

Testimony of

The Honorable Jeff Sessions

July 17, 2003

STATEMENT OF SENATOR JEFF SESSIONS
ON THE IMMIGRATION PROVISIONS IN THE
CHILE AND SINGAPORE FREE TRADE AGREEMENTS

Senate Committee on the Judiciary
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The legislation that we have before us is deeply troubling. The U.S. Trade Representative, by implementing new immigration provisions in treaty negotiations, has usurped the role of the legislative branch, without any consent from this Congress.

The inclusion of immigration provisions in the Free Trade Agreements with Chile and Singapore interferes with Congress' plenary power to regulate the nation's immigration policy. This power belongs to Congress alone and includes both the temporary and permanent admissions of foreign nationals into the United States.

Article I, section 8, clause 4 of the Constitution provides that Congress shall have power to "establish a uniform Rule of Naturalization." The Supreme Court has long interpreted this provision of the Constitution to grant Congress plenary power over immigration policy. As the Court found in *Galvan v. Press*, 347 U.S. 522, 531 (1954), "the formulation of policies [pertaining to the entry of aliens and their right to remain here] is entrusted exclusively to Congress has become about as firmly imbedded in the legislative and judicial tissues of our body politic as any aspect of our government." And, as the Court held in *Kleindienst v. Mandel*, 408 U.S. 753, 766 (1972) (quoting *Boutilier v. INS*, 386 U.S. 123 (1967)), "[t]he Court without exception has sustained Congress' 'plenary power to make rules for the admission of aliens and to exclude those who possess those characteristics which Congress has forbidden.'"

As a Senator of this Committee, which has jurisdiction over immigration policy, it is my duty to preserve the plenary power of Congress to make immigration policy - I am dedicated to opposing any erosions of that power.

At the hearing on Monday, the witness for the U.S. Trade Representative, Mrs. Regina Vargo, was asked what legal authority the USTR was relying on as a basis for including immigration law negotiations in trade treaties. The USTR witness responded by differentiating between temporary and permanent entries into the United States, stating that because the Chile and Singapore Free Trade Agreements only contained provisions regarding temporary entries of foreign persons, the USTR was acting within the bounds of its negotiating authority. This is not the case.

By negotiating and including immigration law provisions in a binding bi-lateral treaty that Congress does not have the power to amend, the USTR has established a dangerous precedent that will not be tolerated in future trade agreements.

It would have been especially appropriate for the USTR to ensure that employers who repeatedly use the visa programs established under the trade agreements abide by all laws governing the entry of the foreign workers.

The legislation before us today makes the H-1B requirements under the Chile and Singapore agreements weaker than the requirements for other H-1B workers and may restrict Congress' ability to reform the L-1 visa program. Specifically, the legislation --

- ? permits the admission of up to 5,400 professionals from Singapore and up to 1,400 professionals from Chile each year;

- ? permits the almost unlimited renewal of these visas each year, which could have the effect of turning a temporary entry visa program into a permanent visa program; and

- ? permits the entry of dependent spouses and children to join these professionals without their entry into the U.S. being subject to a numerical cap.

If the U.S. Trade Representative continues to negotiate treaty terms such as the ones before us today, I will be unable to support them.

I am concerned with the current unemployment rate among U.S. workers and I am dedicated to preserving their jobs. The abuse surrounding some immigration visas is contributing to a record level of unemployment for U.S. high-tech workers.

I welcome, when appropriate, foreign industries within our borders, and, when appropriate, I fully support foreign workers coming here to work. I believe the only way to protect the job market for American workers is to preserve Congress' plenary power to make laws that affect the ability of foreign workers to displace American workers from their jobs.

Any provision of a future trade agreement that restricts the ability of this Congress to protect U.S. jobs will not be looked upon favorably.

I have great respect and appreciation for both Chile and Singapore. They are great allies of this country and I want, very much, to support the Free Trade Agreements that have been negotiated with them. In this single instance, however, my support of the trade provisions of the underlying treaty agreements should not be read as support of the immigration policies included therein or included in the implementing legislation.

We have seen some improvement from the provisions included in the initial draft, and I thought the administration had heard our message loud and clear. The answers to written follow up questions, however, do not indicate that the message was clear enough. My support for the trade agreements should not be questioned, but the assertion that the USTR now has the authority to effectively legislate in the area of immigration was detrimental to my support of the immigration provisions included therein. I deeply desire to support Chile and Singapore and had fully planned on voting for the Free Trade Agreements at every turn. However, in light of the answers that we

received this morning from the USTR - answers to the written questions submitted by Senators Feinstein, Kennedy and Grahm after Monday's hearing - I cannot support the committee vote concerning the immigration provisions.

I continue to rely fully on the verbal guarantees we have received that this process will not happen again in treaty negotiations. I look forward to working with colleagues from each nation, but in particular, the businessmen and women who are engaged in the expansion of trade between our respective business communities. In Alabama we are indeed fortunate that several company's from Singapore found opportunities which they developed into thriving businesses. One such business is located in my home town of Mobile, Alabama. Mobile Aerospace Engineering(MAE) is Singapore owned, but more importantly it is a vibrant business employing over 1000 local workers. MAE is a community leader not just in the number of its employees, but in its community outlook and community involvement. My visits have revealed that Singapore is indeed a valued economic partner and trusted ally.

I believe the Governments of Singapore and Chile clearly understand the message my colleagues and I communicated to the USTR. Our commitment to trade is not diminished; our message however is quite clear.

I thank the chair.