

Testimony of  
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STATEMENT OF THE HONORABLE MICHAEL CHERTOFF  
SECRETARY  
U.S. DEPARTMENT OF HOMELAND SECURITY  
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Mr. Chairman, Senator Specter, Members of the Committee:

Thank you for inviting me to testify today about immigration reform. The Department of Homeland Security (DHS) is committed to the President's vision of immigration reform based on five main pillars: (1) gaining effective control of the border; (2) building a robust interior enforcement program; (3) establishing a Temporary Worker Program (TWP); (4) bringing illegal aliens who are now in the U.S. out of the shadows; and (5) promoting assimilation of new immigrants into our society. With Congress's help, DHS has made measurable progress in achieving effective control of the border and improving the enforcement of our immigration laws in the interior. I would like to share some of our accomplishments with you today. But to continue on this path of success, you must help us further by giving us effective tools to do our job. As you consider immigration reform legislation, I urge you to heed the lessons of past reform efforts and avoid repeating their mistakes. In that respect, I would like to share with you some of my views, as the head of the Department charged with administering our immigration programs, of what we could learn from our past experience.

#### Protecting Our Nation's Border

We have accomplished a lot in improving our border enforcement. The following are our key accomplishments in this area:

**6,000 National Guard Deployed to Border:** In support of the President's initiative to secure the border, 6,000 National Guard personnel were deployed to the Southwest border as part of Operation Jump Start. In addition to the National Guard deployment, Border Patrol agent staffing increased by over 30 percent since 2001, as shown in the chart below.

**"Catch and Return" Replaced "Catch and Release" Along the Borders:** As part of the Secure Border Initiative, the Department ended the practice of "catch and release" along the Southern and Northern borders. In the past, we apprehended illegal aliens at the border from countries other than Mexico, who we could not immediately remove from the U.S., and then released them on their own recognizance. Often these illegal aliens failed to return for their immigration hearings. In July 2005, we were releasing up to 80 percent of non-Mexican illegal aliens because

we did not have the bed space to hold them. As of August 2006, all removable aliens caught at the border are detained until returned to their home countries. When people know they will be held in detention and then returned to their home country, it creates a strong disincentive to cross illegally in the first place. Ending this practice and replacing it with "catch and return" is a breakthrough in deterring illegal immigration on the Southern border.

### SBI Ends Catch and Release

Apprehension Rates Declined: Beginning in the third quarter, FY 2006 showed a marked decrease in the apprehension rate due, in principle, to the end of "catch and release," the implementation of Operation Jump Start, and the expanded use of expedited removal procedures, among other factors. The graph below provides historical data by fiscal year for total apprehensions of both Mexican and non-Mexican aliens between U.S. ports of entry. CBP's Office of Border Patrol (OBP) made nearly 100,000 fewer apprehensions in FY 2006 than in FY 2005 due to these factors. This decline is represented below by quarter, with the drop in apprehension rates corresponding to the implementation of Operation Jump Start in the third quarter of FY 2006 and the full implementation of "catch and return" in FY 2007.

Border Security at and Between the Nation's Ports of Entry Increased: By deterring illegal immigration, security has been strengthened. With fewer alien crossings, DHS can more effectively target resources to control our borders with fewer alien crossings. As shown in the chart above, our efforts resulted in a reduced number of apprehensions at the borders during each of the three quarters since Operation Jump Start.

SBI-net: Last year, DHS initiated a multi-year plan - SBI-net - to secure our borders and reduce illegal immigration by upgrading technology used in controlling the border, including improved communications assets, expanded use of manned and unmanned aerial vehicles, and state-of-the-art detection technology. We are currently evaluating the proper mix of fence and other tactical infrastructure, as well as personnel and technology, to gain effective control of the Southwest border.

Two operational task orders have already been contracted under SBI-net; they are Project 28 and Project 37. Project 28 is being carried out along 28-miles of border flanking the Sasabe, Arizona Port of Entry. It will demonstrate the SBI-net system's capabilities by deploying sensor towers, unattended ground systems and upgrades to existing Border Patrol vehicles and communication systems. Project 28's completion date is set for June 2007. In January 2007, we awarded a task order for Phase I (9 miles) of the Barry M. Goldwater Range Project 37. The next phase of this project involves completion of 34 miles of fencing and vehicle barriers.

US-VISIT's Biometric Program Kept Terrorists and Other Criminals Out of Our Country: US-VISIT's biometric program increased watch list hits by 185 percent at consular offices between FY 2005 and FY 2006. The program protects American people by keeping terrorists and other criminals out of our country, while facilitating visits from legitimate travelers. In FY 2006, there were 2,558 watch list hits at consular offices, up from 897 hits in FY 2005. The use of biometrics has allowed DHS to deny entry to more than 1,100 known criminals and visa violators.

### Improving Interior Enforcement

We have also dramatically improved the enforcement of our immigration laws in the interior. The following are some of our key accomplishments:

**ICE Set New Records for Worksite Enforcement and Compliance Enforcement:** As depicted in the graph below, in FY 2006 more than 4,300 arrests and apprehensions were made in the U.S. Immigration and Customs Enforcement (ICE) worksite enforcement cases, more than seven times the arrests and apprehensions in FY 2002, the last full year of operations for the U.S. Immigration and Naturalization Service (INS).

ICE completed 5,956 compliance enforcement investigations resulting in the administrative arrest of 1,710 overstay and status violators, a 75 percent increase over the number of administrative arrests in FY 2005.

In our most recent worksite enforcement operation, on February 22, 2007, ICE agents arrested 190 unauthorized workers in 64 locations who were employed by ROSENBAUM-CUNNINGHAM INTERNATIONAL, Inc. (RCI), a Florida-based company that specializes in nationwide contract cleaning services at several national restaurant chains and resorts. The charges include allegations that one of the owners and his co-conspirators obtained over \$54 million from its contracts by using sub-contracting cleaning crews comprised almost entirely of undocumented aliens. This two-year investigation is just the latest example of our intent to maintain an aggressive worksite enforcement program that targets egregious employers who are knowingly violating the law.

**ICE Set New All-Time Record for Alien Removals:** ICE removed 192,171 illegal aliens including 88,217 criminals, from the country in fiscal year 2006. This marks a 13 percent increase in total removals and a 4 percent increase in criminal removals over the prior fiscal year. As shown in the following chart, ICE also increased its detention bed space by 6,700 during FY 2006 and is now funded for a total of 27,500 beds for FY 2007.

## Elements of a Successful Immigration Reform

### Border Security and Interior Enforcement

The continuation of our success in securing the border and enforcing immigration laws in the interior depends on whether the immigration legislation that Congress enacts gives us the necessary tools to accomplish our task. Let me outline some of the authorities that I believe are needed:

? First, and most important, immigration reform should ensure that we maintain effective safeguards preventing terrorists from taking advantage of our tradition of welcoming immigrants of all nations. To that end, I urge Congress to enhance DHS's authority to consider national security and terrorist activity in determining an alien's eligibility for citizenship and other immigration benefits, including relief from removal.

? We should make it clear that "port running" and evasion of DHS checkpoints are criminally punishable. We should strengthen criminal sanctions for dodging checkpoints or failing to obey a DHS officer.

? We should strengthen our ability to penalize countries that impede effective removal of their nationals from the United States by such means as delaying issuance of travel documents to their citizens, limiting the repatriation flights, or otherwise refusing to take back their own nationals.

? We should set reasonable rules to govern courts ordering immigration-related injunctions, to ensure that our practice of "catch and return" can continue.

? We should ensure DHS's ability to detain dangerous aliens until removal.

? We should strengthen the definition of "aggravated felony" in the immigration law to ensure that it bars aliens who committed manslaughter, homicide, and other serious felonies. We should make gang membership an independent ground for removal and inadmissibility.

### Worksite Enforcement

I especially urge Congress to ensure that the immigration legislation contains provisions strengthening the worksite enforcement system. Effective worksite enforcement tools are crucial to mitigating the economic incentives that draw illegal aliens into the United States. If those who are here illegally cannot find jobs, we will remove the main incentive drawing illegal immigration to our country.

While we have dramatically increased our worksite enforcement efforts, they have been severely hampered by a lack of tools, both for enforcement officials and for employers who want to comply with the immigration laws. I urge Congress to fill gaps in current law, and to do the following to make sure that our worksite enforcement is both workable and effective:

? We should make it mandatory for employers to use the Electronic Employment Verification System (EEVS). This system would enable employers to confirm that their new hires are U.S. citizens or work-authorized aliens. This system would give employers a verification tool that is accurate, fast and easy to use. But we need legal authority to assure that the Social Security Administration can share with us and with employers data concerning stolen identities being misused to obtain work illegally.

? One of the mistakes of the Immigration Reform and Control Act of 1986 (IRCA) was to deprive immigration authorities and employers of the ability to adapt to new forms of worksite fraud. As a result, it has become much easier for illegal immigrants to avoid the verification requirements by using fraudulent documents. To remedy this mistake, DHS should be given flexible authority to establish new requirements in response to new forms of immigration fraud, such as identity theft.

? We should not tie up worksite enforcement in endless litigation. This was yet another mistake we made in 1986. To the greatest extent possible, we should build an enforcement system that does not mire employers, workers, and the government in drawn out litigation.

? We should ensure that civil and criminal penalties for violation of the immigration laws are tough enough that scofflaw employers cannot just treat fines as a cost of doing business. We cannot afford another law like the 1986 reform that makes enforcement expensive and violations cheap. We should increase penalties for repeat offenders and establish substantial criminal penalties and injunction procedures that punish employers who engage in a pattern of knowing violations of the laws and effectively prohibit the employment of unauthorized aliens.

### Temporary Worker Program and Program for Currently Undocumented Workers

Our efforts to ensure vigorous enforcement of our laws in the interior, and especially at the worksite, are crucial to controlling the problem of illegal immigration. But they alone will not be sufficient. We must create a lawful mechanism so that in the future, foreign workers can come

into the United States on a temporary basis to fill jobs that U.S. workers do not want. This regulated channel for temporary workers would dramatically reduce the pressure on our borders, aid our economy and ease the task of our law enforcement agents inside the country. There is an inextricable link between the creation of a TWP and better enforcement at the border.

We also cannot ignore the presence in our country of about 12 million illegal aliens. Many of them have been living in the United States for a long time, doing jobs that our economy needs to have filled. As Secretary Gutierrez stated, it is simply not in our interest to have a population of this size remain in the shadows of our economy and often beyond the reach of law enforcement. We should seek to bring these people out of the shadows and under the rule of American law. That process must also involve acknowledgment and atonement for those who have broken our immigration laws.

Over the course of the past month, Secretary Gutierrez and I have had the chance to meet with many of you and your Senate colleagues. We listened carefully to your views on the main features of immigration reform in general and of this problem in particular. We are considering carefully what we have learned in our conversations. After we have had some time to consider your advice, I hope to return to you so that we can work together on sound and long overdue immigration reform legislation.

Today, though, I would like to share with you some of my own thoughts, as the head of the Department that would be charged with administering the TWP, as to some of the principles that should guide that program. These thoughts are shaped by our experience administering the system that was bequeathed to us by the 1986 immigration reform:

? First, we need to have clear and consistent application standards that will protect the applicant, guide those reviewing and granting each application, and defend against fraud. One of the mistakes made by the drafters of IRCA was the vagueness of its eligibility provisions. The requirements for applicants must be simple and straightforward. The more confusing or complicated the process is, the less likely it is that applicants will seek to enter the program, and the more likely it is that the system will be abused. We should minimize the number and complexity of fact-based adjudications that must be performed by a government agency.

? Second, we should carefully design judicial review of application decisions to ensure that applications are treated fairly and objectively but do not become a source of never-ending litigation. As a result of IRCA, judicial review provisions have jammed the federal court system with a huge backlog of legalization cases. Some of this litigation continues even today, 20 years later. Excessive litigation will break any immigration system.

? Third, we should not give illegal aliens who have already broken the law greater access to our courts than those who have legitimately applied for a visa or green card from outside our country. There is no reason to grant special treatment to those who flouted our laws to get here.

? Fourth, as with worksite enforcement, we need to have flexibility in implementing and managing a TWP and a program for currently undocumented workers. On an annual basis the DHS immigration agencies oversee the monitoring, evaluation, and processing of millions of legal immigrants. The work of implementing a TWP and a program for currently undocumented workers will be piled on top of this already enormous workload. To do this work well, we will need to have sufficient time and resources to develop regulations, develop and implement

contract requirements, hire and train workers, and plan for the enhanced workload.

? Fifth, we cannot give a blank check of "confidentiality" for information learned in the course of adjudicating applications for the program. Counterterrorism and law enforcement investigators should not be hobbled by artificial walls that keep them from gaining access to relevant information that could protect Americans.

Workable reforms are needed in many areas of immigration law. Today, Secretary Gutierrez and I have shared with you some of our thoughts as to the measures needed to build a successful immigration system. I thank you for the opportunity to do so.