated to pay for asylum and refugee adjudications, INS should retain the discretion to subsidize these programs with fee money until Congress provides an adequate level of appropriations.

8) <u>There must be Greater Inter-agency Coordination and White House Involvement in Immigration Policy and Priority Setting.</u>

To facilitate higher level communication and coordination, we propose that the White House co-convene with the INS Commissioner a council that includes senior representatives of all government agencies involved in immigration to facilitate work of all such departments and ensure a coherent national immigration policy and program.

Testimony

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to the

Subcommittee on Immigration and Claims
Committee on the Judiciary
U.S. House of Representatives

May 21, 1998

Thank you for providing this opportunity to testify about the U.S. Commission on Immigration Reform's recommendations on structural reforms needed in the U.S. immigration system. Until December 31, I served as the Executive Director of the Commission. Since January, I have been the Director of the Institute for the Study of International Migration at Georgetown University.

I am very pleased to see the high level of discussion prompted by the Commission's recommendations, and I hope our findings will be helpful to this Committee as you consider the various pending proposals for organizational reform. Restoring credibility and setting priorities—themes at the center of the Commission's policy recommendations on illegal and legal immigration, respectively—will not come to pass unless the government is structured to deliver on these policies. An effective immigration system requires both credible policy and sound management. Good management cannot overcome bad policy. Poor structures, lack of professionalism, poor planning, and failure to set priorities will foil even the best policies.

Until relatively recently, the agencies responsible for implementing immigration policy were underfunded, understaffed, and neglected. During the past few years, massive increases in resources and personnel, combined with significant political attention to immigration issues, have provided new opportunities to address long-standing problems. Further change is required, however, if the overall U.S. immigration system is to function smoothly and effectively, anticipating and addressing, rather than reacting to, problems.

The Commission's recommendations focus on two sets of improvements that are needed to make the implementation of immigration policy more effective: structural reforms and management reforms. In developing these recommendations, we looked comprehensively at the immigration system. This hearing is focused on restructuring the Immigration and Naturalization Service. However, let me emphasize that the organizational problems we identified go far beyond INS and will not be solved solely by any structural changes in that agency.

The immigration system is one of the most complicated in the federal government bureaucracy. In some cases, one agency has multiple, and sometimes conflicting, operational responsibilities. In other cases, multiple agencies have responsibility for elements of the same functions. We identified three principal problems resulting from the current complex system for implementing immigration policy: mission overload, diffusion of responsibility, and lack of accountability.

With regard to mission overload, some of the agencies that implement the immigration laws—the INS, in particular—have so many responsibilities that they have proved unable to manage all of them effectively. Between congressional mandates and administrative determinations, these agencies must give equal weight to more priorities than any one agency can handle. Such a system is set up for failure, and, with such failure, further loss of public confidence in the immigration system.

No one agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well. Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses. While some argue that enforcement and benefits are complementary functions, the Commission agreed with the Commission for the Study of International Migration and Cooperative Economic Development [Asencio Commission, after its Chair] that placing incompatible service and enforcement functions within one agency creates problems: competition for resources; lack of coordination and cooperation; and personnel practices that both encourage transfer between enforcement and service positions and create confusion regarding mission and responsibilities.

Combining responsibility for enforcement and benefits also blurs the distinction between illegal migration and legal admissions. As a matter of public policy, it is important to maintain a bright line between these two forms of entry. Moreover, separating enforcement and benefits functions will lead to cost efficiencies, more effective enforcement, and improved service to the public.

Had mission overload been the sole problem, the Commission may have recommended changes solely within INS or the Justice Department. However, the second problem—diffusion of responsibilities among agencies—requires more fundamental structural reforms. Responsibility for many immigration functions are spread across numerous agencies within single departments or between departments. This fragmentation of responsibility is most clear in relationship to the adjudication of applications for admission as a legal permanent resident: responsibility for making decisions on skill-based immigrant and temporary worker applications is dispersed among the Department of Labor, the Immigration and Naturalization Service and the Department of State. Another agency, the United States Information Agency, now being merged into the State Department, has responsibility for determining who will enter with a J visa, under which some exchange visitors work in this country. USIA also must sign off on requests for waivers of the two-year home residency required of some J visa holders before they can adjust their status to other nonimmigrant or immigrant categories.

A second area in which responsibility is diffused and activities are redundant is worksite enforcement. Both INS and DOL conduct investigations to determine if employers have violated the employment eligibility verification requirement. Sanctions may be imposed by INS against employers who knowingly hire unauthorized workers. The DOJ Office of Special Counsel has related responsibilities in determining if employers are engaging in immigration-related unfair employment practices.

Fragmentation of responsibility leads to conflicting messages from the various agencies, unnecessary delays in adjudication, and, when more than one agency must adjudicate the same request, redundancies in actual implementation.

It also leads to problems of accountability, the Commission's third area of concern. Here, the problems are across agencies as well as within agencies. When everyone is responsible for implementing a policy, no one readily can be held accountable for the outcomes. It is too easy to blame the other agencies. Even within the same agencies, however, the immigration system suffers from problems of accountability. In its report to Congress, the Administration agreed with the Commission's assessment that INS suffers from insufficient accountability between field offices and headquarters, lack of consistency, overlapping organizational responsibilities and significant management weaknesses. The Commission also pointed to accountability problems within other agencies. For example, the absence of systematic procedures for review of consular decisions, particularly on visas for legal immigrants, opens the door to potential abuse of consular discretion.

Having determined that fundamental reform going well beyond changes in INS was needed, the Commission considered a range of ways to reorganize roles and responsibilities, including proposals to establish a super-agency, either a Cabinet-level Department of Immigration Affairs or an independent agency along the lines of the Environmental Protection Agency. There is little reason to believe, however, that a super immigration agency with multiple complex responsibilities would function any more effectively than INS. The same conflicts between the enforcement and service roles would continue. In practical terms, a super-agency would mean that INS would absorb the personnel and activities of the State Department, Labor Department and other agencies with immigration responsibilities. Such consolidation would hardly constitute an improvement for an agency that has been struggling with its own growth during the past five years.

After examining the full range of options, the Commission concluded that a clear division of responsibility among existing federal agencies, with appropriate consolidation of functions, will improve management of the federal immigration system. The Commission's specific recommendations stem from a belief that the most practical approach to structural reform is to build on the strengths and capabilities of existing agencies. As such, we identified the organizations with the strongest capacity to take on the four principal operations of the immigration system and recommended:

1. Immigration enforcement at the border and in the interior of the U.S in a new Bureau for Immigration Enforcement at the Department of Justice;

2. Adjudication of eligibility for immigration-related applications (immigrant, nonimmigrant, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of an Undersecretary for Citizenship, Immigration, and Refugee Admissions;

3. Enforcement of immigration-related employment standards in the Department of Labor; and

4. Appeals of administrative decisions, including exclusion, deportation, and removal hearings, in an independent agency, the Agency for Immigration Review.

This streamlining, reconfiguring and strengthening of responsibilities will help ensure: coherence and consistency in immigration-related law enforcement; a supportive environment for adjudication of applications for immigration, refugee, and citizenship services; rigorous enforcement of immigration-related labor standards to protect U.S. workers; and fair and impartial review of immigration decisions. More specifically, the Commission recommends that responsibility for the four functions of the immigration system be structured as follows:

Immigration Enforcement

The Commission recommends placing all responsibility for enforcing U.S. immigration laws to deter future illegal entry and remove illegal aliens in a Bureau for Immigration Enforcement in the Department of Justice. The Commission believes that the importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the DOJ. The Commission further recommends that the newly configured agency have the prominence and visibility that the Federal Bureau of Investigation [FBI] currently enjoys within the DOJ structure. The Director of the Bureau for Immigration Enforcement would be appointed for a set term (e.g., five years). The agency would be responsible for planning, implementing, managing and evaluating all U.S. immigration enforcement activities both within the United States and overseas.

The new agency's responsibilities would include many functions currently performed by the INS: inspections and admissions at air, land, and sea ports of entry and at pre-inspection facilities overseas; border management and control between ports of entry; apprehension and prosecution and removal of illegal residents and workers; oversight of pre- and post-trial/hearing release; identification and prosecution of document fraud; identification, deterrence, and prosecution of alien smuggling gangs; and other domestic and overseas deterrence activities.

The Commission believes that the current U.S. immigration system structure diffuses and confuses potential for a more concerted focus on central functions and activities. Enforcement objectives sometimes conflict with service goals and vice versa. Often, both compete for limited operational resources and for the time and attention of those responsible for planning, administering, and managing these programs.

The Commission is particularly concerned that although the current removal system produces more than 100,000 final removal orders each year, the system does not have the corresponding capability to remove the individuals subject to those orders. The Commission believes that it is critical to the credibility of the removal sector of the enforcement system that the agency be held accountable for setting realistic numerical priorities and producing specific outcomes. Upper-level management must be responsible for effecting an integrated system such that the agency apprehends, detains, and proceeds against those aliens it prioritizes for removal, and ultimately removes all those being issued final orders of removal.

To establish such an integrated system, the Commission recommends that the new enforcement agency have a more traditional law enforcement model structure and that it focus on police activities, pre- and post-trial probation services, and prosecution. Agency personnel should be upgraded to receive pay and benefits commensurate with those provided to other Department of Justice law enforcement agents. At present, INS personnel performing the same functions as FBI or Drug Enforcement Agency [DEA] personnel are often at a lower-pay grade.

The police function would be carried out by uniformed services, such as Inspectors and Border Patrol Agents, and investigators who would conduct investigations and collect intelligence at the border and in the interior to deter smuggling, facilitate removals, and accomplish other similar goals. The Commission suggests turning over most detention responsibility to the U.S. Marshals Service and/or the Bureau of Prisons.

As in other law enforcement operations, particularly those in which more people are put into proceedings than can either be accommodated in detention or actually removed, there is a need for pre- and post-trial/hearing screening and/or supervised release on probation or bond. In the immigration context, these could be available, for example, to asylum-seekers who are deemed by an Asylum Officer to have demonstrated a credible fear of persecution, to those who have accepted voluntary departure and posted bond, or to those unlikely (because of close family members or other strong community ties) to abscond pending completion of their hearings or sentences.

To ensure a high expectation of individuals actually being removed from the U.S. within a certain time, the Commission believes that Trial Attorneys should have greater discretion to set priorities for apprehension and prosecution and to determine which cases are pursued for removal proceedings.

The Commission recommends the following distribution of responsibilities within the Bureau for Immigration Enforcement.

<u>Uniformed enforcement officers</u>. The Commission recommends merger of the INS Inspectors, Border Patrol, and detention officers into one unit, the Immigration Uniformed Service Branch. Its officers would be trained for duties at land, sea, and air ports of entry, between land ports on the border, and in the interior where uniformed officers are needed for enforcement. The unit would be accountable for both the facilitation of legal traffic at the

ports of entry and the enforcement against illegal entry. It also would be responsible for moving detainees from apprehension sites to detention facilities and to hearing sites, as well as for escort duty during removals. After appropriate training, most of the officers performing these various functions could be transferred interchangeably, and opportunity for job mobility would exist across lines not now possible. As stated above, grade level and pay should be upgraded as needed to be commensurate with the law enforcement activities the officers will perform.

Unlike the current practice in which the Border Patrol reports to Sector Chiefs and Inspectors report to District Directors, all uniformed officers within a particular geographic area would be under the authority of a single, integrated immigration enforcement manager.

Investigators. The Commission believes investigations will be a key part of the new agency's responsibility. Investigators are the main agents responsible for identifying and apprehending people who are illegally residing or working in the United States, for deterring smuggling operations, for building a case against those who are not deterred, and for identifying, apprehending, and carrying out the removal of aliens with final orders of removal.

Only some 2,900 employees, out of an INS staff of more than 25,000, work on these many investigative tasks. A similar number work in INS Detention and Deportation. Most of these Deportation Officers could--given additional on-the-job training and supervision--conduct investigations. Deportation Officers now deal almost exclusively with docket control and management paperwork that could be done by lower level support staff, freeing the Deportation Officers for field work.

INS Investigators primarily work the front end of the removals process: identifying and arresting those who are illegally residing or working in the U.S. Little attention is given to the removal process as a whole, for ensuring availability of adequate detention space, allocating ample Trial Attorney and Immigration Judge time, effecting transfer to airports, and achieving physical removal. The system is bogged down with increasing numbers of aliens who are apprehended, charged with an immigration violation, put into proceedings, released due to lack of detention space or other prerequisites for effective timely processing, never appear at their hearings, or are never deported after a final order of removal is issued. The failure of careful planning and integration of the process means many of those who are apprehended are never removed. According to some observers, the INS' compartmentalized program planning, budgeting, and implementation procedures blunt attempts to integrate these functions more fully into a seamless and effective process.

"Removal Officers" in the new Bureau for Immigration Enforcement, who would integrate the functions of Investigators and Deportation Officers in apprehensions and removals, would enable the immigration system to deliver better on its commitment to actually remove those who are issued final orders. Managers would then have the flexibility to shift resources among various investigations activities as needed to produce a smooth-flowing process that ensures timely removal. As dsicussed above, grade and pay should be commensurate with the often dangerous law enforcement duties performed by investigators.

Intelligence. The Bureau for Immigration Enforcement will require an Intelligence Division to provide strategic assessments, training and expertise on fraud, information about smuggling networks, and tactical support to uniformed officers or investigators. It would act as a liaison with other federal law enforcement agencies and share information and intelligence. The Intelligence division would be one of the smallest in the agency with an anticipated staff of about 100 employees.

Assets Forfeiture Unit. As with the other DOJ enforcement agencies, the Bureau would have an Assets Forfeiture Unit. Statutory authority for Assets Forfeiture activities is a useful addition to the range of strategies and sanctions available to the U.S. law enforcement community. Augmented authorities in the 1996 immigration legislation increased both its usefulness and the potential for misuse or abuse. In order to be aggressive in using these new authorities and equally aggressive and proactive in ensuring against misuse/abuse, DOJ agencies established assets forfeiture units under the general guidance of the DOJ Assets Forfeiture Unit. Each agency, including FBI, DEA, and INS, has its own unit. These units, usually highly-placed within the agency, are the focal points for agency-wide asset-related policy implementation, field staff training, and field operations monitoring. They assist the agency's field staff in case development, monitor use of assets forfeiture funds, and oversee use of these sanctions to guard against abuse.

Pre- and post-trial "Probation" Officers. "Probation" functions are not now performed consistently or effectively in the immigration system, but the Commission believes these functions are essential to more strategic use of detention space. District Directors and Immigration Judges determine the release (either on personal recognizance or on bond) of apprehended aliens from detention. Often, release relates more to lack of detention space than to the likelihood that aliens will appear at their proceedings or assessment of aliens' danger to the community.' Some aliens are given the option to depart voluntarily, but there is little tracking of whether they actually leave the country. As it is unlikely that all potentially deportable aliens could or should be detained awaiting removal, the Commission believes more attention should be given to supervised release programs and to sophisticated methods for tracking the whereabouts of those not detained.

Pilot programs, such as the Vera Institute Appearance Assistance Program (AAP), could be expanded into more areas if successful. INS requested this three-year project in the New York area. It studies reporting requirements and the effectiveness of community sponsors in supervising the release of aliens who meet certain criteria regarding community ties and public safety. The program aims to free up valuable detention space for aliens without legal remedies who are likely to abscond, while keeping others out of detention.[1]

Trial Attorneys/Prosecutors. INS has nearly 800 staff involved in immigration-related legal proceedings, such as offering legal opinions and advice and representing the government's interests in proceedings before Immigration Judges and on appeal.

The Commission believes that the Trial Attorneys, who, in effect, are the Government's immigration prosecutors, should be vested with, and should utilize, an important tool possessed by their criminal counterparts: prosecutorial discretion. Under the current system, the Trial Attorneys do not as a practice use discretion in determining which cases to pursue. The INS does not sufficiently prioritize or target cases; instead it acts as if it had the means to prosecute each and every case effectively. Cases go forward, even when an alien will, or is likely to, prevail on an application for relief or when there is no realistic belief that the alien will ever be removed from the country. Discretion exercised at the beginning of the process and at every step would target the use of scarce resources better and contribute to a more effective and credible system. Central office leadership would be required to set appropriate priorities and provide guidance to the Trial Attorneys as to the proper use of discretion.

Greater sharing of information between the Trial Attorneys, aliens, and their counsels would facilitate smoother and more expeditious movement through the system and fewer Freedom of Information Act requests. Greater use of stipulations and pretrial conferences (with sanctions resulting when attorneys are not prepared) would narrow the disputed issues needing court resolution and time.

Field Offices. The new enforcement agency would implement its programs through a series of field offices structured to address comprehensively the immigration enforcement challenges of the particular locality. As the location of these offices should be driven by enforcement priorities, they would likely be located in different places than current district offices. Current INS Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices.

The field office inspections officers at ports of entry would both facilitate the admission of those with permission to enter and the identification of illegal entrants. Border Patrol stations

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[1]The actual implementation of the pilot demonstrates some of the accountability problems highlighted by the Commission. The pilot was designed originally to test the supervised release of aliens who were likely to prevail in their efforts to obtain legal status, with detention used at the point in the proceedings when they no longer had reason to believe they would succeed—for example, asylum applicants who met the credible fear standard. However, the New York district office generally has refused to grant AAP staff access to this asylum caseload, despite headquarters approval of this strategy. Nor has the district office taken into custody individuals whom the AAP identifies as likely to abscond because they do not comply with the program's requirements even when AAP provides accurate information on their whereabouts.

along the border and at checkpoints along major interior transportation corridors would facilitate enforcement activities. Appropriate field offices also would investigate and prosecute cases and contribute to detection and destruction of smuggling rings.

Legal Immigration, Refugee Admissions, and Citizenship Services

The Commission recommends that all citizenship and immigration benefits adjudications be consolidated in the Department of State, and that an Undersecretary for Citizenship, Immigration, and Refugee Admissions be created to manage these activities. At present, three separate agencies--the INS, the Department of State, and the Department of Labor--play broad roles adjudicating applications for legal immigrant and nonimmigrant admission, refugee admission, asylum, and/or citizenship. In addition, the Department of Health and Human Services plays an ancillary role in setting requirements regarding health standards for new arrivals, and the United States Information Agency has a major role in exchange visitor programs.

The Commission believes a more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, would result in faster and better determinations of these benefits. Consolidation of responsibility in one department would permit a reengineering of the adjudication process to make it more efficient and timely. The new organization would be responsible for naturalization and determination of citizenship, overseas citizen services abroad, adjudication of all immigrant and nonimmigrant applications, work authorizations and other related permits, and adjustments of status. It also would have responsibility for refugee status determinations abroad and asylum claims at home. Policy and program development for all immigration activities would be incorporated into the new organization, which also would have enhanced capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

In considering which department should be responsible for adjudicating these applications, the Commission considered each agency's current and historic role and overall mission. The Department of State, we believe, has the greatest capacity to undertake the responsibilities entailed in a consolidated legal admissions and citizenship system.

The Department of State has the most substantial adjudicatory capability of any of the Departments involved in immigration matters. It issues one-half million immigrant visas and six million nonimmigrant visas each year. DOS also provides a full range of citizenship services both domestically (issuance of almost six million passports annually) and abroad (e.g., citizenship determinations and registration of births of U.S. citizens overseas). DOS already plays the principal role in refugee resettlement determinations, and it plays an advisory role with regard to asylum. Indeed, DOS has devoted a major share of its personnel and its capital and operating resources to these immigration, refugee and citizenship adjudicatory functions at embassies and consulates in more than two hundred countries and in passport offices in fifteen U.S. cities. In addition, the National Visa Center in New Hampshire processes and forwards to overseas posts three-quarters of a million immigrant cases.

Consolidation of benefits adjudication responsibility in the State Department has clear cut advantages over consolidating the full responsibility in the Justice Department. Taking responsibility for immigration and citizenship services out of the Department of Justice sends the right message, that legal immigration and naturalization are not principally law enforcement problems; they are opportunities for the nation as long as the services are properly regulated. Further, the Department of Justice does not have the capacity internationally to take on the many duties of the Department of State.

Consolidating responsibility requires changes in the way the Department of State administers its immigration responsibilities, which we believe would strengthen the adjudication function. This increase in domestic responsibilities may raise concern over possible decrease in attention and focus on the Department of State's traditional mandate in foreign affairs, as well as more practical caution regarding the well-known difficulties in managing the domestic aspects of immigration. Some observers also may be concerned that DOS might not give sufficient consideration to the domestic impact of immigration. To counter this perception (and some underlying reality), the Department of State would need to develop mechanisms for consultation with domestic groups representing a broad range of views and interests regarding immigration.

The Department of State also will need to change its historic position on review of consular decisions. At present, decisions made at INS and the Department of Labor on many immigrant and nonimmigrant applications may be appealed, but no appeal is available on consular decisions. The Commission believes that immigrant and certain nonimmigrant visas with a U.S. petitioner should be subject to independent administrative review [see below].

The Department of State also would have to prepare its own bureaucracy to take on these new functions. A need for a renewed emphasis on training for the management of large and interrelated offices and processes will be matched by the need for superior personnel management and leadership. These highly-regarded management skills would be an ideal attraction for those Foreign Service officers who shy away from consular assignments abroad, perceiving them as unwanted digressions from the classic diplomatic career path.

With consolidation, the Department of State would have sole responsibility for processing immigrants--from the filing of the petition in the United States and subsequent visa issuance abroad, to the production of the green card and work authorization in the U.S., and ultimately, to naturalization. Issuance of a passport to the newly-naturalized citizen would complete this almost seamless process of immigration benefits adjudications. Consolidation of these steps would permit greater operational flexibility (e.g., one-stop adjudication of petitions and forwarding to posts abroad, streamlined processing for work-related visas), greater flexibility in use of personnel (e.g., the examination function could span visa petitions and passports), and, as discussed below, greatly enhanced antifraud capabilities.

This recommendation envisions creation of an Undersecretary who would have direct access to the Secretary of State and who would be responsible for domestic and overseas immigration, citizenship, and refugee functions.

Within the Office of the Undersecretary would be a unit responsible both for formulating and assessing immigration policy as well as reviewing and commenting on the immigration-related effects of foreign policy decisions. This policy capacity would be new for the Department of State, but it is in keeping with the important role that migration now plays in international relations.

The Undersecretary would have three principal operating bureaus:

A Bureau of Immigration Affairs [IA] would focus on the immigration process, as noted above, as well as on processing of nonimmigrant visas. IA's expanded responsibilities would be based on those currently assigned to the Visa Office and the National Visa Center. In addition to its existing overseas work, the Bureau of Immigration Affairs would be responsible for domestic adjudication/examination functions, including work authorization, adjustment of status, domestic interviewing, and the issuance of appropriate documentation (e.g., green cards). The Bureau of Immigration Affairs also would staff immigration information and adjudication offices in areas with immigrant concentrations. Related INS legal and regulatory staffs in Washington also would transfer to the IA Bureau, as would DOL functions regarding employment-based entry. In short, the IA Bureau would assess--in the U.S. and abroad--applications for all immigration-related benefits now performed by INS, DOL, DOS, and USIA.

Bureau of Refugee Admissions and Asylum Affairs would assure an appropriate level of independence from routine immigration issues and processes. It would combine the present Bureau for Population, Refugees and Migration [PRM] responsibilities for overseas refugee admissions, the refugee and asylum offices of the INS, and the DOS asylum office in the Bureau of Democracy, Human Rights and Labor. This would integrate the key governmental players in one of our most important and historic international activities. In this vein, the direct line of authority to the Secretary of State through the new Undersecretary underlines the key policy advantage for global refugee issues.

Bureau of Citizenship and Passport Affairs would be responsible for naturalization, other determinations of citizenship, and issuance of passports. Local offices performing some citizenship functions, such as overseas travel information, passport and naturalization applications, testing and interviews, could be located at the new or expanded immigration offices noted below.

Overseas citizen services would continue to be handled within the new consolidated organization, utilizing the DOS substantial domestic and overseas staff. These services include: responding to inquiries as to the welfare or whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, or experience other emergencies abroad; providing notarial services; and making citizenship determinations and issuing passports abroad. In some countries experiencing instability, an increasingly important activity is organizing Americans living or working in those areas into networks for efficient communication of information and warnings.

Quality Assurance and Fraud Prevention Offices would oversee records management, monitoring procedures, fraud investigations, and internal review. At present, monitoring of the quality of decisions made on applications for immigration and citizenship benefits receives insufficient attention. INS enforcement officials now have the responsibility to investigate allegations of fraud in immigration and naturalization benefits programs, but monitoring the adjudications process is a low priority in an office that is also responsible for identifying and removing criminal aliens, breaking up smuggling and counterfeiting rings, and performing similar police work. A staff responsible for and dedicated to ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses, such as those recently identified in the naturalization process.

Some adjudication decisions now are reviewed by a separate administrative unit within the agency conferring benefits; others are not. The Commission believes that quality decisions require some form of supervisory review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. At present, DOS has procedures for some internal supervisory review of consular decisions, but it has had no need for procedures to review refusals of applications at earlier stages of adjudication. With expanded responsibilities, DOS will need to develop a comprehensive internal review process that ensures that errors are corrected with minimal disruption to the applicant and the agency.

Quality assurance requires good records. The accrued personal records of each immigrant must be accurate, up-to-date, and retrievable at each adjudicative stage: (1) petition/immigrant visa; (2) alien resident/green card; (3) naturalization; and (4) passport. The creation and maintenance of the alien filing system ("A" files) should be reviewed to assure its maximum utility in the adjudicative flow noted above. The absolute need for good immigration records cannot be overstated.

Standardized and flexible records management and the consolidation of domestic and overseas adjudication functions will greatly enhance antifraud capabilities. At present, fraud often is not discovered until after a government agency has given the case one or more approvals and the alien appears for his or her visa. The resources are not now in place for adequate review of questionable petitions, and communications between overseas posts and domestic agencies are not adequate. Even when they receive information from overseas posts about likely fraud, the domestic agencies generally do not follow up with further investigation. Consolidation within the Department of State would overcome poor coordination and communication and permit more antifraud efforts at the beginning of the process, where they are most effective. A fraudulent entry prevented, a work permit not issued to an unauthorized person, or an ineligible alien prevented from naturalization--these are far more preferable to trying to rescind a benefit granted in error.

Field Offices. With respect to the domestic field structure for implementing these programs, The Regional Service Centers and National Visa Center would continue to be the location of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. At this time, information is passed from the RSCs to the NVC when the applicant for admission is overseas. Eventually, however, the functions of the Service Centers and the Visa Center might be consolidated. Overseas interviews would continue to take place at embassies and consulates.

A range of other interviews would take place domestically. The Department of State already operates fifteen passport offices throughout the United States, many in areas of high immigrant settlement. These offices, however, are not set up for high volume interviewing. New offices, designed specifically with immigrant services in mind, would be needed. Ideally, to avoid long lines and waits for service, there would be smaller offices in more locations than the current INS district offices. The Commission recommends against locating these offices with the enforcement offices discussed above. Asking individuals requesting benefits or information to go to an enforcement agency sends the wrong message about the U.S. view of legal immigration.

Immigration-Related Employment Standards

The Commission recommends that all responsibility for enforcement of immigration-related standards for employers be consolidated in the Department of Labor. These activities include enforcing compliance with requirements to verify work authorization and attestations made regarding conditions for legal hire of temporary and permanent foreign workers. The Commission believes that as this is an issue of labor standards, the Department of Labor is the best equipped federal agency to regulate and investigate employer compliance with standards intended to protect U.S. workers. The hiring of unauthorized workers and the failure of employers to comply with the commitments they make (e.g., to pay prevailing wages, to have recruited U.S. workers) in obtaining legal permission to hire temporary and permanent foreign workers are violations of such labor standards. Responsibility for enforcing compliance with these requirements currently lies within both INS and DOL. Under consolidation, the DOL Employment Standards Administration's [ESA], Wage and Hour Division [WH] and Office of Federal Contract Compliance Programs [OFCCP] would perform these functions in conjunction with their other worksite labor standards activities.

These increased immigration-related responsibilities would require increased DOL staff and resources. In addition to performing all worksite inspections, DOL would assume new employer sanctions responsibilities. Specifically, the Commission makes the following recommendations regarding the DOL role in regulating the worksite to ensure the protection of U.S. workers.

Sanctions against employers who fail to verify work authorization. Among its provisions that address the problem of unauthorized immigration, the Immigration Reform and Control Act of 1986 made it unlawful for an employer knowingly to hire any alien not authorized to work in the U.S. IRCA requires all employers to check the identity and work eligibility documents of all workers hired. Upon hiring, employees must sign an I-9 Form certifying eligibility to work and that the documents they present to the employer are genuine. The employer then signs the form, indicates which documents were presented, and attests that they appear to be genuine and to relate to the individual who was hired. IRCA established penalties both for employers failing to comply with this process and for employers knowingly hiring unauthorized aliens. Pilot testing of a more rigorous verification process recommended in the Commission's 1994 report and adopted in large part in the immigrant legislation passed in 1996 addresses verification problems arising from the widespread use of fraudulent documents by illegal aliens.

The Commission believes all worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by the Department of Labor. Although DOL already conducts many of these investigations, under this recommendation, DOL also would assess penalties if employers fail to verify the employment eligibility of persons being hired. DOL would not be required to prove that an employer knowingly hired an illegal worker, just that the employer hired a worker without verification of his or her authorization to work. With implementation of the Commission's proposal for a more effective verification process, this function will be critical to deterring the employment of unauthorized workers.

At present, INS has the principal responsibility for employers sanctions enforcement, including: investigations and prosecution of "knowing hires" of illegal aliens and paperwork violations; worksite raids that apprehend and remove illegal aliens; and development and maintenance of employee eligibility verification programs designed to help employers determine which individuals are authorized to work in the United States. DOL also reviews employer compliance with the employer sanctions verification processes in the course of its on-site visits to workplaces and as part of regular labor standards enforcement activities. DOL Wage and Hour and OFCCP personnel inspect the I-9 Forms on file and notify INS of the results of such inspections. DOL also is authorized to issue warning notices to employers when deficiencies are found in an employer's verification process. In practice, however, DOL has rarely issued such warnings.

Although INS and DOL jointly enforce the employer sanctions provisions, INS has the primary responsibility, including assessing civil penalties and initiating legal action. A Memorandum of Understanding between DOL and INS retains for INS the responsibility for promulgating employer sanctions program policy.

Consolidating verification enforcement at DOL gives responsibility to an agency with extensive experience regulating business compliance with labor standards, an expertise largely lacking at INS. It also permits a relatively high level of enforcement activity, as DOL completes far more employer visits than INS. The number of employer sanctions cases completed by INS has decreased sharply from 14,311 in 1990 to 5,211 in FY 1996, of which 90 percent were cases in which the agency had some reason to believe a violation occurred.. Over the past several years, the number of Wage and Hour on-site investigations also has decreased substantially but is still well above the INS level. The DOL reduction results largely from a greatly expanded use of expedited investigations in the form of employer self-audits and conciliations in place of on-site investigations. For example, Wage and Hour conducted more than 42,000 on-site investigations and corresponding I-9 inspections in FY 1990, but less than 23,000 in FY 1996. OFCCP conducts some 4,000 on-site inspections each year. In FY 1996, approximately 70 percent of Wage and Hour investigations were complaint-driven; the remaining 30 percent were directed or targeted. Wage and Hour devotes the equivalent of twenty-one full-time employees to I-9 inspections, OFCCP the equivalent of eight.

The Commission recognizes DOL concern that from the begining its assumption of an employer sanctions enforcement role created a potential conflict with its broader mission of protecting the wages and working conditions of workers. Its inspectors worry that workers' fears that such employer sanction actions might result in INS apprehension and deportation could have a "chilling effect" on those workers who might--and should--come forward to report workplace abuses. For this reason, DOL has been extremely wary of crossing the hard-to-distinguish line where sanctions-related activities might effectively frustrate its ability to protect deserving workers.

The Commission believes that DOL participation in verifying that only authorized workers are hired should be seen as integral to its mission of protecting U.S. workers. DOL has an essential interest in reducing illegal migration as those employers who hire illegal aliens are more likely to violate the minimum labor standards that DOL is charged with enforcing. A reduction in levels of illegal migration could well be the most effective tool available to enhance protections for legally authorized workers. The primary responsibility of DOL is protecting American workers, and transfer of employer sanctions enforcement to DOL represents the best option for raising the level of enforcement to a point that presents a real deterrent to the employment of undocumented workers.

Enforcement of skill-based immigrant and temporary worker admissions requirements. In our 1995 report to Congress, the Commission urged adoption of streamlined procedures for the admission of skilled foreign workers whom U.S. businesses wish to hire. We continue to believe that an expedited process is needed for the admission of both temporary and permanent foreign workers, as discussed earlier in this report, as long as adequate safeguards are in place to protect the wages and working conditions of U.S. workers. To prevent abuse of an expedited system, an effective post-admissions enforcement scheme is necessary.

DOL's other worksite enforcement responsibilities place it in the best position to monitor employers' compliance with the attestations submitted in the admissions process. DOL investigators are experienced in examining employment records and interviewing employees. Penalties should be established for violations of the conditions to which the employer has attested, including payment of the appropriate wages and benefits, terms and conditions of employment, or any misrepresentation or material omissions in the attestation. Such penalties should include both the assessment of administrative fines as well as barring egregious or repeat violators from petitioning for the admission of permanent or temporary workers.

When DOL has concluded that an employer is an egregious or repeat violator, and any subsequent administrative appeal has been decided, it would notify the DOS Bureau of Immigration Affairs of such findings, with a recommendation about barring the employer from petitioning for the admission of foreign workers for temporary or permanent employment. The Bureau of Immigration Affairs would then determine if such a debarment is to be made and would notify the employer of its decision. The employer would have the option of appealing such a decision.

Administrative Review of Immigration Decisions

The Commission recommends that administrative review of all immigration-related decisions be consolidated and be considered by a newly-created independent agency, the Agency for Immigration Review, within the Executive Branch.

The Commission believes that a system of formal administrative review of immigration-related decisions--following internal supervisory review within the initial adjudicating agency--is indispensable to the integrity and operation of the immigration system. Such review guards against incorrect and arbitrary decisions and promotes fairness, accountability, legal integrity, uniform legal interpretations, and consistency in the application of the law in individual cases and across the system as a whole.

Experience teaches that the review function works best when it is well insulated from the initial adjudicatory function and when it is conducted by decisionmakers entrusted with the highest degree of independence. Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

To the extent that administrative review of immigration-related decisions is authorized under current law, such review is conducted by several Boards and units located in the Departments of Justice, Labor, and State. For example, within the Department of Justice, the Executive Office for Immigration Review, a separate agency established by regulation in 1983, oversees the system of immigration courts, as well as the Board of Immigration Appeals [BIA]. The BIA, a fifteen-member panel appointed by the Attorney General, has nationwide jurisdiction over a wide range of cases, including decisions of Immigration Judges in exclusion, deportation, and removal proceedings, and requests for relief made in those proceedings. In addition, the BIA adjudicates appeals in several other categories of cases, such as bond determinations, fines, rescission of adjustment of status, and certain family-based visa petitions.

Supplementing their normal hearing docket, Immigration Judges now conduct the final review of the "credible fear" of persecution determinations made in the admission/inspection process, as well as determinations that an alien seeking admission is not currently a lawful permanent resident, refugee, or asylee as he or she claims.

The Office of the Chief Administrative Hearing Officer [OCAHO] also is housed in EOIR and is responsible for administering the hearing process issues arising under the employer sanctions, anti-discrimination, and document fraud provisions of the Immigration and Nationality Act.

Within the Immigration and Naturalization Service there is an Administrative Appeals Office [AAO], whose component parts include the Administrative Appeals Unit [AAU] and the Legalization Appeals Unit [LAU]. Unlike the BIA, the AAO does not have a decisionmaking board. Rather, the Chief of the Unit reviews and signs off on decisions prepared by individual examiners. AAO has appellate jurisdiction over petitions and applications in no fewer than thirty-nine subject areas, among which are decisions relating to the breaching of bonds, employment-based visa petitions, adjustment of status for Indochinese refugees, petitions for Amerasian children, fiancé(e)s, orphans, temporary workers, permission to reapply for admission after deportation or exclusion, reentry permit waivers for certain grounds of excludability, certification of schools for acceptance of foreign students, applications for refugee travel documents, claims to acquisition of citizenship abroad, applications to preserve residence abroad for naturalization purposes, various applications for certain certificates of naturalization, and applications for temporary or permanent resident status under the regular legalization, Special Agricultural Worker or Replenishment Agricultural Worker programs, and corresponding waivers of inadmissibility.

Appeals of denials of naturalization applications, however, are not considered by the AAO. Instead, review of such decisions occurs at the INS district office level and is conducted by an officer of equal or higher grade as the initial adjudicator. (If the initial decision denying the naturalization application is sustained, the alien may challenge the decision in federal district court, the court having jurisdiction over the ultimate swearing-in of successful naturalization applicants.)

In the Office of the Legal Adviser in the Department of State, there is a Board of Appellate Review [BAR] vested with jurisdiction to hear, in part, appeals of determinations of loss of nationality or expatriation, and denials, revocations, restrictions, or invalidations of passports.

In the Department of Labor, the Board of Alien Labor Certification Appeals [BALCA], created by regulation in 1987, hears appeals of denials of applications for labor certification.

When considering the appellate review function in its totality, it becomes apparent that responsibility for reviewing enforcement-related decisions rests primarily with the individual components of EOIR, while responsibility for reviewing benefit adjudication decisions is spread across several offices and agencies including the BIA, AAO, INS district offices, BALCA, and, for a more limited set of nationality- and citizenship-related issues, the BAR at DOS. Further, Immigration Judges and the BIA have the authority to provide certain forms of relief during deportation, exclusion, and removal hearings that can result in lawful permanent resident status for aliens.

Inasmuch as the underlying benefits and enforcement functions performed by the immigration system are themselves dispersed among several Departments, it is not surprising to find that formal administrative review of decisions made in the context of performing those functions is likewise dispersed. However, in light of our recommendations that responsibility for the enforcement of the immigration laws be placed with a new Bureau for Immigration Enforcement in the Department of Justice and that all citizenship and immigration benefits adjudications be removed from the Department of Justice and instead be consolidated in the Department of State, we find that a corresponding change in the placement of responsibility for the review function is in order.

Even with the assignment of the benefits adjudication function to DOS and the enforcement function to DOJ, interrelationships will exist between eligibility for benefits and enforcement actions. Indeed, eligibility for an immigration benefit may be an avenue to relief from deportation, exclusion, or removal while certain immigration violations may present barriers to attaining legal status. For example, favorable disposition of a petition or application by the benefits agency may collaterally resolve a deportation or removal issue. Aliens in enforcement proceedings may be eligible for certain forms of relief involving the same types of legal questions arising in the context of benefits adjudication outside of proceedings--or aliens in proceedings may be foreclosed from eligibility for a benefit applied for outside of proceedings. Ultimately, however, there is a need for a uniform administrative interpretation of what the law is and how it should be applied, regardless of whether the questions arise when adjudicating an application for a benefit or resolving an enforcement action. These considerations lead us to conclude that administrative review of all presently reviewable immigration-related decisions should be consolidated.

In deciding where the review function could best be performed, the Commission considered a number of options, including separate reviewing bodies for enforcement actions within DOJ and for benefit determinations within DOS, placing responsibility for review entirely with EOIR, and creation of an Article I Immigration Court.

Placing the review function in its entirety with EOIR was an attractive option, particularly given EOIR's success in both insulating the review function and achieving independence of decisionmaking since its inception in 1983. At the same time, EOIR remains located in the Department of Justice, ultimately and predominantly a law enforcement agency. Further, existing procedures permit the Attorney General to reverse or modify any decision reached by the BIA. The Commission, as well as other commentators, find this practice troubling because, at a minimum, it compromises the appearance of independent decisionmaking, injects into a quasi-judicial appellate process the possibility of intervention by the highest ranking law enforcement official in the land, and, generally, can undermine the BIA's autonomy and stature. In the end, the Commission decided the EOIR option was unworkable because of the inherent difficulty of a reviewing agency in one Department rendering decisions in cases initially decided by another Department.

Instead, the Commission was persuaded by the arguments that the review function should be completely independent of the underlying enforcement and benefits adjudication functions and that the reviewing officials should not be beholden to the head of any Department. Although the desired independence could be attained by establishing an Article I Immigration Court, such a court would be part of the Judicial, rather than the Executive Branch. The overall operation of the immigration system requires flexibility and coordination of function, including the review function, by the various agencies in the Executive Branch. Given this reality, the Commission concluded that the review function should be conducted by a newly-created independent reviewing agency in the Executive Branch. To ensure that the new reviewing agency is independent and will exist permanently across Administrations, we believe it should be statutorily created. It would incorporate the activities now performed by several existing review bodies and offices, including the DOJ Executive Office for Immigration Review, the INS Administrative Appeals Office and district offices (naturalization), the DOL Board of Alien Labor Certification Appeals, and the limited set of nationality and citizenship-related matters presently considered by the DOS Board of

Appellate Review. The Agency for Immigration Review also would have additional responsibilities.

Creating any decisional system or tribunal requires attention to several guiding principles. First, no system can work effectively if the personnel who form the base of the decisional pyramid are insufficient in number or deficient in skills and integrity to do the job. Second, the base of any such structure cannot be expanded either in number of its personnel or in extent of its jurisdiction beyond the capacity of the next level above to review and decide the outcome. This must be achieved within a reasonable period and with a reasonable expenditure of resources. Finally, the apex of any decisional pyramid should be relatively small. With these considerations in mind, the Commission proposes the following organization for the new independent Agency for Immigration Review.

This new reviewing agency would be headed by a Director, a presidential appointee, who would coordinate the overall work of the agency, bur who would have no say in the substantive decisions reached on cases considered by any division or component within the agency. There would be a trial division headed by a Chief Immigration Judge, appointed by the Director. The Chief Judge would oversee a corps of Immigration Judges sitting in immigration courts located around the country. The Immigration Judges would hear every type of case presently falling within the jurisdiction of the now sitting Immigration Judges.

The new reviewing agency also would consider appeals of decisions by the benefits adjudication agency, using staff with legal training. Although the benefits adjudication agency will handle a wide range of applications--from tourist visas to naturalization and the issuance of passports--not all determinations will be appealable, as is the case under current law. We envision that those matters that are appealable under current law would remain appealable. The only difference is that the appeal would be lodged with and considered by the new independent Agency for Immigration Review rather than by the various reviewing offices and Boards presently located among the several Departments.

The administrative appeals division also would consider appeals from certain visa denials and visa revocations by consular officers. Under current law, such decisions are not subject to formal administrative or judicial review.

When a visa is denied, important interests are at stake. To be sure, the visa applicant is adversely affected--but more importantly at stake are the interests of the United States citizens, lawful permanent residents, employers, and businesses who have petitioned the admission of the applicant or who otherwise have an interest in having the applicant present in the United States. Given the lack of formal administrative and judicial review of consular decisions, these individuals are left with little or no recourse.

The Commission believes that consular decisions denying or revoking visas in specified visa categories, including, all immigrant visas and those nonimmigrant categories where there is a petitioner in the United States who is seeking the admission of the visa applicant, should be subject to formal administrative review. The visa applicant would have no right to appeal an adverse determination. Instead, standing to appeal a visa denial or revocation would lie only with United States petitioners, whether U.S. citizens, lawful permanent residents, or employers.

An appellate Board would sit over the trial and administrative appeals divisions of the new independent Agency for Immigration Review. This appellate Board would be the highest administrative tribunal in the land on questions and interpretations of immigration law. It would designate selected decisions as precedents for publication and distribution to the public at large. Its decisions would be binding on all officers of the Executive Branch. To ensure the greatest degree of independence, decisions by the Board would be subject to reversal or modification only as a result of judicial review by the federal courts or through congressional action. Neither the Director of the reviewing agency nor any other agency or Department head could alter, modify, or reverse a decision by the appellate Board.

The appellate Board would be headed a Chairman. Both the Chair and Vice Chair would be appointed by the President for staggered terms of at least ten years. The appellate Board would have as many Members, who would be appointed by the Chair, as needed to decide appeals in a timely manner. It would consider appeals from the categories of cases presently falling within the BIA's jurisdiction, subject to the above-noted modifications. In addition, the appellate Board could entertain appeals from decisions of the administrative appeals division in cases in which a novel or significant legal issue were presented, or in any other case in which it was deemed necessary or appropriate.

The Office of the Chief Administrative Hearing Officer, presently housed in EOIR, would operate as a separate component in the Agency for Immigration Review and would perform the same work as is presently being conducted. Of course, the precise organizational arrangements and divisional jurisdictions could be subject to future modification following a comprehensive review by the Agency for Immigration Review of the types and volume of cases received. However, to meet the challenges presented by consolidation of all immigration-related appeals in one place, and to perform its critical mission of correctly and expeditiously resolving appeals, the new reviewing agency must be given sufficient resources and staffing.

Management Reform

While the Commission-recommended structural changes will help improve implementation of U.S. policy, certain management reforms must also be adopted if the agencies responsible for immigration matters are to be effective in performing their functions. Structural reforms will not by themselves solve some of the management problems that have persisted across Administrations in the immigration agencies. The Commission sets out a number of management changes that should help improve operation of the immigration system, including the setting of more manageable and fully-funded priorities; developing more fully the capacity for policy development, planning, monitoring, and evaluation; improving systems of accountability; recruiting and training managers; strengthening customer service orientation; using fees for immigration services more effectively; and improved data and analysis.

I would be pleased to answer any questions you have about these structural and management reforms.

SUMMARY OF STATEMENT OF DEMETRIOS G. PAPADEMETRIOU
Before the House Subcommittee on Immigration and Claims
May 21, 1998

The immigration function today is extremely complex and cuts across a number of critical domestic and foreign policy issues. About ten percent of the U.S. population is foreign-born, and at current immigration rates, about two-thirds of U.S. population growth in the next fifty years will be attributable to immigrants, their children, and their grandchildren. Nevertheless, and despite repeated efforts at modifying and reshuffling the immigration function over the last century, the system is plagued by weak coherence in policymaking and execution; poor customer service; unequal attention to service and enforcement functions; extreme growth in workload and complexity of function; and lack of accountability.

We believe that the immigration function should be located in an agency whose primary mission is fully consistent with the function's core purposes. Reform should opt for a centralized, high-level location for immigration policy development, improved service delivery, and separation of service and enforcement. We discuss and propose two reform options.

First, we recommend creating a new, independent, "Cabinet-level" agency for migration and citizenship affairs. This agency would consolidate the various immigration functions currently scattered around several federal departments. It would incorporate the current functions of the INS; labor certification from the Labor Department; the visa, passport, and most of the refugee and migration functions of the State Department; and the functions of the Office of Refugee Resettlement from the Department of Health and Human Services. Service and enforcement functions would be separated within the new agency, and separate immigrant service areas and enforcement sectors would be established at the local level. The new agency would be a full partner to the Congress in the development of comprehensive migration and citizenship policies, would be held accountable both for coherence in implementation and general performance, would establish a single system of records, would serve as a catalyst for cultural change within the immigration bureaucracy, and would attract experienced managers and analysts. These steps would enhance accountability and service as the system benefits from greater policy coherence, improved mission clarity, and an infusion of new managerial talent.

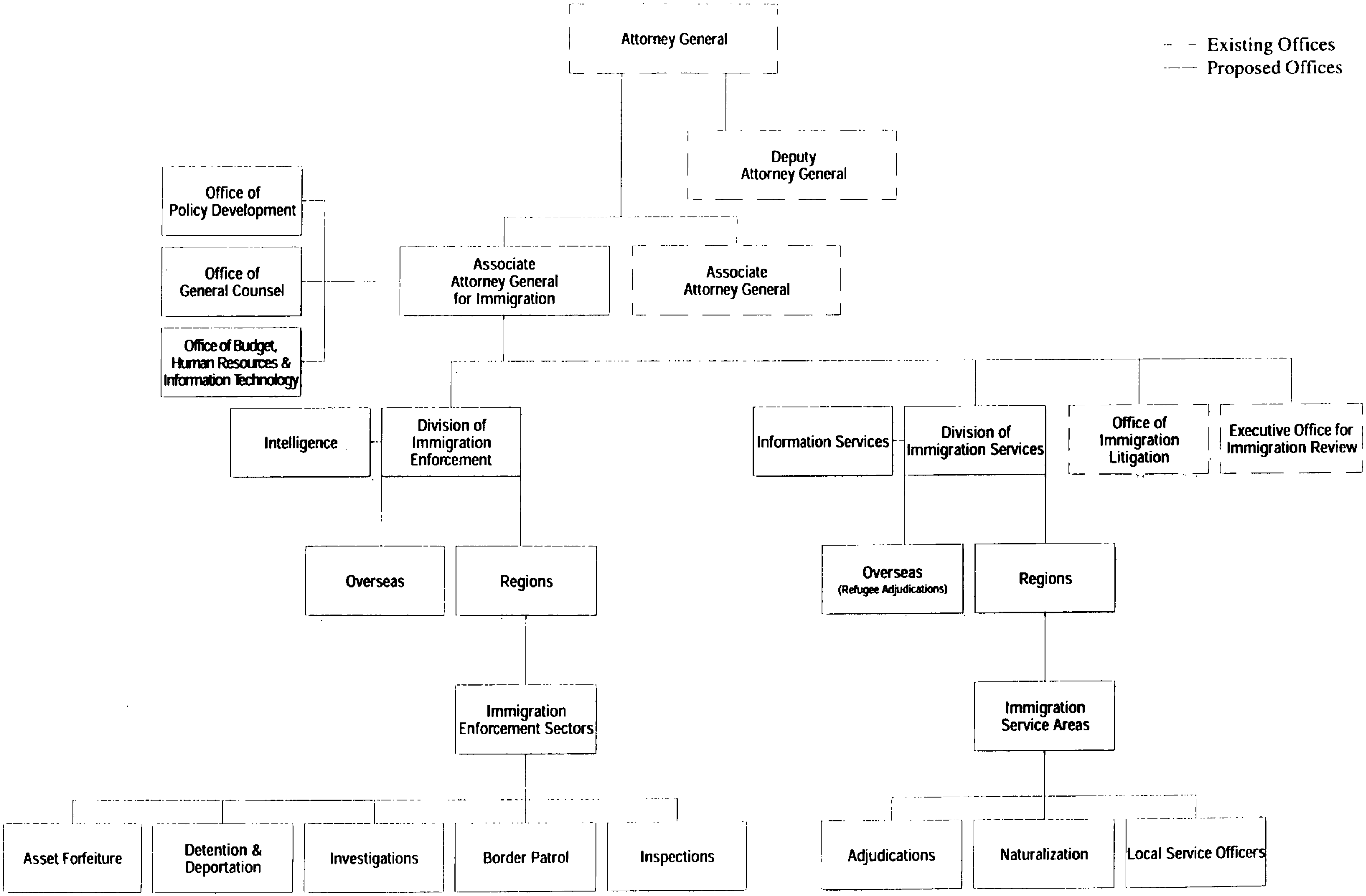
Our second-best option would elevate the immigration function within the Department of Justice through a new position of Associate Attorney General for Immigration. The office, which would be at a higher level than that of the current INS Commissioner, would be charged with the formulation of immigration policy, would supervise the immigration enforcement and service functions of the Department, and would be better placed to call upon and coordinate with other agencies who have immigration-related functions. As in the first proposal, service and enforcement tasks would operate through separate chains of command and would have separate local offices.

Other options simply are not up to the task. Separating service and enforcement functions within the existing INS would neither be likely to improve coherence in policy development, coordination, and execution nor close the agency's credibility gap. Dismantling the INS and dispersing its functions to other agencies would transfer core immigrations functions to agencies that do not view immigration issues as fundamental to their missions. Moreover, the disruption would adversely affect the U.S.'s capacity to deliver immigration functions effectively for the foreseeable future.

No one lightly proposes creating a new agency. In 1970, President Nixon created the EPA using similar reasoning - that the importance of the environment required oversight by a single independent agency. Circumstances call for another exception. If the immigration function is as central to sound public policy across a variety of policy domains as we believe it is; if accountability and consistency in program delivery are as weak as many observers argue; and if the service function is as much of a stepchild within the INS as even the agency's friends acknowledge, then creating a new agency, and giving it the authority, resources and support it requires to do its job properly becomes a compelling choice.

Chart 2

Option 2: Elevation of Immigration within the Department of Justice



Statement of

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before the
Subcommittee on Immigration and Claims
of the
Committee on the Judiciary, U.S. House of Representatives

May 21, 1998

Mr. Chairman and Members of the Subcommittee. My name is Demetrios Papademetriou and I am the Director of the International Migration Policy Program at the Carnegie Endowment for International Peace. Thank you, Mr. Chairman, for asking me to testify about the proposal to restructure the Immigration and Naturalization Service that my colleagues and I developed a few months ago. I am submitting this testimony for the record. I also am submitting an opinion piece that summarizes key elements of our proposal; it appeared on April 24, 1998 in the Los Angeles Times.

I. OVERVIEW

A new era of large-scale immigration calls for new forms of governance and management. As we negotiate these demands it is important to ask ourselves a number of critical questions. First, are the intentions of the immigration system clear to all who engage with it? Second, are our institutional structures equal to the task of managing the responsibilities implied by large immigration numbers and ever more complex functions? Third, are various components of the immigration function rationally organized into a set of interrelated elements whose whole is clearly larger than the sum of its parts? Fourth, is the system we have in place—both in terms of its organization and of its location within our public administration apparatus—capable of delivering all the programs we expect of it? Fifth, can the system satisfy Americans that increasing public investments in the immigration function have in fact improved its two main elements: compliance with the law and system flexible enough to learn from experience, embrace change, and meet the financial and programmatic criteria of accountability that the public has a right to expect?

These questions were very much at the core of a study recently completed by my colleagues and I at the Carnegie Endowment. This study's purpose was: *to examine whether the institutional framework that has been created to manage our immigration function meets fair and reasonable expectations of program integrity and delivery and—if it does not—to offer appropriate alternatives.* In order to do so, we met with representatives of the Administration, the Congress, interest groups, service providers, and others who have studied these issues; drew on our own knowledge and experiences as well as those of other governments; and reviewed the work of more than a century of study groups, commissions, task forces, congressional committees, and researchers.

Our starting premise was that immigration can best be managed in the context of laws grounded in a realistic policy vision, an appreciation of immigration's relationship to other major domestic policy priorities, and a high degree of clarity about the international objectives and obligations of the United States. Effective *day-to-day management*, in turn, has four primary ingredients: regulations that make sense, are transparent, and are consistently applied; programs that emphasize an uncompromising commitment to accountability; an institutional culture that understands and internalizes the agency's mission and priorities while embracing and rewarding personal integrity and professionalism;

and enough vigilance to identify and fix small problems before they become big ones, while adapting constantly to changing real circumstances that may require adjustments in policy and law.

II. THE IMMIGRATION FUNCTION

In an important sense, there is no single "right answer" to the question of where the immigration function should be located or how it should be organized. The system is big, complex, and asked to do many discrete things. An optimal location and structure for offices that grant benefits, and must thus be accessible and "user-friendly" to customers, may not be the same as those which optimally serve the needs of officers who investigate immigration violations and arrest and detain people. A system of records that maintains accurate and easily accessible files of lawful immigrants may not be the same system that tracks criminal aliens most efficiently. While form should follow function, *flexibility* should also be an important organizational principle when "on-the-ground" conditions demand it; a picture with neat boxes may be pretty to look at but difficult to implement.

In this study, we identified some major areas in which form appears to impede function, or in which an important function lacks a location. We then asked how the current structure might be modified to enhance policy coherence, public accountability, and customer service. We did not start from scratch, nor are we simply suggesting changes at the margins. There are some major problems and gaps that demand major changes. Remarkably, we found that the immigration bureaucracy has been plagued by many of the same problems and challenges throughout its history despite numerous congressionally mandated changes and internal restructurings. This finding implied that the questions regarding the most appropriate location and the most effective organization of the immigration function are larger than simply the politics of the moment, U.S. immigration policies, or an administration's management of the agency.

Finally, after evaluating several possible changes of placement and structural reform, *we conclude that the salience of migration and citizenship policy today argues in favor of consolidating virtually all immigration functions in a single, independent, Cabinet-level agency.* A second-best, but still fundamental, change would be to elevate the immigration function within the Department of Justice through the creation of an Associate Attorney General for Immigration.

Under either alternative, we recommend the complete separation of service and enforcement functions, each with its own career path, chain of command, and system of accountability for the complete delivery of its function. Both functions, however, would ultimately report to the same high-level administrator who also would be charged with the formulation of immigration policy for the Executive Branch. By doing so, we believe that two of the central weaknesses of the management of immigration as it is presently structured—lack of overall policy coordination and unequal attention to the agency's two main activities (enforcement and service)—are addressed with clear gains in the accountability of each activity and the consistency of program delivery.

We also conclude that other options are not up to the task. Simply separating service and enforcement functions within the existing INS could be an important step, but it would not improve policy development and coordination and might not sufficiently close the agency's credibility gap. Nor are we persuaded by the proposal to dismantle the INS and disperse its functions to other agencies. Such a move would transfer core immigration functions to agencies that do not view immigration issues as fundamental to their missions. Moreover, rather than improve policymaking, it would be likely to hinder coherent policy development.

III. HISTORY OF THE IMMIGRATION FUNCTION

Since Congress first began to centralize control over immigration in 1864 with a Commissioner in the State Department, the immigration function has been moved from department to department; substantial internal reorganizations have been even more frequent. Complete control over immigration was given to the Treasury Department in 1891 after an attempt to delegate to the states enforcement of laws against arriving aliens resulted in inconsistencies and inefficiencies. The Bureau of Immigration was transferred to the newly created Department of Commerce and Labor in 1903 because of the latter's focus on enforcing the laws regarding foreign contract labor. The naturalization function was added three years later, and an information division also was added to help immigrants settle throughout the country and compile a list of employment opportunities for them. When the Department of Commerce and Labor was split into two departments in 1913, the Immigration and Naturalization Bureau was shifted to the new Department of Labor and divided into two bureaus, which were reconsolidated in 1933 and renamed the Immigration and Naturalization Service (INS). The INS remained in the Labor Department until 1940 when President Franklin D. Roosevelt's Reorganization Plan transferred it to the Department of Justice as a wartime national security measure. It has remained there since.

Structural reform proposals date back to the first decades of the 20th century. They consistently have focused on INS' multiple missions (particularly the tension between service and enforcement), the overlap of INS functions with those of other agencies, and INS management. More specifically, they commonly have looked at raising the profile for immigration policy development, consolidating border agencies, consolidating the DOS and INS visa responsibilities, and improving efficiency and management.

The three most recent immigration commissions all have addressed this issue. In 1981, the report of the Select Commission on Immigration and Refugee Policy recommended maintaining the basic structure of the immigration system, with responsibility for visa issuance in the State Department and for domestic operations with the INS. Within this structure, however, SCIRP recommended a clear budgetary and organizational separation of the service and enforcement functions of INS; an upgrading of the level of the Commissioner to Director, and the creation of an Article I immigration court. A staff report noted that if a new immigration system were to be set up, they would recommend a new independent agency, but observed that there would be many jurisdictional and practical problems, such as personnel, that could preclude serious consideration of such an option.

The 1990 report of the Commission for the Study of International Migration and Cooperative Economic Development concluded that reorganization of the immigration function was "urgently needed." It recommended an Agency for Migration Affairs that would centralize immigration and refugee issues, give migration a higher profile on the domestic and foreign policy agendas, and eliminate costly and overlapping activities. AMA would include INS (except for Border Patrol and interior enforcement), the Bureau of Consular Affairs (except assistance to Americans abroad), the Bureau of Population, Refugees, and Migration, and the asylum office at the State Department. In effect, this would have split the service and enforcement functions, which the Commission was concerned were competing for resources, lacked coordination, and caused confusion about mission and responsibilities.

The final report of the U.S. Commission on Immigration Reform in 1997 recommended a Bureau for Immigration Enforcement within the Justice Department for border and interior enforcement; an Undersecretary of State for Citizenship, Immigration, and Refugee Admissions within the State Department with responsibility for benefit adjudication; an Agency for Immigration Review for independent repeals of administrative decisions; and a transfer of the immigration-related employment standards enforcement to the Labor Department. This fundamental restructuring of the immigration responsibilities according to function, which would eliminate the INS in its present form, was meant to address INS's mission overload, conflicting responsibilities, and poor performance of its responsibilities.

IV. PROBLEMS WITH THE CURRENT STRUCTURE

A. Weak Coherence in Policymaking and Execution and Low Agency Stature

Considering the issue's importance and the lack of a single central location for the routine and ongoing formulation and review of migration policy, one might suppose that the Executive Branch would establish a standing policy group to consider U.S. immigration policies. One might also expect a coordinated policy effort that examines the impact of migration on a variety of domestic and foreign policy realms. That, however, is not the case.

A variety of agencies have various pieces of the overall responsibility for immigration. These tend to be viewed narrowly, and they are principally operational: the INS is charged with most day-to-day program delivery tasks; the State Department deals with visa issuance and most refugee policy issues (the program is delivered by the INS and the Department of Health and Human Services); the Department of Labor weighs in on some work visa issues and helps enforce workplace immigration rules; the Department of Defense gets involved in high-seas interdictions and off-shore safe havens; and the Department of Health and Human Services manages refugee resettlement programs with the assistance of the states and private service providers. When confronted with a major migration crisis, control and coordination shifts to the National Security Council, which seeks information from and gives direction to the relevant departments.

Major immigration initiatives typically are vetted through the Domestic Policy Council, which in recent years has served more of a coordinating role than a policy formulation function. Routine coordination of agency perspectives on specific issues is handled by a few staff persons at the Office of Management and Budget (OMB). OMB also is responsible for coordinating government-wide responses to congressional requests for an administration position on pending legislation. Impasses at staff level are typically "kicked upstairs" to the relevant agencies' political management. Because of the way in which responsibility for the function is dispersed among agencies, and the function's low relative priority within most parent agencies, vetting differences typically does not start until it is very late in the process and consensus is often reached at the last moment—leaving both principals and staff exhausted and congressional committees frustrated. The lack of a central location and a formal structure for policy development are thus highly problematic.

B. Poor Customer Service

The budget of the INS has increased by 153 percent in the past five years; during the same period, staff levels have grown by 51 percent. Administration requests for Fiscal Year 1999 seek to increase budget and personnel by an additional 11 and 9 percent respectively. If the recent past is any guide, appropriations may even exceed Administration requests. The vast majority of the increase in appropriated funds has gone to enhanced border enforcement, detention and deportation, investigations, land border inspections, and technology improvements. Services—including adjudication of applications, issuance of documentation, and provision of information—are largely funded out of fees paid by persons filing applications with the INS, and these accounts also have grown significantly in recent years.

Despite the budgetary increases and growth of fee-based accounts discussed above, the day-to-day service to immigrants and U.S. citizens at immigration offices around the country does not appear to have materially improved. Lines at district offices remain long, telephones go unanswered, files continue to get misplaced or lost, information about particular cases and general policies remains difficult to obtain, and the public's experience with INS service personnel continues to be the agency's number one image problem.

Poor service has consequences beyond the frustrations experienced by individual clients. It implicitly sends a message to U.S. citizens and corporate entities that petition for a foreign-born person, as well as to immigrants who seek a service, that their needs and interests are not valued—a message that may eventually impede integration efforts and may also find reflection in public attitudes. Inadequate service also erodes support for the INS and undermines the credibility of agency policy initiatives. Finally, poor service breeds a self-reinforcing culture among agency personnel who, because they receive daily complaints, come to view their customers as adversaries.

C. Service and Enforcement Functions Receive Unequal Attention

In recent years, public attention has focused primarily on the problem of illegal immigration; Congress and the Administration have turned the immigration portfolio, and funding, strongly toward enforcement. This has only served to accentuate the INS's dominant profile as an enforcement agency. (There have been a few notable counter-examples to this characterization, such as the legalization efforts of the late 1980s, and the recent creation of an asylum corps.)

Some believe[1] that the service problems stem from a fundamental conflict between the agency's core functions of deterring illegal immigration and facilitating legal immigration. The combination of enforcement and service functions also has been criticized on the ground that enforcement goals always seem to take precedence over service goals. For instance, money will be made available for expediting removals but not for expediting adjudication of immigrant petitions. Another criticism posits that the culture of the agency has bred an "enforcement mentality" that "infects" INS personnel undertaking other tasks. As a result, many adjudicators are thought to begin their tasks with a predisposition to doubt applicants and to deny applications.

Whatever the causes, the current INS structure appears to engender conflict and confusion in the performance of the agency's central functions. Those charged with implementing immigration law lack clear guidance on their core missions, how to balance priorities, or how to assign personnel. District Offices

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[1] See U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigrant Policy*. 1997:148-49.

bear the brunt of this lack of clarity. They are microcosms of the immigration world: handing out documents, interviewing applicants, interrogating those they arrest, and detaining and transporting deportable aliens. They tend to be located in large cities, but their location is frequently neither convenient for lawful immigrants nor near prime areas for enforcement—such as major transit routes for undocumented aliens. District Directors are responsible for oversight of multiple functions, including adjudication, investigation, detention and deportation, and records maintenance. They are charged with accomplishing the agency's many priority tasks, as well as responding to day-to-day crises and special cases. Effective management under these circumstances is not impossible; it has, however, proven to be very difficult. Almost invariably, it has been the service side of the agency's functions that has suffered.

D. Extreme Growth in Work Load and Complexity of Functions

The tasks assigned to the INS have grown dramatically in recent years. The basic functions—border inspection, adjudication of a variety of immigrant applications, asylum processing, naturalization, and detention and deportation of unauthorized aliens—have become remarkably complex. They require policies on such diverse areas as the management of the border, arrests and interrogation, detailed regulations on complicated substantive rules of immigration law, a records systems that includes millions of entries, the production of documents requiring the use of ever more advanced technologies, knowledge of political conditions in foreign countries, the maintenance of a 12,000 bed detention program, and appearances before tens of thousands of immigration court proceedings a year.

IRCA greatly expanded the INS's duties by effectively making the hiring of any person—citizen or alien—anywhere in the United States of concern to the INS. Legislation in 1996 charged the INS with a large number of additional inspection and enforcement responsibilities. Yet, this disparate and increasingly complex array of tasks has been imposed on an infrastructure long ignored by the Congress and most administrations. To quote from the Commission on Immigration Reform:

> Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. . . . Such a system is set up for failure, and with such failure, further loss of public confidence in the immigration system.[2]

Our own analysis does not support the assertion that the number of tasks assigned to the INS are more than "any one agency can handle"—and our recommendations reflect this conclusion. On the face of it, the INS has no more priorities than the Defense Department, the Department of Justice, Health and Human Services, or the Treasury Department. Moreover, a number of other governmental departments have both enforcement and service components: the State Department issues visas and prosecutes visa fraud; the Department of Labor grants labor certifications and enforces wage and hour laws; the

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[2] *Id* at 148.

Department of Justice enforces the drug laws and gives grants for drug treatment programs; and the Department of Defense plans for war and is responsible for humanitarian peace-keeping missions. Indeed, any large institution is likely to perform a range of tasks in pursuit of both enforcement and service values.

E. Lack of Accountability

The American people have a right to expect far greater accountability from the immigration system than they now get. Accountability has two dimensions. The first dimension—we call it *external* accountability—is based on the public expectation that important governance functions will be consistent and supportive of each other, and that agencies will deliver their principal functions effectively, both by committing resources in a manner consistent with policy priorities and by achieving publicly announced goals. The second dimension—we call it *internal* accountability—demands that agency personnel be held responsible for the effective performance of their duties.

External accountability has suffered in the performance of the immigration function. Policies regularly seem to be in tension—such as the conflict between admissions policies that seek to enhance our competitiveness and those that seek to protect U.S. workers. Furthermore, a strained overall relationship between the executive and legislative branches has made it more difficult to perform the immigration function well. Poor relations between the two branches on immigration issues, in turn, have produced a congressional tendency to micromanage the issue and undervalue the expertise and experience of the agency's managers and analysts.

Internal accountability also is inadequate in the performance of the immigration function. Policies and practices vary from district to district, headquarters-to-field communication is notoriously poor, and managers are rarely—if ever—held accountable for neglecting the service side of the agency's work *or for tolerating enforcement practices that are at variance with agency policies.* These problems have persisted whether INS has adopted a centralized or decentralized organizational structure.

Internal accountability demands that an agency develop rules and deliver programs in a fair and consistent manner, and with the highest commitment to personal integrity and professionalism. Whether in the enforcement or service component of a function, nothing undermines an agency's credibility and, gradually, its effectiveness, than repeated failure in accountability.

V. PRINCIPLES AND ELEMENTS OF REFORM

The most appropriate placement of any major function is in an agency whose primary mission is fully consistent with the function's core purposes. The present placement of the immigration function fails this simple test, in part because of the complex and cross-cutting nature of the immigration function—part service, part enforcement, part regulations, intersecting with policy realms and program domains that are close to the missions of many other agencies. More than any other single reason, *and there are many,* this is the explanation for the imbalance which characterizes the conduct of our immigration responsibilities. It is also the reason that the INS (and its precursors) shifted location so many times as one or another of its core purposes became paramount.

As a function changes parent agencies the performance of the function is affected in basic ways. That element of the function that is most consistent with the parent agency's mission becomes dominant; other elements atrophy or are *de facto* delegated to agencies whose mission is more consistent with that purpose. This is the genesis of many of the immigration service's current predicaments; it also provides the guideposts for resolving them.

If the immigration function were a relatively inconsequential one, as it was during most of the first three decades of its location within the Department of Justice (1940-1970), the case for dispersing it among agencies—the proposal of the Commission for Immigration Reform—might be compelling. But even then, the logic of the Commission's proposal would hold true for only part of its implicit conclusion: that police functions are done best by police officers. The other major part of that conclusion—that service functions should be located within the State Department—strains credibility in two significant ways. It requires the belief, first, that placing the immigration service function in the State Department would be consistent with that agency's mission and with the world view and career aspirations of its foreign service professionals and, second, that delivering immigration services would necessarily be improved—and within a reasonable time—by such relocation.

As we have already stressed, the immigration function is exceedingly important today. It has become an integral part of the country's ability to put into effect some of its highest policy priorities: enhanced economic competitiveness, consistent social and human resources policies, humanitarian aspirations and obligations, law enforcement and national security responsibilities, and a variety of foreign political and economic policy objectives. Structural reform must correspond to and reflect the function's increasing significance. What, then, might be some key elements of reform?

A. The immigration function must be organized in a manner and at a level that is commensurate with its importance to our society. The importance of the immigration function, its cross-cutting nature with other critical policy issues, and the need for coherent policy development and execution argues strongly for the *consolidation* of its component parts and its *elevation* within the Executive Branch. Consolidation will give the immigration function the common purpose it lacks. It also will allow top management to articulate a coherent vision of the agency's mission (and make explicit the values that must undergird that mission), and hold agency personnel appropriately accountable. Elevating the function will go a long way toward giving it the attention it deserves within the Executive Branch and will help the agency attract the talent it needs to perform its tasks effectively; it also will strengthen its hand in its dealings with the Congress.

B. The government must improve the timeliness, fairness, and efficiency with which it delivers services to immigrants and the many U.S. citizens involved in the immigration process. Structural reform must make improvement of service a top priority. In recent years, Congress and the administration have tended to measure the effectiveness of our immigration policy by such factors as border apprehensions and detention and deportation numbers. It ought also to be measured by declines in waiting times at INS district offices, increases in the timeliness and accuracy of information provided, and the courtesy and efficiency with which the agency's customers are treated.

C. The service and enforcement sides of the immigration system ought to be totally separated along the full continuum of each function—though staying within a single agency. To ensure better performance and greater accountability, the enforcement and service functions should be separated. This would mean replacing the current District Office structure with two distinct entities, operating under separate chains of command. We will call them *Enforcement Sectors* and *Service Areas*. These entities need not (and probably should not) be geographically coterminous. Rather, they would be defined by their respective missions. The boundaries of Enforcement Sectors would be drawn to reflect the location of undocumented populations, transit routes, the location of detention facilities and the like. Service Areas would be constructed around the location of their clientele. Under this conception, immigration officers assigned to one division would not be loaned or detailed to the other; nor would line managers have to guess at the best distribution of resources between enforcement and service priorities.

This proposed separation is not a panacea. In a world of limited resources, top managers within each function would still face difficult choices, *e.g.*, whether to devote additional resources to employer sanctions enforcement or increased detention; whether to reduce the backlog of naturalization applications or adjustment of status cases. But at least they will be making these choices among options that are of a fundamentally similar character and can be costed and evaluated in fairly similar ways (i.e., overall number of removals, or numbers of cases completed) rather than attempting to weigh enforcement apples against service oranges.

VI. OUR PROPOSALS FOR CHANGE

We believe that the case for dispersing enforcement and service functions among agencies may reflect frustration with INS performance in the service area—which is understandable—rather than a fundamental incompatibility between the agency's two main functions. If anything, keeping the two functions together actually produces synergies that serve broader public policy goals. For example, attention to potential for fraud properly balances service goals of completing adjudications as quickly as possible and safeguards the integrity of the system. Indeed, it is difficult to see how, without both sides participating, effective policy could be crafted and carried out on a range of issues—such as the development of documents that both facilitate entry and employment and protect against fraud, or the establishment of an asylum program that can recognize bona fide cases and deter abusive claims.

We are also convinced, however, that dramatic change is needed. Yet, change must be manageable—and capable of responding effectively to the ills of the current system. Structural change is deeply disruptive both to organizations and the people who work in them. Consequently, proposals must be evaluated not just on the basis of how neat they look in charts, but also on whether the benefits of the proposed change promise to outweigh the costs of getting from here to there. Indeed, because of a general tendency to underestimate the intangible costs of reorganization, we believe that the benefits should *substantially* outweigh its costs before any particular proposal is adopted.

A number of the ideas we discuss below are not new. This may be good news or bad news. On the one hand, it may reflect a growing consensus on the direction of needed change; on the other hand, it may represent the familiar scenario of good ideas chasing inertia and entrenched interests. As we stated earlier, in our view, there is no silver bullet here. The immigration function is too complex to have a simple structural solution.

A. Create a New Independent Immigration Agency

The structure best suited to address the concerns and sustain the principles we have identified above is a new, independent agency at the Cabinet level that consolidates the functions currently scattered among a number of federal agencies. (See Chart 1 for a possible organizational chart.) This agency would not itself constitute a Cabinet department, however. In this regard, the Environmental Protection Agency is our model: it took the head of the EPA 23 years to gain a seat in the Cabinet, and that may be temporary, reflecting this Administration's interest in the issue. A new immigration agency would combine the immigration functions of the Justice Department; the visa, passport, and most refugee, asylum, and migration functions of the State Department; labor certification from the Labor Department[3]; and refugee resettlement programs from the Department of Health & Human Services.[4]

Simply stated, an independent or Cabinet-level agency would give the immigration function its due. The current structure plainly is inadequate. The Domestic Policy Council, as noted above, serves more to coordinate and cajole than make policy. It does not have the staff or the expertise to perform serious policy analysis and development. OMB, which has access to more resources, is also hamstrung by the parameters of its role and by the fact that its organization reflects that of the government itself—the immigration function also is scattered among different divisions. The policy branch of the INS is located well down in the Justice Department structure, and the influence of migration-related policy offices

[3] Like the Commission on Immigration Reform, we would transfer employer sanctions enforcement to the Department of Labor. Under the current system, both agencies check I-9s, although DOL conducts many more such inspections as part of its general auditing of employers for compliance with labor laws. Enforcement, however, resides with the INS: DOL refers suspected violation to the Service for further action. The INS does not view such work as a core task; its investigators would rather work significant criminal cases than fine employers. And the Labor Department is generally unsatisfied with the response it receives from the INS in referred cases (indeed, in most cases it gets no response from INS).

[4] Of course, considering the fact that the departments whose functions would now be incorporated within this new agency will continue be interested in the setting of migration and citizenship policy in some way, they should continue to be prepared to offer their expertise and perspectives by developing or retaining a policy capacity located in the office of each department's top management.

at the Departments of State and Labor are generally not viewed as central to their Departments' missions. Much as environmental policy took a big step up with the creation of the EPA (established in 1970 by the consolidation of 11 programs dealing with the environment[5]), the creation of an immigration agency would, for the first time, fully focus the resources of the Executive Branch on the important (and difficult) issues of immigration and citizenship. Such an agency would be best able to develop and implement migration and citizenship policy in a coherent fashion and to provide high levels of both internal and external accountability.[6]

The INS currently is larger than several Cabinet agencies in terms of personnel, while its budget is comparable to that of several others. (See Tables 1 and 2).

TABLE 1

Personnel Full Time Equivalents (FTEs) of Selected Federal Agencies and Departments, 1997-1999

	1997	1998 (estimated)	1999 (proposed)
Commerce	32,600	38,300	44,200
INS	**25,600**	**27,800**	**30,200**
State	22,400	22,900	23,200
EPA	17,000	18,000	18,400
Energy	17,300	17,100	16,600
Labor	15,900	16,700	17,000
HUD	11,000	10,400	10,000

[5] The EPA was created through a Presidential reorganization plan under the reorganization authority in chapter 9 of title 5 in the U.S. Code. The DEA was also created through a Presidential reorganization plan under the same authority but in 1973. Creation of the DEA consolidated all anti-drug functions from the numerous agencies within the Departments of Justice and Treasury. See also the discussion in this study's conclusion.

[6] This option has been recommended by Milton Morris in *Immigration: The Beleaguered Bureaucracy* (Washington, DC: Brookings Institution, 1985:141-42) and former INS Commissioner Gene McNary ("*No Authority, No Accountability: Don't Abolish the INS. Make it an Independent Agency,*" 74 Interpreter Releases 1281-89 [August 25, 1991].)

TABLE 2

Budget Authorities (in billions) of Selected Federal Agencies and Departments, 1997-1999

	1997	1998 (estimated)	1999 (proposed)
EPA	$6.5	$7.2	$7.8
State	$5.2	$5.5	$5.6
Commerce	$3.8	$4.1	$5.0
INS	**$3.2**	**$3.8**	**$4.2**

Beyond coherent policy development and coordination, a new agency offers the following advantages:

- It would attract talented executives at an assistant secretary rank and also mid-level managers and analysts with a range of governmental experience. An infusion of new management and analytical talent would aid policy coherence, engender greater accountability, and stand the best chance of changing institutional "culture."
- It would have a chance to develop proper relationships with its Congressional oversight Committees, which would now have to deal with a single set of officials. In this scenario, both the agency's responsiveness and its officials' accountability would be expected to improve.
- It would separate enforcement and service functions most completely and with less obstruction from entrenched institutional interests.
- It could establish most easily a database that would create a single file for an individual as he or she moves through the immigration process—from the filing

of a visa petition and admission to naturalization and the issuance of a U.S. passport.

Some might argue that creation of a new federal agency is not a politically viable option in these times. Committees of Congress charged with oversight of the immigration function have expressed exasperation with current INS operations. Thus, it has been suggested, they will be reluctant to "reward" what they view as ineffective management with the elevation of the function to Cabinet level. We believe that this would be a shortsighted approach to the current problems. Other high-immigration countries such as Australia and Canada have established independent agencies to deal with immigration and citizenship. An appropriately funded and staffed agency could resolve the problem of "mission overload" currently some attribute to the INS. Indeed, experience has shown that large federal agencies are capable of carrying out a variety of tasks, provided that they have the appropriate leadership, management and resources. The consolidation, integration, and elevation of immigration functions are crucial steps to effective planning and program implementation.

This proposal also is consistent with the need to propose "manageable change." The various functions currently scattered among the Executive Branch departments are fairly discrete; their transfer to a new agency would not undermine the missions of the departments in which they currently are located. Furthermore, consolidation would reduce the government's transaction costs in both policy development and implementation, and would eliminate the substantial duplication that now exists between the INS and the Justice Department in a variety of areas.

Finally, it might fairly be asked how change at the top levels of the Executive Branch will produce the needed changes at the lower levels—in the day-to-day interactions of government officials and the public. The answer, we believe, is that we are proposing change all along the way: at the top (in the formulation of coherent immigration policy), at the middle (with many new managers and a new emphasis on accountability), and in the field (with the separation of service and enforcement functions).

B. Elevate the Function Within the Department of Justice

The INS is *in* but not really *of* the Department of Justice. Traditionally, the Department has exercised supervisory authority over the INS, but frequently it has ignored the agency's day-to-day functioning unless an issue has hit the front page of the newspapers or has come to the attention of a congressional office. More importantly, there is no office at the Justice Department specifically charged with immigration policy development. Such matters have been handled—when handled at all—by staff members of the Associate or Deputy Attorney General. Until 1993, the general attitude of most Attorneys General toward the INS had been one of benign neglect.

This uneasy bureaucratic relationship does not well serve the formulation and implementation of immigration policy. The Department of Justice clearly has the clout to serve as a major forum for policymaking, but it rarely exercises such authority. The office of the INS Commissioner does not occupy a position high enough in the Executive Branch to fill such a role effectively—the Commissioner ranks at about the Assistant Attorney General level. (And although the INS is now larger than the FBI, both in terms of personnel and budget, the Commissioner has a lower rank than the FBI Director.)

Formulation of immigration policy needs a higher level bureaucratic home. If our first preference—a new, independent immigration agency—is not in the cards, then policymaking should be elevated within the Department of Justice. Arguably, this option could be carried out simply by the creation of an Office of Immigration Policy within the Justice Department, perhaps akin to the Office of Tax Policy in the Treasury Department (which has no day-to-day oversight of the IRS.) But we think more is needed. We would propose the elevation of the immigration function within the Department of Justice through the creation of an Office of Associate Attorney General for Immigration (AAGI). (See Chart 2 for a possible organizational chart.) The AAGI would be charged with the formulation of immigration policy and also the supervision of immigration enforcement and service functions. In short, the functions currently performed by the INS would be folded into the Department of Justice. The Executive Office for Immigration Review and the Office of Immigration Litigation also would report to the Attorney General through the AAGI, thereby combining oversight of all the department's immigration functions within one office.

Though less desirable than an independent, Cabinet-level agency, this change would still offer a number of advantages over the current structure. First, an Associate Attorney General—a position that ranks substantially higher than an INS Commissioner —would be better able to call upon and coordinate policies and services with sister agencies that have immigration-related responsibilities. To make clear the importance we attach to this aspect of the overall role, we propose that the Associate Attorney General for Immigration chair a standing inter-agency group on migration issues. Departmental policymakers would also be better situated than the INS is now to get the attention of, and to persuade, the White House on important immigration issues.

In keeping with our analysis above, we would recommend the separation of the enforcement and service functions into different divisions established fully within the Department of Justice. Each would be headed by an Assistant Attorney General and would report to the AAGI.

Folding these functions into the Department of Justice would also provide a modest opportunity for an influx of new talent at mid-level management and analytical positions in the new Offices. (The establishment of the Executive Office for Immigration Review, for example, produced an important upgrading of the immigration court and the Board of Immigration Appeals.) Finally, placing these functions directly within the Justice Department might also spark needed "cultural" change in the manner in which immigration laws are implemented and enforced, while creating substantial cost savings and efficiencies by eliminating several levels of overlapping bureaucracy that exist within the current INS/DOJ structure.

While further work remains to be done in fleshing out both proposals, our second proposal is clearly a second best solution because it leaves the immigration function—and therefore the development and coordination of immigration policy—fragmented. For example, the development of policy on the admission of temporary skilled workers (such as computer programmers) involves the expertise of the Labor and State Departments and the INS. The distinct and separate missions of these agencies have in the past made coordination difficult. Currently, the resolution of differences must occur at the White House level by staff that lacks the preparation and expertise to do so. Similarly, the admission of an immigrant on an employment-based visa also requires the input of the Labor Department (which must issue a "labor certification"), the INS (which must approve a visa petition), and the State Department (which must grant a visa). Although in recent years coordination and cooperation among the agencies may have improved, those attempting to navigate the system still must confront different attitudes, separate forms and records systems, and different administrative procedures and avenues of appeal.

VII. CONCLUSION

Twenty-seven years ago, President Nixon proposed establishing a new agency charged with administering U.S. environmental laws. His reasoning is worth quoting at some length here because it parallels closely our own reasoning for calling for a new, Cabinet-level immigration agency.

> In proposing that the Environmental Protection Agency be set up as a separate new agency, I am making an exception to one of my own principles: that, as a matter of effective and orderly administration, additional new independent agencies normally should not be created. In this case, however, the arguments against placing environmental protection activities under the jurisdiction of one or another of the existing departments and agencies are compelling.
>
> ...[A]lmost every part of government is concerned with the environment in some way, and affects it in some way. Yet each department also has its own primary mission...which necessarily affects its own view of environmental questions....
>
> Because environmental protection cuts across so many jurisdictions, and because arresting environmental deterioration is of great importance to the quality of life in our country and the world, I believe that in this case a strong, independent agency is needed.[7]

We believe that circumstances call for another exception to the extreme skepticism with which proposals for creating new federal agencies are received. If the

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[7] Richard Nixon, Public Papers of the President, July 9, 1970, p. 582.

immigration function is as central to sound public policy across a variety of policy domains as we believe it is; if consistency and accountability in program delivery are as weak as many observers argue; if the service function is as much of a stepchild within the INS as even the agency's friends acknowledge; and if re-arranging organizational boxes within the agency—however, radically—will satisfy neither the agency's critics nor its friends; then, creating a new, independent agency, and giving it the authority, resources, and support it requires to do its job properly becomes a compelling choice. If we decide to go through the political pain, and—from the perspective of the personnel involved, the genuine angst and uncertainty that fundamental change entails—why not do things right for a change?

LOS ANGELES TIMES

FRIDAY, APRIL 24, 1998

The INS Needs a Complete Makeover

■ Immigration: Making it a new agency under the executive branch would increase accountability and effectiveness.

By DEMETRIOS PAPADEMETRIOU, T. ALEXANDER ALEINIKOFF and DEBORAH WALLER MEYERS

The INS, responding to widespread criticism of its performance, has proposed separating its service and enforcement functions but retaining both, the third significant such reform proposal in five years. A contending proposal, by the now-defunct Commission on Immigration Reform, would dismantle the INS and distribute its functions to other departments. We believe that the INS proposal does not go far enough, while the commission's takes us in the wrong direction.

The politicization of immigration policy and frustration with INS performance have been growing for more than a decade. Both proposals react to that but fail to ask the most fundamental question: What is the system supposed to do, and how should it be organized to do it?

We have developed an alternative proposal that starts with goals and principles and develops structures to put them into practice. Immigration policy is top and center of this structure.

The INS' self-conception is primarily as enforcer of laws that it often plays a marginal role in formulating. At times, it is a victim of congressional micromanagement; at others, it becomes a political football between the administration and Congress. The executive branch generally reacts rather than initiates.

We propose creating an independent agency within the executive branch to direct the nation's immigration system. The new agency's core purposes would continue to be complex: facilitating and controlling entry, enforcing the law and delivering services, removing the deportable and naturalizing the qualified.

Various functions currently scattered among several federal departments—such as labor certification (Labor), visa, passport and most refugee and migration functions (State) and refugee resettlement (Health and Human Services)—would gradually be consolidated under a single roof. Consolidation would follow a simple rule: Unless the function (or part of it) falls within the central mission of the department in which it is located, it should move to the new agency.

An independent agency would be better prepared and situated to work with Congress to construct immigration policies that are consonant with other critical domestic and foreign policy priorities, from Social Security, welfare and human resources to education, economic competitiveness and international relations.

If congressional energy for fundamental reform falters, a second-best alternative would be to elevate the immigration function within the Justice Department through a new position of associate attorney general for immigration. This office would be charged with the formulation of immigration policy and the coordination of its execution.

Under both scenarios, service and enforcement functions would be separated within the agency. At the local level, separate immigrant service areas and enforcement sectors would be established. These steps would lead to greater accountability and better service for both immigrants and citizens.

The other options on the table are not up to the task. The INS plan would neither improve policy coherence nor ensure that program delivery is consistent with a policy's intent. Most important, it won't close the agency's credibility gap. The commission's proposal would hinder coherent policy even more, handing off to agencies with little institutional commitment to immigration the same problems of accountability, management and poor service that have dogged the INS.

No one lightly proposes creating a new agency. In 1970, President Nixon used reasoning similar to ours—that the importance of the environment required that a single independent agency oversee it—and created the Environmental Protection Agency.

Circumstances call for another exception. If the immigration function is as central to sound public policy across a variety of policy domains as we believe it is, if accountability and consistency in program delivery are as weak as many observers argue and if the service function is as much of a stepchild within the INS as even the agency's friends acknowledge, then creating a new agency and giving it the authority, resources and support it requires to do its job properly becomes a compelling choice.

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