

Testimony to the Committee on the Judiciary

United States Senate

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Testimony of Jan C. Ting¹

Mr. Chairman and Committee Members: Thank you for your invitation to offer testimony on our shared goal of “Building an Immigration System Worthy of American Values.”

I was privileged to serve as Assistant Commissioner at the Immigration and Naturalization Service from 1990 to 1993 when it was an agency of the U.S. Department of Justice. Since my return to Temple University in 1993, I have studied, taught, lectured and written about our immigration system, its laws, problems and challenges.

Both of my parents were immigrants, and many of their friends and neighbors, the parents of the children with whom I grew up, were also immigrants. So I start out with tremendous respect and admiration for immigrants and their enormous and undeniable contributions to America.

All Americans are either immigrants themselves or descendants of ancestors who came here from somewhere else, and I’m told that includes Native Americans. America has a great immigrant tradition and history. Of course, we should all respect and admire immigrants. But that’s not the question.

The question is: how many? More specifically, the question is should we enforce a numerical limit on immigration to the U.S., or alternatively, should we allow unlimited immigration into the U.S., as we did for the first century of the republic?

This is a binary choice: an enforced limit or no limits. I believe our failure and inability to clearly choose between these two alternatives is at the root of our

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dilemma over immigration policy. We keep searching for a third way, but there isn't one. We have to choose.

Like many lawyers, I like to think I can argue both sides of any question. I respect those who openly advocate for unlimited immigration to the U.S. for all who are neither criminals nor national security threats. Open borders is an intellectually coherent and defensible position. Many different arguments can be made in defense of allowing unlimited immigration including philosophical, religious, historical, utilitarian, libertarian, and social justice.

But it is neither intellectually coherent nor defensible to argue that we need to retain legal limits on immigration, but we don't have to enforce them, and we can instead periodically amnesty immigration law violators whenever they attain a sufficiently large number. That makes no sense. If we're going to allow unlimited immigration anyway, why bother with the expensive window dressing of immigration enforcement? Let's transfer responsibility and funding for apprehension of immigrant criminals and national security threats to the FBI.

The current U.S. immigration system provides a complicated formula for determining the legal limit on immigration to the U.S. It is the most generous legal immigration system in the world, providing each year more green cards for legal permanent residence with a clear path to full citizenship than all the rest of the nations of the world combined. It is an immigration system worthy of American values. In a typical year we admit around a million legal immigrants in various categories.

But to enforce the numerical limitation, U.S. immigration law also provides that immigration violators can be removed from the U.S. after being found to be either inadmissible or deportable. The enforcement provisions of U.S. immigration law are essential to maintaining the statutory numerical limit on legal immigration.

Now we are constantly being told that our immigration system is broken, the main evidence for which is the presence of at least 11 million illegal immigrants living among us without legal right to do so. But there are many causes for this evident failure in our immigration system, including an ineffective employer

sanctions system adopted in 1986, the mistaken belief that the 1986 amnesty would “solve” our illegal immigration problem instead of attracting more illegal immigrants, and ineffective management and political interference in our immigration enforcement system.

Illegal immigrants make a rational choice when they deliberately choose to violate our immigration laws. A former colleague at Temple University used to observe correctly that, “The poor people of the world may be poor, but they are not stupid. They are as capable of doing multi-functional cost-benefit analysis to determine their own self-interest as anyone in this room. And they do it all the time.”

Those considering illegal immigration to the U.S. weigh the costs, like the risks of getting caught, against the benefits of a better life in the U.S. If we want more illegal immigration, we should lower the costs, through discretionary prosecution of violators, and increase the benefits, through amnesty for immigration violators. Conversely, if we want to reduce the number of illegal immigrants, we have to increase the costs, through more effective enforcement, and lower the benefits through more certain removal from the U.S.

Border enforcement alone will never be sufficient to enforce a numerical limit on immigration. Would-be violators have to be deterred from making the attempt through clear understanding that costs outweigh the benefits of violating U.S. immigration law.

Why should we enforce a numerical limit on immigration? The first answer is population growth.

The Pew Research Center has estimated that the U.S. population will grow to 438 million by 2050, up from 296 million in 2005, and increase of 142 million in only 45 years.² Where are we going to put another 142 million people?

Where will they drive and park their cars? How much more highway pavement will they require? How much more land for housing? How much more

² <http://www.pewsocialtrends.org/2008/02/11/us-population-projections-2005-2050/>

fossil fuel will they burn to heat and air-condition their homes? How will we provide good jobs, education and health care for the additional population when we are struggling to provide the minimum requirements for the current population? How will another 142 million people affect the environment and climate change and the availability of clean water and air?

Are these questions we should be asking? Or are these questions we can afford to ignore? Should we be trying to slow the growth of the U.S. population, or should we allow population growth without limit and without regard to cost?

Another study by the Pew Research Center reports that the birthrate in the U.S. has now fallen to 1.9 children per U.S. woman, which is below the 2.1 children per U.S. woman required to maintain the U.S. population.³ But how can the U.S. population be projected to experience rapid future growth at the same time that the birthrate has fallen below the replacement level?

The answer is immigration. The first Pew report makes clear that fully 82% of the 142 million population growth projected between 2005 and 2050 will be attributable to immigrants entering during that time period and their descendents.⁴ And that's without an amnesty which will accelerate immigration and population growth.

The historical precedent for open immigration is no longer applicable. The frontier is long gone, and the country is fully settled and populated. We live in a world where both communication and travel are easier and cheaper than at any time in the past, increasing the demand for immigration. And we live in a world where foreign terrorism is a constant threat, which could be reduced by limiting immigration and the size of the "haystack" in which we have to search for "needles".

³ http://articles.washingtonpost.com/2012-11-29/local/35585758_1_birthrate-immigrant-women-population-growth. <http://www.pewsocialtrends.org/2012/11/29/u-s-birth-rate-falls-to-a-record-low-decline-is-greatest-among-immigrants/>

⁴ <http://www.pewsocialtrends.org/2008/02/11/us-population-projections-2005-2050/>

The U.S. is now a social welfare state struggling and having to borrow to pay the social costs of the population which is already here. Augmentation of the population through additional immigration increases the social costs without sufficient offsetting revenue. That's true especially for state and local government which incurs cost for education, emergency Medicaid, and incarceration of criminal aliens,⁵ but also for the federal government.⁶

A 2009 Pew Hispanic Center report found that unauthorized immigrants are disproportionately likely to be poorly educated and living in poverty.⁷ They compete with some native workers for jobs. In times of high unemployment they hold down wages and undermine labor standards. Legalization through amnesty would make these immigrant workers better able to compete with American workers for jobs, including at least 12 million American workers still trying to find work.

But here's why enforcing a numerical limit on immigration is hard. First, there's a constant argument over what the limit should be. Is it too high, or too low? And within the limitation, are we admitting the right kind of immigrants or not? Not enough STEM graduates? Too many uneducated relatives of recently naturalized citizens? That's a constant, permanent discussion.

But the hardest thing about enforcing a numerical limit on immigration is that it requires us to say no to people who remind us of our own ancestors, who are neither criminals nor national security threats, who just want to work hard and make a better life for themselves and their families. And if they come in violation of our legal limit, we have to deport them to raise the costs of illegal immigration and deter other would-be illegal immigrants who could through their large numbers overwhelm our immigration system.

⁵ See generally Congressional Budget Office, The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments (December 2007). <http://www.cbo.gov/publication/41645> .

⁶ Steven Camarota, The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget (Center for Immigration Studies 2004). <http://www.cis.org/High-Cost-of-Cheap-Labor> .

⁷ <http://www.pewhispanic.org/files/reports/107.pdf> .

Are we able and willing to do that? If not, then we should declare the borders open to all hard-working immigrants like our ancestors who are not criminals or national security threats, regardless of numbers. We can save billions in taxpayer dollars now spent trying to enforce immigration limits.

But what we can't do is keep the legal limits, but not enforce them against anyone but criminals and national security threats. We can't keep spending the money on enforcement, but then give amnesty all who come illegally to work. That's a formula for a permanently dysfunctional immigration system, not an immigration system worthy of American values.

The alternative to the big (false) fix of so-called comprehensive immigration reform is a series of smaller reforms, continuing review and adjustments to our immigration limits, and more certain enforcement of whatever legal limits on immigration we enact.

I believe the STEM Jobs Act passed by the House of Representatives deserves enactment, including its abolition of the fraud-prone and ethnically discriminatory Diversity Visa Lottery.⁸ I believe the DREAM Act if reintroduced would easily pass both houses of Congress.

We need to dismiss the illusion of some that we can do a big, one-time "fix" of our immigration system, that we can get it off our plates once-and-for-all, and never have to deal with it again. We are going to be dealing with immigration forever. We have to get used to it!

Just as the 1986 amnesty led to more illegal immigration in subsequent years, talk of another amnesty may be having the same effect. As the front page story in Monday's Washington Post reported, "Several law enforcement observers said illegal migrants are starting to cross in larger groups, anticipating a more tolerant U.S. government policy to result from talks in Washington."⁹

⁸ I testified with others against the Diversity Visa Lottery in 2004 before the House Judiciary Committee.
<http://judiciary.house.gov/Legacy/ting042904.pdf>

⁹ http://www.washingtonpost.com/local/in-arizona-border-security-in-spotlight-amid-immigration-reform-efforts-sequester-cuts/2013/03/17/d866858c-8801-11e2-999e-5f8e0410cb9d_story.html?hpid=z3