

Testimony of

The Honorable Eduardo Aguirre

February 12, 2004

Testimony of Eduardo Aguirre
Director
U.S. Citizenship and Immigration Services
Department of Homeland Security

Before the
Senate Judiciary Committee
Subcommittee on Immigration, Border Security and Citizenship

Regarding the
President's Proposed Immigration Reform

February 12, 2004
2:30 p.m.
Dirksen Senate Office Building
Room 226

Good afternoon, Chairman Chambliss, Ranking Member Kennedy, Members of the Subcommittee. My name is Eduardo Aguirre and I have the honor of serving this Administration and our great nation as the first Director of U.S. Citizenship and Immigration Services, within the Department of Homeland Security.

This is my first opportunity to return to this committee since my confirmation hearing on June 6, 2003. I am privileged to appear with Under Secretary Asa Hutchinson for Border and Transportation Security of the Department of Homeland Security, and Deputy Secretary Steven Law from the Department of Labor. We will testify on the President's recent proposal for immigration reform, offering our respective expertise and insights. I will begin, however, by providing an overview of the President's proposal.

On the occasion of my confirmation hearing, I shared with you my story of having arrived as a 15-year-old unaccompanied minor from Cuba. My parents sent me to escape a repressive regime and to experience freedoms and opportunities found only in America.

That was of course, the legal immigration track; the very system I am now charged with fundamentally transforming. A system you recognized was in need of reform and appropriately addressed in the Homeland Security Act of 2002, separating services from enforcement.

With the creation of the Department of Homeland Security, America's legal immigration system was put back on the right track, overnight. What remained were the many details and, as I prefer to say- God is in the details.

My team of 15,000 and I embraced a simple but imperative mission; making certain that the right applicant receives the right benefit in the right amount of time, and preventing the wrong applicant from accessing America's immigration benefits.

We established three priorities: eliminating the immigration benefits backlog, while enhancing national security and improving customer service.

These priorities dictate every facet of our business, consisting of family-based petitions; employment-based petitions; asylum and refugee processing; naturalization and citizenship services; special status programs; and document issuance and renewals.

Today marks our 349th day in existence. I am particularly pleased with the progress we have made and the professionalism exhibited by our employees, day-in and day-out, while mitigating security threats that we know to be real and relentless.

In the area of customer service, we have:

- o Initiated on-line features that allow customers to file and pay for our a number of our commonly used applications, as well as offering individual case status updates;
- o Established the Office of Citizenship to develop and implement public outreach and educational initiatives that better prepare immigrants for their rights and responsibilities;
- o Improved access to information by establishing a toll-free, bilingual National Customer Service Center help line (800-375-5283); and
- o Reduced the lines at a number of offices with the highest customer volume, such as New York, Miami and Los Angeles.

In the area of backlog reduction, we have:

- o Created a Backlog Reduction Team to identify immediate changes to speed up adjudication processes as well as to revise implementation plans;
- o Eliminated the backlog of applications for Certificate of Citizenship on Behalf of an Adopted Child with a program that proactively provides parents the certificate without application and without fee;

We take national security very seriously. We conduct background checks on the front and back end of nearly every application for an immigration benefit. That meant 35 million Interagency Border Inspection System checks last year.

In the vast majority of cases (97%), the checks take only minutes. In the event of a "hit", however, we will move cautiously until the issue at hand is resolved, even if that means a delay and contributing to the backlog. Last fiscal year, we processed about six million applications for an immigration benefit. Approximately 7% of the applications processed resulted in an initial security hit, and after further scrutiny, 2% resulted in confirmed security or criminal threat matches.

We make no apologies for our commitment to the integrity of the immigration system and we will not cut a single corner, if it means compromising security, to process an application more quickly.

Our intra-government coordination demonstrates that our approach realizes intended results. By way of example, within the last two weeks, our background check procedures identified individuals wanted for murder in Portland and sexual assault in Miami. We are making America safer against security and criminal threats, one background check at a time.

But, that is just part of a typical day's work at USCIS. Today, we will:

- o Process 140,000 national security background checks;
- o Receive 100,000 web hits;
- o Take 50,000 calls at our Customer Service Centers;
- o Adjudicate 30,000 applications for an immigration benefit;
- o See 25,000 visitors at 92 field offices offices;
- o Issue 20,000 green cards; and
- o Capture 8,000 sets of fingerprints and digital photos at 130 Application Support Centers.

Although our customers tell us that they are pleased with our new e-filing opportunities and on-line status checks, we are displeased with the length of time it takes to process benefit applications. We know that the dedication that led to effective background check processes must now be applied to backlog elimination efforts.

We will not declare victory in backlog reduction until we achieve the President's objective of universal six-month processing by the end of fiscal year 2006.

We will not declare victory in customer service until every legal immigrant is greeted with open arms and not endless lines.

And, we will not stop until we have restored public confidence in the integrity of America's immigration system.

That loss of confidence is an unfortunate yet legitimate obstacle and it can be attributed to the second track in our immigration system, the illegal track.

On January 7th, President Bush courageously confronted a broken system, one that has been ignored for too long. From the East Room of the White House, he called for Congress to deliver true reform and a new temporary worker program that facilitates economic growth, enhances national security and promotes compassion.

The President made clear his principles for reform, which are to: protect the Homeland and control our borders; match a willing worker with a willing employer, when no American can be found to fill that job; promote compassion; provide incentives for return to home country; and protect the rights of legal immigrants.

This is not an amnesty program, which joins the illegal track with the legal one by facilitating green card status and potential naturalization. Rather, the President proposes a one-time

regulated opportunity for undocumented workers, already here as of the date of the President's announcement, to legitimize their presence and participate more fully in our economy, for a finite period, before returning home. And, it creates ongoing opportunity for individuals abroad to apply to come temporarily to the United States and legally fill jobs that American workers will not fill, thereby presenting long-term, viable alternatives to the risks associated with illegal immigration.

As this committee appreciates, immigration laws are some of the most complex that we have as a nation, perhaps even more so than the tax code.

The President feels strongly that the Temporary Worker Program should be simple and user friendly. We have the wisdom born of experience, the reliability of modern technology and human expertise and ingenuity to realize the President's vision.

Simply put, I believe it is doable, and I raise five points that complement my reflections on process for the committee's consideration.

First, enforcement is paramount to the Temporary Worker Program. At present, we go to great lengths to inform the public abroad that America's immigration laws have not changed and enforcement and interdiction procedures continue. Additionally, we inform community based organizations at the grass-roots level that illegal immigrants, already here, should be mindful of their status and recognize that they are in violation of our laws and susceptible to detention and removal. Under Secretary Hutchinson will elaborate, but I remind you that America's borders are substantially more secure thanks in part to his leadership. Deputy Secretary Law will contribute to this point as well by addressing labor law enforcement.

I add that security and fraud prevention are synonymous with enforcement, and must be a priority. Identifying and registering the undocumented population will minimize threats and maximize security.

Because, we are talking about, in all likelihood, an entirely new immigration category, the program would require a dedicated biometric card for the worker, and also for participating family. As Under Secretary Hutchinson will mention, the temporary worker program would introduce effective measures to prevent fraud, by the employer and worker, and would be integrated with programs such as USVISIT.

Second, the American worker comes first. The President has made it clear that this program would match a willing worker with a willing employer, when no American is filling or can be found to fill the job. We know that employers in many sectors continue to experience difficulty filling employment vacancies. These challenges detract from an increasingly prosperous economy.

We also know that more than 14% of America's labor force is foreign-born and we anticipate that a high percentage of the estimated 8 million undocumented aliens in this country work. The fact that they are here, in the workforce, is proxy for their participation in the American economy and evidence of a market demand for their labor.

We know that many pay taxes, but, because of their undocumented status, they may be reluctant to assert their right to protections that American workers have, such as minimum wage, labor protections, and health and safety requirements. As President Bush pointed out, this is not the American way.

Third, the program will require incentives. One obvious incentive is enforcement, for the employer and the worker. As I previously noted, Under Secretary Hutchinson will speak to enforcement. However, I contend the greater incentive is economic and social opportunity.

The President's Temporary Worker Program will offer portability of investments. This will be instrumental in expanding individual participation in the increasingly interlinked worldwide economy, encouraging savings or even capitalization in a business, house or land in the home country.

The U.S. has bilateral totalization agreements with some 20 countries around the world. The Administration will work with our international partners to encourage their recognition of the temporary worker's contributions made in both countries.

The temporary worker will also benefit from skills learned and education attained during their work experience in America. This training will contribute to the temporary worker's marketability upon his or her return home.

An additional incentive is circularity. The temporary worker should be able to travel, knowing that he or she can go and return freely to the country of origin for celebrations, funerals or vacation, and maintaining important ties that will aid the worker in his or her eventual yet certain return. Since many of the individuals already present in the United States who would register to participate in the President's Temporary Worker Program would have accrued sufficient unlawful presence to be subject to the 3 and 10-year bars for re-entry, any legislation to create this program would necessarily need to address those bars for individuals who register. It is terribly important to maintain the ties between these individuals and their homes abroad as an incentive for their eventual return.

Similar to other non-immigrant categories, the President believes that provisions should be made for family, to remain in the U.S. or travel to the U.S. with the temporary worker, providing that the temporary worker can demonstrate an ability to financially support his or her family, and assuming that members of the worker's immediate family present no criminal or security risks. I encourage the Committee to review the structure established by the H non-immigrant category, for best practices. In addition, to truly meet the needs of the labor market and economy, the program should be non-sector specific.

Finally, eliminating the fear of deportation will be an incentive. Undocumented aliens will tell you that they often have trouble sleeping at night, and leaving for work each day, not knowing if they will make it home at the end of the day. They realize that a simple traffic violation, automobile accident or other everyday misstep could result in bringing them to the attention of federal authorities and their subsequent deportation.

Fourth, the program should be fair and not come at the expense of legal immigrants, who have respected our laws and earned their place in line.

The President's plan calls for an initial three-year term that is renewable. We need to consider the number of renewals that the worker should be permitted to have prior to his or her mandatory return home. Standards, or thresholds, for renewal should include a job offer, a sound employment record, good moral character, and confirmation that the worker does not present any type of criminal or security threat. Furthermore, we should consider whether, like the H1B visa category, this program would permit the temporary worker to seek existing paths to permanent residency by way of sponsorship from an eligible family member or employer during the period of their work visa. It is the President's belief that if the worker were to make that choice, he or she should take their spot at the back of the line. Recognizing, however, that current annual limitations may be insufficient, the President calls for a reasonable annual increase in legal immigrants.

Fifth, the program should be simple and user friendly - thus one that can be effectively administered. The President's proposal calls for aliens present in the United States as of January 7, 2004, to pay a fee upon registration in the program. In addition, US CIS would anticipate recovering the cost of processing the applications through collection of a processing fee as is done currently with all immigration applications. The processing fee would be set based on full cost recovery. This is important given US CIS is almost an entirely fee-based agency in the Federal government. On Monday, February 2nd, the President requested \$1.711 billion in the FY 2005 budget for US CIS, \$1.57 billion of which is mandatory spending, or fee revenues for immigration benefits.

Earlier this week, I announced a proposed fee increase to better reflect the cost of processing our cases. We have been losing just under \$1 million a day since the start of this fiscal year because our fees are no longer covering the cost of processing the applications. These losses are attributed to the costs of doing business, particularly increased background checks and practical or legal limitations on our ability to charge fees for certain immigration benefits. Enactment of the President's proposal will result in an increased workload to USCIS, though it is expected that costs associated with the workload would be covered by registration and processing fees, like other application processing.

With respect to process, as I have suggested, in all likelihood, we are talking about an entirely new immigration category.

America has not seen immigration reform of this depth since enactment of the Immigration Reform and Control Act of 1986 (IRCA), which granted residency to three million aliens. While this program would be very different, for the purposes before us, I tasked my team to share with me lessons learned from that experience - that we can apply toward the President's Temporary Worker Program. Given our structure within DHS, US CIS will exceed the President's expectations.

I respectfully submit the following features:

- o A one-time fee to be assessed upon the undocumented alien's registration separate from the application processing;

- o A web-based mechanism for petitioning for program participation be used;
- o A labor market driven program when no American workers can be found - therefore there no artificial numerical limitations;
- o A retroactive date, requiring proof of employment, be utilized to prevent an impulse of illegal border crossings;
- o A duration of time be required in the home country, prior to re-eligibility; and
- o Options provided for ineligibility for or termination of status based upon the worker's failure to meet his or her responsibilities, or in the interests of national security or public safety.

Additionally, President Bush has set high expectations for what new citizens should know about our history and government. He has charged my bureau with examining the standard of knowledge in the current citizenship test, to ensure that new citizens know not only the facts of our history, but also the ideals that have shaped our history.

Every citizen of America has an obligation to learn the values that make us one nation: liberty, civic responsibility and tolerance for others.

My project management team recently met with over a dozen historians, civics experts, and adult educators to discuss the redesign of the U.S. history portion of the naturalization test with the goal of making the test more meaningful, substantive and fair. We are examining the meaning of significant events that occurred in our nation's history and exploring ways in which candidates may better retain the significance of these events. Recognizing that many Americans have strong beliefs about what our new citizens should know about our country, especially in our post-9/11 era, we plan to publish the proposed test content in the Federal Register and ask for public comments about it. We believe that many Americans would like to have a say in what we are asking our new citizens to learn, and we are eager to hear from them. We look forward to briefing you and other Members of Congress on our proposed new test content and receiving your feedback, as well.

In addition, the current testing process is not uniform, which can lead to unfair results. A candidate in San Francisco is, in all likelihood, not tested the same way or asked the same questions as a candidate taking the same exam on the same day in Boston. As a result, we are developing standardized testing procedures so that applicants can be assured that they are experiencing a fair testing process.

We do not want to make the test harder. We do not want to make it easier. We want to make it more meaningful, in a way that does not have an adverse impact on any particular group of applicants. Therefore, we will carefully pilot test the revised English, history and government tests before implementing them. And we will continue to consult with our stakeholders to solicit their input. In January, we received valuable feedback from over 120 community representatives, adult educators, and CIS officers at a stakeholder conference that addressed issues ranging from test question formats, test content and pilot test plans. Our newly created Office of Citizenship will be responsible for coordinating the development of educational materials designed to complement this important initiative.

Our plan is to implement the new tests and testing process in 2006. Given the high stakes - the prize of U.S. citizenship - this process is not one that can or should be rushed. We are committed to improving the current process and to doing it right.

In his announcement, President Bush noted, that we should have immigration laws that makes us proud. We need a system that is compassionate, that serves the economy and fulfills security; that is the American way.

This concludes my prepared remarks. I thank you for the invitation to testify before this committee and I would be happy to answer any questions.