

Testimony of  
**Prof. Bill Ong Hing**

June 26, 2002

Good afternoon. On behalf of the National Asian Pacific American Legal Consortium, I would like to thank Chairman Kennedy and Ranking Minority Member Senator Brownback for inviting us to testify on this critical issue.

My name is Bill Ong Hing. I am a member of NAPALC's National Advisory Council. I am a Professor of Law and Asian American studies at the University of California, Davis. I am also the general counsel the Immigrant Legal Resource Center in San Francisco, an organization I helped to found. I began my legal career as a legal services attorney with San Francisco Neighborhood Legal Assistance Foundation in 1975, and I have represented immigrants before the Immigration and Naturalization Service for over a quarter of a century.

I was appointed to the U.S. Department of Justice Citizens' Advisory Panel by then Attorney General Janet Reno. The Advisory Panel advises the Attorney General with respect to the Immigration and Naturalization Service and Border Patrol training and misconduct. I was also named to the National Research Council's Committee on Immigrant Children and Family Health and serve as a trustee for the Rosenberg Foundation.

I am the author of several books, including: *To Be an American: Cultural Pluralism and the Rhetoric of Assimilation*; *Making and Remaking Asian American Through Immigration Policy*; and *Handling Immigration Cases*.

My testimony outlines the views of the NAPALC with regard to the Bush Administration's recent proposal to reorganize the federal government and create a new Department of Homeland Security. Specifically, my testimony focuses on the Administration's proposal to transfer the functions currently performed by the Immigration and Naturalization Service (INS) and the Department of State to the proposed new Department of Homeland Security.

As you know, NAPALC is a national expert on immigration policy issues. Almost two-thirds of the Asian American population are immigrants and approximately one third of the immigrants who come to the United States each year are from Asia, mainly to join other family members already here. As a result, the ability of the INS to function fairly, efficiently and effectively has a significant effect on our community.

Balancing our need to secure our borders with our other needs as a nation.

President Bush has said that the mission of the new Department of Homeland Security would be to prevent terrorist attacks within the United States, to reduce America's vulnerability to terrorism, and to minimize the damage and recover from attacks that may occur. In his message to Congress urging support of the new Department he noted the need to balance our efforts to secure our borders while expediting the legal flow of people and goods on which our economy

depends. While NAPALC does not have a view as to the establishment of such an agency, NAPALC does have expertise based upon its experience and that of its affiliates, the Asian Pacific American Legal Center in Los Angeles, the Asian Law Caucus in San Francisco and the Asian American Legal Defense and Education Fund in New York City, on whether the INS belongs in such an agency. Not only is immigration critical to our economy, as President Bush has noted, it is also critical to our families and communities.

The need to better secure our borders to minimize the ability of terrorists to enter the United States appears to be the impetus for the Administration's proposal to place the Immigration and Naturalization Service ("INS") within the Department of Homeland Security. The question that is posed to us by this Subcommittee is whether moving the INS and some of the visa functions of the State Department into such a vast and disparate bureaucracy will indeed improve our national security, both immediately and over time, while also serving our nation's interest in an efficient and fair immigration process.

This question of how to efficiently, effectively and fairly regulate immigration is one that we must answer with an eye not only to our immediate fears, but to how the answer shapes us as a nation over the long term. We must consider whether such an arrangement would actually make us safer from terrorism, whether there are alternatives or modifications that will enhance our security without unnecessarily harming families and our internationally-based economy, and how placing the responsibility for immigration and naturalization functions unrelated to national security in an anti-terrorism organization would affect the day-to-day administration of our national immigration laws and procedures, as well as how immigrants themselves are viewed by fellow Americans.

Moving all of INS and visa policy functions to Department of Homeland Security will not make us safer.

While having Department of Homeland Security take over INS functions may seem attractive to some, the question that must be answered is whether it makes sense. Implicit in this inquiry is a principle recognized by this Congress in the Enhanced Border Security and Visa Entry Reform Act: our most effective security strategy is to improve prescreening of immigrants so as to keep out those who mean to do us harm, while admitting those who come to build America and make our nation stronger. We believe the nation needs a targeted and efficient use of our anti-terrorism resources.

The United States has become the great nation it is today because of its strong tradition of welcoming immigrants from around the world who bring with them their ideas, skills, labor, creativity and respect for freedom. One of the reasons our economy is the strongest in the world is because every year, millions of nonimmigrant tourists, business people and foreign students are welcomed to the United States. The overwhelming majority, and I daresay virtually all, of these non-immigrants pose no security threat to the community. The same can be said for the immigrants who enter the country as refugees, asylum seekers and family members in comparatively smaller numbers with significant pre-screening.

Thus, the vast majority of immigrants and non-immigrants are simply not relevant to the issue of national security and to make them so would pose an unnecessary distraction and a drain on resources of the new Homeland Security Department.

There are more effective alternatives to putting INS in Department of Homeland Security.

Long before September 11, INS miscues provided legitimate fodder for criticism and calls for reform, and in some cases dismantling, of the agency. NAPALC has long supported the need for INS reorganization. However, restructuring INS is not enough. Congress has played a part in the problem. The number and complexity of the laws it has passed in the last decade with unreasonable sunset dates, quotas and convoluted restrictions has taxed an already overburdened agency. True immigration reform that addresses the immigration backlogs and provides for laws that are easier to understand and implement is what is most critically needed.

The need to reform INS and the need to provide better national security should not be confused. The temptation to conflate the two issues is enticing. They are related but are separate issues. With the proper overhaul, resources and management, the INS is well-positioned within the Department of Justice to provide the type of scrutiny we all want of every incoming immigrant, as well as non-immigrant students and visitors, especially with the assistance of the State Department's visa offices around the world.

A successful reorganization of INS within an environment of an even more massive government restructuring require to create the new Department of Homeland Security is highly unlikely. Effectively fixing INS is at the core of better addressing our national security and that will be put at great risk without the necessary resources and internal restructuring. Moving INS will only make it more dysfunctional.

This country cannot afford to equate immigration with terrorism.

As our recent history has shown, native-born citizens are equally capable of terrorist acts. Placing all of INS in the new Department of Homeland Security would mark a radical shift in the United States' tradition as a nation of immigrants. It would redefine our nation based upon principles of exclusion and xenophobia. It is a fundamental truth that America's very strength lies in our diversity that is the result of being a nation built on immigration.

Not only are family reunification and employment visas important for relatives and businesses in the United States, immigration is vital to many parts of the United States. As population declines in regions of the country such as Iowa, Pittsburgh, Philadelphia, Louisville, and Baltimore, leaders in those areas recognize the need to attract more immigrants. They are looking to Washington for assistance in facilitating the entry of workers and families to their regions, knowing that immigrants can help to revitalize and sustain their communities.

For this reason, it is NAPALC's position that our nation's immigration policy can best contribute to national security if this policy is developed and executed by an organization that is effectively, efficiently, and fairly reorganized and given a higher status within the Department of Justice. This plan would give our nation's immigration function a higher priority, with the commensurate organizational authority and control over necessary resources. This agency should be duly

equipped to face the enormous task of managing our nation's immigration policy and admitting and monitoring the whereabouts of non-immigrants. This job cannot be accomplished by an agency buried within a new, wide-ranging department. The agency should be headed by an Associate Attorney General for Immigration Affairs as was contemplated in both S. 2444 and H.R. 3231.

This would also alleviate the inefficiencies and administrative backlogs that already plague INS services, and avoid their exacerbation by inclusion in an agency whose narrow mission does not include services and requires a different orientation, as well as a different set of skills and criteria. Immigration services generate fees which can fund the improvement of those services. Within an agency whose mission is to stop terrorism, there will be a constant temptation to raid the fee accounts, unfairly and unwisely diluting payments made by INS customers for efficient and effective services.

The plan would also leave the immigration and naturalization function in an organization that bears the responsibility for enforcing our civil rights laws. Indeed, there currently is a unit within the Department of Justice enforcing prohibitions on alienage-based discrimination against those who "look or sound" foreign or who have "foreign sounding" names.

This plan places emphasis where emphasis is due: on smart, controlled immigration, with focused scrutiny directed by-- as with the FBI or the CIA -- a Department of Homeland Security left unencumbered by responsibility for functions unrelated to national security.

The Department of Homeland Security simply cannot subsume every function of our national government that encompasses a national security concern. But it can develop the expertise and focus to collect, process, and share anti-terrorism information with the entities responsible for administering the broad policy areas that can't be effectively administered by one gargantuan agency. Just as the FBI and CIA will perform a myriad of functions best left to their expertise and organizational culture, yet will also improve their anti-terrorism efforts by smart and efficient coordination with the Department of Homeland Security, so can--and should--a reorganized immigration and naturalization agency.

Keeping the Focus on National Security.

Should Congress deem it necessary to at least transfer some border enforcement functions of INS to the new Homeland Security Department, immigration and naturalization services should nevertheless remain with the Departments of Justice and State.

Services such as naturalization, green card processing, refugee and asylum processing and employment-based visas need to be in an agency better able to foster a professional service mission and attract employees who have the skills and temperament suited for providing services to the individuals, families and businesses who depend on them. The responsibility and authority to develop policy and regulations for these functions should lie with this agency as well.

Certain non-terrorist enforcement functions should remain in the Department of Justice so that services and immigration enforcement are closely coordinated. This would include the detention of non-terrorist aliens, such as asylum-seekers, indefinite detainees, and certain criminal aliens.

Other enforcement operations, such as work site enforcement or other types of interior enforcement, could also remain within the Department of Justice in a new immigration agency.

Certain enforcement functions related to potential terrorists, including border and port enforcement, can be fit within Department of Homeland Security. Offices within both the Department of Justice and the new Department of Homeland Security should be created to coordinate enforcement responsibilities, just as there would presumably be for coordination between the Department of Homeland Security and the CIA or FBI.

While service and enforcement functions of the current INS clearly have areas of overlap, scrutiny of exclusion grounds does not have to be sacrificed in the development of a separate visa and naturalization service entity. Given cutting-edge technology that has been available for many years from Silicon Valley-type companies but never implemented at the INS, issues of data storage, confidentiality, high volume traffic, inter-agency communication and access, and security are quite possible.

The vast majority of immigrants seeking service from the INS are of no interest to a national security agency seeking to control entry of those who would do us harm. They are persons who are already in the United States. They are lawful permanent residents seeking naturalization, and non-immigrants seeking adjustments of status. They are residents who need employment authorization documents or persons already in the United States requesting the protection of asylum. They are young girls or women brought to this country by traffickers or smugglers. They are unaccompanied minors seeking protection and support. Over time, the strong tendency of a Department of Homeland Security would be to treat these people as though they were potential terrorists, regardless of the need to do so -- wasting limited resources and undermining our other national priorities.

The issue of national security is indisputably an important concern to all of us. But subsuming visa and naturalization services within the domain of Homeland Security is not necessary, especially when other priorities would be compromised unnecessarily. One such interest is in providing efficient and fair service to immigrant, nonimmigrant, and naturalization applicants.

Most applicants are not represented by counsel nor by a community based organization. Instead, they stand in line themselves, fill out their own applications, and rely on the agency to treat them and their families fairly. The agency has the obligation to assess the application efficiently, objectively, and hopefully in a timely manner. That is unlikely to happen in an agency whose mission is based on anti-terrorism. It is all too likely that services will not be given the resources, structure and environment necessary to fulfill its responsibility to immigrants, their families, and employers. This will undermine families, communities, and the economy.

NAPALC advises against the President's plan on placing all of INS within the Department of Homeland Security. We propose, along with the United States Conference of Catholic Bishops (USCCB) Migration and Refugee Services, that the INS be reorganized and revitalized as a separate agency at a higher position within the Department of Justice. If, however, Congress deems it necessary to place some enforcement functions of the current INS into the Department of Homeland Security, we recommend that only those immigration functions which are

necessary to assist in the detection and prevention of terrorist threats be placed in this new agency.

Furthermore, judicial functions should remain independent in order to ensure the fair and objective interpretation of U.S. immigration and asylum laws. The Executive Office for Immigration Review (EOIR) is currently an entity outside INS but within in the Department of Justice. Any restructuring should create an independent commission for EOIR to ensure the integrity of the judicial process by providing judicial independence.

Thank you for your consideration of our views.