

Testimony of

# **The Honorable Orrin Hatch**

July 8, 2003

Statement of Chairman Orrin G. Hatch  
Before the United States Senate Committee on the Judiciary  
Hearing on the nominations of

**MICHAEL J. GARCIA TO BE ASSISTANT SECRETARY OF HOMELAND SECURITY  
FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT**

and

**JACK LANDMAN GOLDSMITH III TO BE ASSISTANT ATTORNEY GENERAL  
FOR THE OFFICE OF LEGAL COUNSEL, UNITED STATES DEPARTMENT OF JUSTICE**

It is with great pleasure that I welcome two outstanding nominees to the Committee this afternoon.

Michael J. Garcia is the President's nominee for Assistant Secretary of Homeland Security for the Bureau of Immigration and Customs Enforcement, or B-I-C-E. Since March 1st of this year, the B-I-C-E has taken over the interior enforcement responsibilities previously handled by the former Immigration and Naturalization Service.

One of the most important areas over which this Committee has oversight is the protection of our national security through enforcement of our immigration laws. Since September 11, 2001, we as a nation came to the realization that we were indeed vulnerable to the evil designs of terrorists; terrorists who wish to harm us and take away our freedom and security. We have also learned that many terrorists who took thousands of innocent American lives actually penetrated our borders by abusing and violating our immigration laws. Now more than ever, we need to take immigration enforcement seriously.

For the past several months, Mr. Garcia has assumed the primary responsibility of protecting our national security through the strict and effective enforcement of our immigration laws. In December 2002, Mr. Garcia became the Acting Commissioner of the Immigration and Naturalization Service. On March 1, 2003, when the immigration enforcement functions of the INS transferred to the B-I-C-E, Mr. Garcia continued to function in the same critical role as Acting Assistant Homeland Security Secretary for the newly created bureau.

Mr. Garcia brings with him an impressive background in law enforcement. For most of his legal career, he was an Assistant U.S. Attorney in the Southern District of New York, where he successfully prosecuted the terrorists who were responsible for the first World Trade Center bombing and the bombing of the U.S. embassies abroad. In August 2001, he was confirmed by the senate as Assistant Secretary of Commerce for Export Enforcement. In that capacity, he led a law enforcement agency whose primary responsibilities included preventing the transfer of sensitive technology to terrorists or to countries that supported terrorism.

Mr. Garcia became our country's top immigration enforcement administrator at a most critical time in the history of immigration enforcement. Effective immigration enforcement has always been a difficult but crucial task. In addition, he has had to manage the transition of a significant portion of the INS, a 50-year-old and 36,000 employee agency, to the B-I-C-E, a newly created agency within a newly created department. Considering the enormity of the task especially considering all the challenges that INS faced historically, the transition is going as well as one can reasonably expect. I commend Mr. Garcia for his leadership in this process.

Mr. Garcia is also taking over immigration enforcement at a time when the war against terror is fought on the technological front. As mandated by the USA PATRIOT Act and the Enhanced Border Security and Visa Reform Act, there will be greater data sharing among the various law enforcement agencies, as well as a more accurate tracking of non-immigrant visitors who are in our country. Consistent with congressional mandate, the Department of Homeland Security will begin implementing a new system called US-VISIT, which is an integration of the existing computerized databases. I and many others in this Committee believe that it is of paramount importance that immigration enforcement be fully transitioned from a paper driven system to an automated, state-of-the-art system. I implore Mr. Garcia to make this transition one of his top priorities at the B-I-C-E. I am confident in Mr. Garcia's leadership ability and trust that he will make this transition a smooth and efficient one.

Finally, I wish to emphasize that while we must do all we can to defend our country against future terrorist attacks, the recently released Justice Department Inspector General's report concerning the treatment of the 9/11 detainees includes a number of recommended reforms that I believe are worthy of serious consideration. Among other things, the IG recommends that the Department of Homeland Security, along with the Department of Justice, develop a crisis management plan that clearly identifies its duties should a similar national emergency ever occur. I look forward to hearing from Mr. Garcia about the steps the B-I-C-E and the Department of Homeland Security are taking to address the problems identified in the IG report.

In addition to Mr. Garcia, the Committee today has the pleasure of considering the nomination of Jack Goldsmith to head the Justice Department's Office of Legal Counsel. In this capacity, he will be charged with assisting the Attorney General in his function as legal advisor to the President and all the executive branch agencies.

The Office of Legal Counsel is a very important component of the Department of Justice. In addition to serving as, in effect, outside counsel for the other agencies of the executive branch, the Office of Legal Counsel also functions as general counsel for the Department itself. All Executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President's formal approval. The Office of Legal Counsel reviews all proposed orders of the Attorney General and all regulations requiring the Attorney General's approval. The Office also is responsible for providing legal advice to the executive branch on all constitutional questions and reviewing pending legislation for constitutionality.

Mr. Goldsmith is an ideal choice for this position. He has an outstanding background, having graduated with highest honors from Washington and Lee University, as well as from Oxford and from Yale Law School. We often see nominees who have completed two judicial clerkships, which is considered a particularly noteworthy feat. Mr. Goldsmith, however, went a step further and completed three clerkships: After clerking for Fourth Circuit Judge J. Harvie Wilkinson, he

clerked for Supreme Court Justice Anthony M. Kennedy and for the Iran-U.S. Claims Tribunal in the Netherlands.

Mr. Goldsmith then entered private practice with the distinguished firm of Covington & Burling. In 1994, he turned to teaching, first as an Associate Professor at the University of Virginia School of Law, and in 1997 as a Professor at the University of Chicago Law School. Mr. Goldsmith has an outstanding record in the academic world. His activities as a law professor have been focused on teaching, scholarship and counseling students.

As a teacher, Professor Goldsmith has a broad spectrum of experience. Among the courses he has taught are Civil Procedure, Constitutional Law, Commercial Arbitration, Conflict of Laws, Foreign Affairs & the Constitution, Public International Law, and International Litigation.

Professor Goldsmith's scholarship is also quite impressive. He is a prolific writer, having co-authored two textbooks and numerous articles. The range of his scholarship is extraordinary. He has written on a variety of topics, including foreign relations, international law, human rights, and numerous Internet issues. He is well respected by his colleagues in the academic world. For example, Harvard professor Ryan Goodman describes his scholarship as "methodically rigorous, sharply reasoned, and sensitive to constitutional history and doctrine. It is no wonder that he is a leading, if not the preeminent, scholar in foreign affairs law."

In addition, beyond the respect he commands for his scholarship, those who work with and know Jack Goldsmith speak highly of his character and professionalism. I would note that many of his letters of support contain a statement to the effect that although the author may disagree with Mr. Goldsmith's views on particular topics, the author is nevertheless impressed with his integrity, graciousness, demeanor, ethics, devotion and qualifications. For example, in her letter, Anne-Marie Slaughter, Dean of Princeton University's Woodrow Wilson School of Public and International Affairs, wrote, "But even when I disagree, I admire the personal and professional integrity that characterizes all of his work. I am confident that Jack will make an outstanding Assistant Attorney General." Stanford professor Lawrence Lessig wrote a strong recommendation, noting that Mr. Goldsmith is a lawyer "who is serious and devoted to the law itself, and not to the law as a means to some political end."

Mr. Goldsmith is clearly a nominee who has the experience, capability and personal characteristics to lead the Office of Legal Counsel. Most recently, he has served as Special Counsel to the General Counsel of the Department of Defense, where he provided advice and guidance on various constitutional and international law issues. This experience has undoubtedly prepared him well to provide similar counsel to the Attorney General.

I congratulate both Mr. Goldsmith and Mr. Garcia on their nominations. I look forward to hearing from them.

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