

Statement of  
**The Honorable Patrick Leahy**

United States Senator  
Vermont  
December 9, 2009

Statement Of Senator Patrick Leahy (D-Vt.),  
Chairman, Senate Judiciary Committee,  
Oversight Of The Department Of Homeland Security  
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I welcome Secretary Napolitano back to the Committee for her second oversight hearing since her confirmation in January. In the first several months of the Secretary's tenure at the Department of Homeland Security, we have witnessed marked changes in the way that immigration enforcement and domestic security are conducted, reflecting a new approach that will serve us well as we consider broader immigration reform legislation in the new year.

We often hear that we cannot begin comprehensive reform of our immigration laws until we have won control of our borders. Since the Senate last considered immigration reform, most of the enforcement benchmarks and triggers included in prior legislation have been substantially met. Indications are that illegal immigration has receded. We should commend you and men and women of the Border Patrol for their extraordinary efforts.

The Department is also now acting more pragmatically and effectively to deter employers from hiring immigrants who are not authorized to work in the United States by conducting targeted audits, and where appropriate, laying the groundwork for meaningful prosecution of employers that flout the law. While the prior administration launched large-scale worksite immigration raids, disrupting business operations and often depriving arrested workers of due process, Secretary Napolitano has adopted a sensible approach to immigration enforcement. Sensible enforcement of current law will not by itself solve our Nation's immigration problems, however. We need reform, comprehensive reform. The immigration system is broken. An example from my home state of Vermont demonstrates how badly we need broad-based reform of our immigration laws. Three weeks ago, at least four Vermont dairy farms were visited by Immigration and Customs Enforcement agents as part of a nationwide workplace immigration audit. Vermont dairy farmers want to respect the law and hire lawful workers, but they struggle to find American workers and -- unlike other agricultural businesses -- are not eligible to hire temporary foreign workers under the H-2A visa program. The result is that many dairy farmers are forced to choose between their livelihood and adhering faithfully to our immigration laws. I have urged the Department of Labor to modify the H-2A program in its current rulemaking process, and I continue to fight for enactment of the AgJOBS legislation. I urge Secretary Napolitano to support these efforts.

Another example from Vermont demonstrates how we can use our immigration laws to promote job creation and foreign investment in the United States. At a hearing in July, we saw, again, how the investor program known as EB-5 Regional Center Program is bringing millions of dollars of foreign investment into the state of Vermont and helping create jobs in places like Jay Peak Resort. I want to thank the Secretary for the Department's recent approval of an expansion of the EB-5 Regional Center program in Vermont. I have advocated making this a permanent program, and so far we have been able to extend the EB-5 investor program another three years. This is a program that works across the country in Alabama, Iowa, New York, Maryland, Oklahoma, California, Illinois, Pennsylvania, South Carolina, Vermont, and Wisconsin among others. It helps stimulate the economy and creates jobs.

In addition to being enforceable, our immigration laws must be fair, humane and reflect our American heritage. On that score, I appreciate the steps Secretary Napolitano has taken to begin to reform the shameful condition of our immigration detention system. I urge adoption of systemic reform, including enforceable standards of detention conditions, internal and independent oversight, broader use of secure and humane alternatives to detention, and expanded access to legal counsel for the detained.

I have long pressed for America to live up to its ideals in welcoming and protecting asylum seekers and refugees. The Department has made progress in resolving the harm to genuine refugees caused by the overly broad definition of material support to terrorist organizations in the immigration statute. More still needs to be done, however, as I have explained repeatedly in correspondence and meetings with the Secretary. I also urge the Secretary to act swiftly to issue regulations on severe gender-based persecution as a basis for asylum claims. The landmark case in this area, *Matter of R-A-*, has now been pending for 14 years. That case is finally near resolution, but we need regulations in place to protect other victims.

Finally, I want to commend the Secretary for working in a constructive manner to address the impending December 31 REAL ID compliance deadline. The residents of states that are not materially compliant with REAL ID may otherwise be denied access to airplanes and Federal buildings. The National Governors Association stated last month that as many as 36 states may fail to comply by December 31. Senator Akaka introduced, and I cosponsored, a bill called PASS ID, that makes reasonable modifications to REAL ID. The bipartisan National Governors Association supports this bill. The PASS ID bill awaits action by the Senate floor, but that action is being prevented by a hold. I urge that hold be lifted so that we can make progress before the busy holiday travel season.

We welcome the Secretary and look forward to working with her on these and other critical issues.

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