

Testimony of
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Before the Senate Committee on the Judiciary
On Comprehensive Immigration Reform
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Many thanks to Chairman Specter and to the other members of the Senate Judiciary Committee for this opportunity to share my views on the urgent challenge of fixing our broken immigration system.

The American people are right to demand that Congress and the Administration take effective action to restore the rule of law to our nation's immigration system. The evidence of the system's dysfunction is all around us: young men and women die gruesome deaths in southwestern deserts as they attempt to enter the U.S. in search of work; fake document merchants and criminal smugglers turn huge profits in networks that one day might be exploited not by those seeking work in our economy but by those seeking to attack our nation; local community tensions simmer and sometimes explode as housing gets stretched, schools experience change, and language differences emerge; immigrant families remain divided for years, even decades, by restrictive admissions policies and inefficient processing; immigrant workers afraid of being discovered and deported are subject to abuse and exploitation by unscrupulous employers seeking to gain an unfair advantage over law-abiding competitors; meanwhile, public frustration mounts as the federal government seems incapable of mobilizing the political leadership and enacting the policy changes to fix the system once and for all.

Mr. Chairman, I urge you and the Committee to lead the way and take effective action in this Congress. The country is crying out for leadership on this issue and a solution to this problem. Immigration policy is fundamentally and constitutionally a matter for the federal government. States and local communities are understandably frustrated with the effects of a broken immigration system, but they cannot and do not set national immigration policy. It is up to Congress and the Administration to rise to the occasion.

I believe the Senate Judiciary Committee is uniquely suited to the task at hand. This Committee has rightly earned a reputation for confronting difficult challenges in a professional and dignified manner. Others on Capitol Hill may be tempted to take the path of least resistance and enact piecemeal measures that sound tough but solve nothing. But this Committee, if it acts with

dispatch and intelligence, can set the tone and direction for the debate in this Congress, and create the template for immigration reform that is bipartisan in its formulation, comprehensive in its approach, and workable once fully implemented.

A problem as hard to diagnose as it is to solve

Fixing the broken immigration system requires sizing up its complexity and its dimensions. The numbers tell part of the story. Some 11 million undocumented immigrants now live and work in the United States. That means that almost one third of all the immigrants in America lives here without government authorization. 14 million people, including some 5 million kids, live in households headed by an undocumented immigrant. 1 out of 20 workers in the nation's labor force is living and working here illegally. Two-thirds of them have arrived in the last decade. More than half are from Mexico. More than 80% are from Latin America and the Caribbean. America's backyard is showing up on America's front porch.

Illegal immigration is no longer a niche issue affecting a handful of gateway states and cities. It has gone nationwide. Consider the five states with the fastest growing populations of undocumented immigrants: North Carolina, Utah, Colorado, Arizona, and Idaho. In fact, a wide swath of the nation's heartland, from the old South stretching up through the Mountain states to the Northwest, is undergoing a remarkable demographic transformation with little to no recent experience to draw on to respond to it.

Moreover, most new undocumented immigrants appear to be here to stay. The vast majority no longer fit the stereotype of the migrant male on his own here to do temporary work before returning home. Today, 70% live with spouses and/or children. And only 3% work in agriculture. The vast majority are employed in year-round service sector jobs. After all, the jobs are plentiful. More than half the new jobs created in the American economy require hard work, not multiple diplomas. Meanwhile, young native-born workers are smaller in number, better educated than ever, and more interested in office work than manual labor. Consequently, much of the nation's demand for housekeepers, childcare workers, landscapers, protein processors, busboys, cooks, janitors, dry wallers, and construction workers is met by a steady flow of some 500,000 undocumented migrants who enter and settle in America each year.

Which begs the question: Since the U.S. has a legal immigration system, why don't these workers from Mexico and elsewhere simply wait in line and enter with legal visas? Answer: what legal visas? There are virtually none available for these workers. While the labor market demands an estimated 500,000 full-time low-skilled service jobs a year, our immigration laws supply just 5,000 permanent visas for workers to fill these jobs. And this tiny category is so backlogged it has been rendered useless. As the Immigration Policy Center recently pointed out, of the other 15 immigrant visa categories available for employment and training, only two are available to industries that require little or no formal training. These two categories (H2A and H2B) are small and seasonal. In addition to the enormous mismatch between labor market realities and our government's immigration policy, our family visa lines are so backlogged that it can take a decade for spouses to be reunited, legally. Not surprisingly, many stop waiting and cross the border illegally in order to reunite with their loved ones.

What to do? Some argue that the solution is to simply enforce the laws we already have on the

books. And while we certainly need tighter, more targeted, and more effective enforcement as part of a comprehensive overhaul, the fact is that over the past two decades the "enforcement only" approach has failed miserably. As another of this hearing's witnesses, Princeton professor Douglas Massey, recently documented, since 1986 the border patrol budget has increased ten-fold in value. This beefing up of border enforcement has been augmented by tough restrictions on immigrant access to employment, public services, and due process protections.

And yet this unprecedented increase in enforcement has coincided with an unprecedented increase in illegal immigration.

Why hasn't "enforcement only" worked to stem illegal immigration? Because our current approach to immigration and border security policy fails to recognize that the United States has an increasingly integrated labor market with Latin America. In much the same way that we used to see workers from rural areas in South migrate to the urban North to fill manufacturing jobs, we now see workers from rural areas south of the border migrating to all areas of the U.S. to fill service jobs. Our failure to account for this fact of life leads to a failure of policy. Instead of building a workable regulatory regime to govern what is essentially a market-driven labor migration, we keep legal channels severely restricted and then wonder why workers and their families have nowhere to go but into the clutches of a migration black market dominated by smugglers, fake document merchants, and unscrupulous employers.

Dan Griswold of the Cato Institute sums it up this way: "Demand for low-skilled labor continues to grow in the United States while the domestic supply of suitable workers inexorably declines - yet U.S. immigration law contains virtually no legal channel through which low-skilled immigrant workers can enter the country to fill that gap. The result is an illegal flow of workers characterized by more permanent and less circular migration, smuggling, document fraud, deaths at the border, artificially depressed wages, and threats to civil liberties." He adds, "American immigration laws are colliding with reality, and reality is winning."

Griswold is right. We will not be able to restore respect for the rule of law in our immigration system until we restore respect for the law of supply and demand. Instead of "enforcement only" or "enforcement first," we need an "enforcement plus" approach.

I recall the first time I came face to face with the reality of an integrated labor market and the futility of an "enforcement only" strategy. In the late 1990's I accompanied a delegation that visited Tixla ("Teesh-la"), a "sending community" located in the Mexico. Most of its sons and daughters had left and migrated illegally to Chicago to fill available service jobs in construction, landscaping, hospitality, and childcare. Those left behind consisted mostly of women, children, and the elderly. The workers used to come back and forth, at least for visits, but this had mostly stopped due to the press of their multiple jobs up north and the risks associated with re-crossing the border illegally. The townspeople were proud to show us the new school and basketball court which had recently been built with pooled remittances. And there, right there in the middle of the basketball court, was a huge replica of the logo for the Chicago Bulls.

That's when it hit me. Tixla, a dusty, rural town south of Mexico City, is a bedroom community for Chicago. We may not think of it that way, but it is 21st century fact. The town produces the workers needed to fill newly-created service sector jobs in the Chicago area. There is plenty of

work available just up the road, and these workers are willing to risk their lives to make the commute.

Needed: a new perspective and a comprehensive strategy

Like so many other public policy debates, the highly-charged immigration debate is often polarized and paralyzed by an "either/or" framework. The tit-for-tat goes something like this: you are either for immigrants or for control; you are either for higher levels or lower levels; you are either for closed borders or open borders; you are either for lax policies or tough policies. This narrow and lopsided framework is a trap that obscures realistic solutions.

What's needed is a "both/and" approach that recognizes the reality of an integrated labor market with Latin America and the legitimate U.S. demand for operational control of its borders in a post 9/11 world. Such an approach seeks to integrate seemingly contradictory elements into a comprehensive package; a package that combines expanded enforcement strategies and expanded legal channels for those entering the U.S. to work and join families and expanded pathways to legal status and citizenship for undocumented immigrants already living and working in the U.S. We need to change our immigration laws so that they are enforceable and enforce them effectively.

Senator Edward Kennedy put it this way in recent testimony before this Committee: "The past debate has long been polarized between those who want more enforcement and those who want more visas. But to repair what's broken, we need to combine increased enforcement and increased legality. Better border control and better treatment of immigrants are not inconsistent - they are two sides of the same coin."

This new perspective was first promoted and popularized by Presidents Bush and Fox in their 2001 migration negotiations. The two presidents imagined a system based on improved border security and widened legal channels. The idea was, and is, to recognize, regularize, and regulate the status of workers who are either coming from south of the border to jobs in the U.S. or already here working and contributing to our economy. The goal? Make the healthy, positive, and predictable movement of workers to available jobs safe, legal, and orderly.

The President deserves considerable credit for getting this "big idea" and sticking with it. In January 2004 he announced principles for immigration reform that, although somewhat vague and incomplete, captured this new perspective. And this vision of immigration reform has spawned two significant immigration reform proposals in the Senate. One is authored by Senators McCain and Kennedy. The other is authored by Senators Cornyn and Kyl. Both proposals are serious and go beyond an "enforcement only" approach. However, in our view only the McCain-Kennedy bill is both fully comprehensive and workable. That is why the organization I direct has joined with constituencies from across the political spectrum and across the country to endorse the Secure America and Orderly Immigration Act of 2005.

Secure America: A cure for what ails us

Secure America is not perfect, but it is an excellent draft that should serve as the basis for fixing our broken immigration system. Specifically, the bill combines 1) enhanced enforcement to

ensure the reformed immigration system is effectively policed; 2) widened legal channels for the future flow of workers and families; 3) a workable solution for the 11 million undocumented immigrants currently working and living in the United States; and 4) support for the successful integration of newcomers in the communities where they settle.

The key to effective enforcement is to augment our border enforcement efforts with a system that ensures that all workers hired in the United States are in our country legally. The bill accomplishes this by building an electronic worker verification system (the bill contemplates credit card swipe machines, but for social security cards, drivers' licenses, or immigration documents, and only at the point of hire) combined with tough sanctions for employers who attempt to end-run the new system. I predict that responsible employers will support it as long as the verification system is functional and the new system is combined with legal channels for workers here and those needed in the future. I predict that unscrupulous employers -- those that benefit from the dysfunctional status quo -- will oppose it.

The keys to making the admissions system realistic, controlled, and workable are a) to provide enough visas for the expected future flow of workers and families; and b) to avoid the exploitation and abuses of old-style guest worker programs. Secure America accomplishes the first by creating 400,000 worker visas a year and increasing family reunification visas so that the current illegal flow will be funneled into a legal one while being fair to those from around the world. It tackles the second by requiring employers to pay newly-admitted workers the same wages as similarly-situated workers, and by mostly de-linking workers' status from employer say-so. For example, workers on temporary visas (three year visas, renewable) will be able to "vote with their feet" and change jobs without threatening their immigration status. After four years in the country, such workers will be able to self-petition for permanent residence - rather than having to ask for the blessing of a particular employer.

The key to putting migration on legal footing once and for all is finding a way for the 11 million or so undocumented immigrants to come out of the shadows voluntarily and transition to legal status. Secure America addresses this controversial issue head on. It offers incentives for undocumented immigrants already here to come forward, register with the government, submit to criminal, security, and health screenings, pay a hefty fine, study English and civics, and clear up their taxes as a way to eventually earn permanent residency. Immigrants who meet these requirements can apply for permanent residence after six years, and become eligible for citizenship in 11 years at the earliest. And this component interacts with the family reunification provisions such that those waiting in the queue outside the U.S. secure permanent residence before those previously undocumented immigrants who obtain temporary status.

Critics label this process of registration and earned legalization an "amnesty." Senator Kennedy rightly objects that "there is no free pass, no automatic pardon, no trip to the front of the line." The Wall Street Journal editorial page, which I suspect rarely lines up with the senior Massachusetts Senator, agrees: "This amnesty charge may be potent as a political slogan, but it becomes far less persuasive when you examine its real-world implications. If paying a fine isn't good enough for illegals already here, what are the restrictionists proposing? Mass arrests, raids on job-creating businesses, or deportations? . . . Those who wave the 'no amnesty' flag are actually encouraging a larger underground illegal population. The only reform that has a chance

to succeed is one that recognizes the reality that 10 or so million illegal aliens already work in the U.S. and are vital to the economy and their communities."

Finally, the bill promotes the successful integration of new immigrants into local communities. Immigration to America has worked throughout our history because newcomers have been encouraged to become new Americans. Secure America takes steps to renew this commitment by increasing English classes for adult immigrants, citizenship promotion and preparation, and the legal security immigrant workers need to move up the economic ladder. In fact, it's worth noting that when 3 million undocumented immigrants became legal immigrants some 20 years ago, their wages increased by 14% over 5 years - they were no longer afraid to speak up or change jobs - and their productivity increased dramatically - they studied English and improved their skills through training. The bill also deals with a longstanding and legitimate complaint from state and local governments by reimbursing costs related to health care and other public services.

The bill certainly has its faults and its critics. The immigration enforcement provisions are strong but will need to be strengthened if we are to ensure immigrant workers and families use widened legal channels and no others. Similarly, the bill aims to construct a temporary worker program that adequately protects both native and immigrant workers alike, but will probably need to be tweaked to fully realize this objective. After all, the goal of immigration reform should be nothing less than to restore the rule of law - both to our immigration system and to low-wage labor markets. And unfortunately, the bill does not adequately address the acknowledged long-term solution to the migration challenge: economic development in sending nations and communities. It is my hope that this session's immigration reform debate will serve as a stepping stone to, if not a venue for, a much-needed review of trade, aid, and development policies in the Americas.

Overall, though, the bill's premise is brilliant and its promise viable: take migration out of the black market and bring it under the rule of law; funnel the illegal flow into legal channels; increase the legality of the migration that is occurring, rather than increase the numbers of those who enter; get control of the flow so we get control of our border; bring undocumented immigrants out of the shadows and under the protection of our laws; know who is in our country and who is entering it; shift from repressing migration ineffectively to regulating migration intelligently; turn the broken status quo into a functioning, regulated system; drain the swamp of fake documents and criminal smugglers; vetted airport arrivals instead of deaths in the desert; families united rather than divided for decades; verification mechanisms that work and fake documents that don't; legal workers and an equal playing field for honest employers; equal labor rights for all rather than a race to the bottom for most. In sum, this bill represents a 21st century solution for a 21st century challenge.

The Cornyn-Kyl bill: Right direction, but falls short

The proposal introduced recently by Senators John Cornyn and Jon Kyl is a serious bill. And Senator Cornyn in particular has distinguished himself recently by his eloquent diagnosis of our broken immigration system. He has repeatedly said that the only way to solve the immigration dilemma is to combine tougher enforcement with a legal regime that deals realistically both with those entering our nation and those already here.

Unfortunately, the bill as introduced is not workable. Instead of offering carrots to draw the 11 million out of the shadows so they register with the government, submit to screenings, pay a fine, and get in line for eventual permanent residency, it presents mostly sticks that would end up with most undocumented immigrants opting to remain in the shadows. Instead of reuniting families in a more timely fashion and keeping nuclear families together, the bill fails to address existing backlogs and instead would most likely result in more families split between different countries for longer periods of time. Instead of ensuring that immigrant workers are treated equally so that both low-wage workers and law-abiding employers benefit, the bill would likely end up favoring employers who undercut their competitors by hiring short-term guest workers. Instead of providing for a stable workforce and promoting citizenship, the bill threatens to force workers out of the country or out of their jobs, and provides no meaningful path to citizenship.

Nevertheless, the authors have rightly steered clear of an "enforcement only" or "enforcement first" approach and have developed a number of ideas worthy of consideration and inclusion in a Senate Judiciary Committee bill. It is my hope and recommendation that this Committee, led by its Chairman, will start with the McCain-Kennedy template and include the best of the proposals before it in a way that builds momentum and support in the full Senate for workable comprehensive reform.

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Final remarks

We at the National Immigration Forum have been working on challenges related to immigration policy for more than 20 years. We understand how hard it is to fashion immigration reform that can pass Congress and work on the ground once enacted. We are fully prepared to support and fight for a combination of tough and smart enforcement measures if combined with simultaneous reforms to our admissions policies that bring undocumented immigrants out of the shadows and provide a sufficient number of worker and family reunification visas for the future flow. But we cannot and will not support proposals that have no realistic chance of working once implemented. Our stand is that we not only get it done, but that we get it done right.

But we are optimistic. We believe this is our generation's best shot at enacting workable reform. As a nation we seem poised to move beyond the old debate -- characterized by simplistic and shallow prescriptions of the past, the non-solution, sound bite-driven "get tough and be done with it" approach. The nation is ready to take part in a new debate, one that takes all of the moving parts into full consideration and at the same time. The old debate suggests that we have to choose between being a nation of immigrants or a nation of laws. The new debate recognizes that the only way to be either is to be both.

We look forward to working with the Committee to turn this vision of reform into a reality.