

Testimony of
Mr. Paul Virtue

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Mr. Chairman and distinguished Members of the Subcommittee, I am honored to be here today to offer my thoughts on efforts to improve the structure by which our immigration and nationality laws are administered. Currently, I am a partner with the firm of Hogan & Hartson, LLP here in Washington and my practice is limited to representing clients in immigration and nationality matters. Prior to returning to the private practice of law three years ago, I served as the General Counsel of the Immigration and Naturalization Service, an agency in which I held several legal and policy making positions during my sixteen-year career. My testimony today represents my own thoughts and observations and does not necessarily represent the views of my firm.

Immigration policy is among the most sensitive, emotional, and potentially divisive issues the federal government is charged with administering. The numbers of people involved are staggering. In fiscal year 2000, some 900,000 permanent residents were naturalized. Nearly 850,000 people immigrate to this country each year. Another quarter of a billion foreign nationals visit the United States annually. Some five million or so undocumented aliens call the United States their home. Our agricultural, construction, manufacturing and service industries depend on foreign labor, documented and undocumented alike. During fiscal year 2000, over 71,000 criminal aliens were removed from the United States. Fifteen of the nineteen foreign nationals directly involved in the devastating terrorist attacks of September 11, 2001, were believed to have been inspected and admitted to the United States as visitors or students by the INS.

The federal agency with primary responsibility for these and a host of related issues, the INS, has not undergone a fundamental change in its structure for the more than fifty years since it became a part of the Department of Justice. Restructuring alone will not cure the agency's ills - many of which are not a product of the agency's structure - but restructuring alone can make matters worse. Accordingly, I recommend proceeding carefully, thoughtfully and deliberately. Any restructuring proposal should have as its goal an organization that will operate with clearly defined mission objectives developed with its customers needs in mind and administered in a fair, prompt and consistent manner.

To accomplish this goal the plan should contain certain fundamental characteristics:

1. Clear lines of authority and accountability;
2. Coordination of Policy Guidance between Service and Enforcement Components;
3. Structural flexibility to meet unanticipated or unforeseeable challenges;
4. An integrated and shared information system;
5. Adequate funding and staffing levels.

I do not claim to be an organizational expert or to have the definitive answer to the structural problems of the INS, but I have had the privilege of serving in senior agency positions with

responsibility for the development and implementation of policies that cross the agency's enforcement and services functions. I have also now had several years of experience representing clients before an agency widely criticized as being ill suited to its mission. It is from these perspectives that I offer my thoughts.

Clear lines of authority and accountability

The INS has more than doubled in size during the last ten years, to about 37,000 employees. The agency may add as many as 10,000 more employees over the next 18 months. The goals of consistency and accountability are impossible to achieve in such a large and diverse organization without a clear understanding from the head of the agency to the mailroom clerk in the Texas Service Center of who is responsible for a given program at every level. In 1990, the INS experimented with a structure that eliminated middle management (the regional offices) and flattened the reporting structure so that each District Director and Chief Patrol Agent reported to one individual at a headquarters office of Field Operations. The scope of that individual's responsibility encompassed the entire mission of the agency. The stated purpose of this approach was to remedy the perception within the administration and in Congress that the INS District Directors and Chief Patrol Agents were being left to fend for themselves by weak middle managers resulting in operational "fiefdoms" with as many as 55 different immigration policies.

In this case, however, the cure proved to be worse than the disease. Predictably, the scope of supervision of the Associate Commissioner for Field Operations was simply too great. Requests by field managers for policy guidance, resources, approval of operational plans and other information overwhelmed the headquarters office. Phone calls and written requests from the District Directors went unanswered and their subordinate program managers began to look to the individual headquarters program offices, e.g. Investigations, Detention and Deportation, Examinations, for answers to their operational and policy questions. Though they lacked supervisory authority over the field offices as well as the means to ensure accountability, the program offices tried their best to accommodate the need for information. The result was a weaker management structure lacking in accountability and administrative chaos. The experiment was ultimately abandoned in 1993, when the regional office structure was reinstated.

None of the proposed reorganization plans has suggested a return to such an unwieldy management structure, and we need not dwell on it, I simply offer it up as an example of how a well-intentioned change in management structure can make matters much worse. The proposed division of the INS into service and enforcement bureaus will have a substantial effect on the management structure of the field offices, those closest to the agency's customers. This is consistent with the noble goal of focusing attention and resources and clarifying mission goals and priorities. I believe it can be accomplished only with a clearly established chain of authority and the careful selection of capable leaders for all critical management positions.

Coordination of Policy Guidance between Service and Enforcement Components

It is logical to propose to divide the agency's functions along service and enforcement lines. This approach is also consistent with existing internal delineations. However, it would be impossible (and unwise) to try to build a solid wall that divides the two functions. There will always remain many overlapping areas of responsibility between the service and enforcement bureaus. A recently proposed rule illustrates this point well. In response to concerns about the agency's

ability to monitor and control the alien population in the United States, the INS last month proposed to change its longstanding policy of granting business visitors and tourists a standard six-month period of stay, irrespective of the purpose or nature of their visit. The regulatory six-month period will be replaced with a period of stay that is "fair and reasonable for the completion of the stated purpose of the visit." Inspectors at the ports of entry will make this determination on a case-by-case basis at the time of admission. If it is not clear whether a shorter or longer period would be fair and reasonable under the circumstances, the alien will be admitted for 30 days. Once admitted, the visitor may apply for an extension of stay, which may be granted for a fair and reasonable period not to exceed six months. Applications for extensions of stay are adjudicated by INS Examiners.

The restructuring proposal offered by the INS would place the immigration inspectors within the enforcement bureau and, while applying the enforcement label to inspectors has been the subject of considerable discussion in the past, the current significance of their role in protecting the country against the admission of terrorists seems to have quieted the debate. INS Examiners are considered services bureau employees under any proposal. Thus we have two categories of employee employed by two separate bureaus applying the same regulation to the particular circumstances of the same individual. The need for policy coordination is readily apparent. For example, the enforcement bureau may decide that, for efficiency reasons, it will give every applicant a thirty-day stay preferring to allow the examiners look at the particulars of each case in the course of adjudicating the extension petition rather than backing up port of entry traffic by trying to apply a new set of complicated criteria. The predictable result would be a flood of extension applications being submitted to the services bureau leading to an inevitable backlog.

This is just one of thousands of examples. Many disputes may be amenable to resolution at the field office level, but for agency-wide consistency and accountability there must be provision for coordinating policymaking and implementation at the headquarters level. In addition to structural obstacles to policy coordination, the INS, unlike the State Department, lacks a repository for sub-regulatory policy memoranda and field guidance. Agency clearance of field manuals, which were intended to replace the outdated INS Operations Instructions, has been slow. In fact only one, the Detention Operations Manual, is available on the INS website. Issues such as this one should be fixed as they contribute to a public perception that the agency is unresponsive to the need for answers to policy questions.

Structural flexibility to meet unanticipated or unforeseeable challenges

Congress should exercise restraint in the level of detail in which it directs a new structure for the administration of the immigration and nationality laws. Currently, the Immigration and Nationality Act contains no language dictating the structure of the agency save a relatively recent exercise of congressional will that directs the Attorney General to allocate to each State not fewer than 10 full-time active duty agents of the INS to carry out the functions of the Service, in order to ensure the effective enforcement of the Act. The structure of the agency is left, with the exception of a certain amount of overreaching reflected in the authorization and appropriations processes, to regulation by the Attorney General.

To the extent possible, this approach should be maintained. Detailed Congressional direction on the structure of field offices, in particular, can reduce rather than enhance the agency's ability to adapt to new challenges, including demographic changes. Personally, I believe that the services bureau field offices should be sufficiently flexible to serve the particular community they serve. In some locations, that may mean small storefront offices designed to address certain needs. In other communities, perhaps a larger full-service operation is needed. The agency has to have the freedom to make such choices, preferably taking into consideration the views of its customers.

An integrated and shared information system

Few aspects of the INS reflect its ills like the inadequacy of its information systems. The agency is embarking on an unprecedented effort to modernize its office equipment, install and integrate sorely needed enterprise architecture, improve data capture and sharing capacities and harness the fascinating array of technological tools needed to improve the delivery of services and enhance its law enforcement activities. The importance of a Chief Information Officer with budget authority and responsibility for technology improvement for both bureaus cannot be overstated.

Adequate funding and staffing levels

As noted earlier, the INS has doubled in size during the last ten years and is poised to grow by another 10,000 employees during the next year and a half. The agency's budget from all sources is in excess of \$6 billion. When compared to other agencies during the same time period, the growth of the INS has been phenomenal. However, the INS had and still has a long way to go to catch up and when compared to its workload, the agency has struggled to keep up. The INS still has only 2,000 investigators to handle interior enforcement responsibilities for the entire country. On the services side, applications for adjustment of status can still take two years or more to complete.

Last summer, the INS introduced its new "Premium Processing" program. For a premium of \$1,000, the INS guarantees a response within fifteen calendar days on certain business related nonimmigrant visa petitions. I cite this program not to suggest it as an answer to backlogs, but it is a perfect example of what is possible with the focused application of resources. Indeed, one goal of the service bureau should be to retire the premium process in favor of a much faster standard process.

Conclusion

The dual missions of the INS are important and they affect millions of people. The Congress should exercise great care as it undertakes to outline structural reforms that will enable the INS or its predecessor(s) to better accomplish those missions. I have outlined my thoughts on several principals I believe to be essential to the undertaking. I would be happy to answer any questions you may have about those principals or any other related issues.