

## Building an Immigration System Worthy of American Values

### Senator Grassley's Questions for Michael W. Cutler, INS Senior Special Agent (Ret.)

1. Over the years, the Department of Homeland Security has had its share of mistakes. Report after report has pointed out their inefficiencies and weaknesses. Back in 2005, the Citizenship and Immigration Service lost track of 111,000 files and processed citizenship applications without them. The agency continues to over-count H-1B petitions despite a congressionally mandated cap. The department has not implemented a biometric exit system that Congress mandated in 1996. In February, Immigration and Customs Enforcement released 2,228 illegal immigrants from local jails for budgetary reasons. As a former INS agent, what grade would you give the new Department of Homeland Security? Do you think they are up to the task?

#### Answer:

Let me begin by answering the last part of your first question first. I would have to give the Department of Homeland Security an unequivocal grade of "F."

There is no satisfaction in coming to this conclusion. As I noted in my prepared testimony, the issue of immigration profoundly impacts nearly every challenge and threat America and Americans faces today. The immigration laws, at their foundation, are *supposed* to protect American lives and American jobs. These failures of the immigration system could not be more serious.

As you will see, my responses to your questions are lengthy and I took the liberty of providing extensive background in conjunction with my answers. I therefore thought I should provide a brief synopsis of my answers to begin with, but I urge you and those who would read my responses to please take the time review my in-depth responses as well.

To begin with a number of your questions addressed a few monumental examples of nonfeasance, misfeasance and malfeasance. To wit:

In 2005 USCIS claimed to have lost 111,000 immigration files relating to applications filed for benefits including United States citizenship.

Recently for budgetary reasons DHS released 2,228 Illegal aliens who had criminal histories who should have been remained in ICE custody.

The administration has taken the unprecedented step of declining to lodge detainees on illegal aliens in custody of other law enforcement agencies claiming that this is to make best use of limited resources to focus on criminals and terrorists.

The administration has taken the additional unprecedented step of using prosecutorial discretion to

provide illegal aliens who claim to have been brought to the United States when they were under the age of 16 with identity documents and a temporary period of employment authorization provided that they had not attained their 31<sup>st</sup> birthday by June 15, 2012. In conjunction with your concerns about how this sort of program would have questionable integrity you asked about the pitfalls that may be found in the implementation of Comprehensive Immigration Reform.

As you will see in my detailed responses, my concerns about all of these issues is the lack of integrity to the immigration system that was designed, in principle, to protect the lives and jobs of Americans.

Adjudicating applications for benefits including United States citizenship have clear national security implications. To cause the adjudicators to process such important applications without the relating files is an egregious example of malfeasance as does the release of aliens who have criminal histories. These actions pose serious potential threats to national security and public safety.

Fraud also poses another huge problem. As you will see in my detailed responses, I am greatly concerned that although we are being told that if Comprehensive Immigration Reform was to be enacted that 11 million or 12 million illegal aliens would emerge from those mythical shadows to participate in this ill-conceived program. I fear that the number aliens who would seek to participate in Comprehensive Immigration Reform would actually turn out to be a *multiple* of 12 million. I am basing this on our experiences with the Immigration Reform and Control Act of 1986 when we were told that about 1 million to, at most 1.5 million illegal aliens would come forward. The reality was that more than 3.5 million actually participated in that massive amnesty program.

Fraud has been a major problem in the immigration benefits program. It has permitted terrorists to enter the United States and embed themselves and it has also permitted many aliens to gain immigration benefits to which they are not entitled. It must be presumed that a massive amnesty program would attract illegal aliens from around the world and, with a lack of integrity to the process, it should be anticipated that millions of applications will be filed that contain lies concerning material facts including dates of entry and other such qualifying factors and that these acts fraudulent assertions will go undetected.

My more detailed responses that follow address this possibility of a human tsunami that would likely be created by enacting Comprehensive Immigration Reform. I know that I am supposed to answer your questions, but I am compelled to ask how would granting potentially *tens of millions* of illegal aliens lawful status under the aegis of Comprehensive Immigration Reform impact the United States and its citizens?

Must of us have come to understand the need to “look before we leap.” Those advocating for Comprehensive Immigration Reform must understand that if they leap, they will be taking America and every American along with them.

Specifically in addition to national security and public safety, I am thinking about the impact on unemployment, schools, hospitals and infrastructure including roads, public transportation and the environment.

Why is no one challenging the numbers of aliens who might ultimately be involved and what this would really mean?

While it is true that law enforcement agencies routinely exercise prosecutorial discretion to create a sort of triage to marshal limited resources, it makes no sense to not at the minimum, process aliens who are released from prisons if for no other reason than to create a record of these individuals with DHS that coincide with the arrest records that landed them in jail, no matter the outcome of the criminal

proceedings. These are, after all, illegal aliens and the immigration law does not preclude deporting aliens who are present in the United States in violation of law.

Because of an extreme lack of resources and for other possible reasons as well, large numbers of applications for immigration benefits are being processed without the aliens who filed the applications being called in for face-to-face interviews. This exacerbates the potential for fraud. This sort of fraud undermines the integrity of the entire immigration system and, as you will see in my more detailed responses, creates profound national security vulnerabilities for the United States.

Your other questions dealt with finding alternatives to holding illegal aliens in detention facilities. These decisions need to be treated the same way that a bail hearing is conducted taking primarily two issues into consideration, namely risk of flight and danger to the community. These decisions must be deliberative and fact-driven. In far too many cases, the release of illegal aliens from custody has resulted in an abysmal rate of absconders who fail to appear when they are supposed to. This undermines the integrity of the immigration system and ultimately encourages more illegal immigration.

You also asked about the Supreme Court decision that mandates that aliens may not be kept in custody for more than six months if they cannot, for one reason or another be deported. In conjunction with this issue are those countries that refuse to provide travel documents to their citizens who are ordered deported. Your concern properly included how these cases might impact public safety, especially where criminal aliens are concerned. Your concerns should be the concerns of both the administration as well as you colleagues in both houses of Congress.

I believe that the State Department needs to work with those countries and see what leverage can be exerted to get those countries to comply. Perhaps we could tighten up on the visa issuance process or look at funding the United States is providing those countries. This goes outside my area of expertise, but as my mom used to say, "Where there is a will, there is a way!"

Let's now move on to my more detailed responses by noting that at present, members of Congress and the administration are debating the issue of Comprehensive Immigration Reform with many politicians stating that they could not support Comprehensive Immigration Reform until and unless the U.S. / Mexican border is made secure. The point being ignored by them is that our immigration system consists of far more than that border. The immigration system has many moving parts. The insightful questions that you have given me are wide ranging but still don't cover all of the components of the immigration system. These questions provide ample evidence that there is far more to the issue of immigration than the security (or lack thereof) to be found along America's Southwest Border.

I have come to think of the issue of security of the U.S. / Mexican border as being analogous to the wing on an airplane, without the wing the airplane will not fly, however, a wing by itself will go nowhere.

Synergy has been described as a situation wherein the total effect of a cooperative effort is greater than the sum of the components operating individually. A successful team is a good example of synergy. Immigration has always lacked this team approach. Consider that no matter what efforts may be expended to secure the Southwest Border of the United States, there will be no meaningful success if determined individuals know that as long as they are willing to be stopped numerous times by the Border Patrol that they can ultimately make their way past the Border Patrol and gain access to the interior of the United States, where sanctuary cities and states are willing to effectively shield them

from detection by the federal government.

Meanwhile, if this is a game of “hide and seek,” the aliens might be hiding, but the federal government is certainly not seeking.

The federal government itself has made it clear that once an alien runs the border, if he or she can make it into the interior of the United States it will be easy to find a job and hide in plain sight with the hope that the administration's stated goals of providing pathways to United States citizenship for illegal aliens will include them. All that they will need to do is obtain bogus documentation that will attest to whatever will be necessary to, at least on paper, (and phony paper at that), provide evidence that the alien in question meets the requirements.

The highly publicized and utterly unprecedented policies of the current administration to not seek to arrest or seek the removal of illegal aliens who have no convictions for serious crimes, provides encouragement for aspiring illegal aliens around the world to head for the United States.

In 1986 the Reagan Administration enacted a massive amnesty program that was supposed to involve about one million illegal aliens. By the time the bureaucratic dust settled, more than 3.5 million illegal aliens availed themselves of the opportunities presented by the implementation of IRCA (the Immigration Reform and Control Act). My colleagues and I who worked for the INS back then were convinced that while some of the increase in actual aliens who applied for amnesty as compared with the original estimates was the result of an under-estimation by the administration and politicians who were eager to enact IRCA, we also were positively convinced that many of these illegal aliens had entered the United States well beyond the cutoff date and lied about their arrival dates on their applications.

Back then the production of fraud-laden supporting documents literally became a cottage industry. Today, with all of the advances in computers and desk-top publishing it is likely that there will be no shortage of fraud document vendors who know that they run nearly no risk of detection and hence no risk of prosecution.

Failures to enforce the immigration laws from within the interior of the United States, expansion of the Visa Waiver Program, and lack of real quality control in the immigration benefits program all act to undermine border security.

When aliens are able to enter the United States by evading the Border Patrol or by violating the terms of their admission into the United States when they enter under the auspices of the Visa Waiver Program or by acquiring a visa through fraud, they add to the constantly growing population of illegal aliens in the United States. These illegal aliens wind up taking more jobs, sending more money back to their home countries and perhaps becoming involved in identity theft and filing more applications for immigration benefits such as engaging in sham marriages that, because of a lack of resources at ICE and USCIS and political will, often go undetected. These factors succeed in creating an ever-growing population that acts as a huge “haystack” in which transnational criminals and international terrorists hide themselves in the United States. This creates a vicious cycle and it is self-perpetuating.

In addition to creating obvious national security vulnerabilities and creating opportunities for transnational criminals to set up shop, especially in the immigrant communities across America, comprised of immigrants from around the world, this influx of foreign workers entering the United States likely outpaces the number of new jobs that are being created.

This constitutes the reverse of synergy- here the sum of the parts are working in opposition to the disproportionate detriment to the enforcement of our immigration laws and the stated goal of achieving

border security.

What has always been lacking in efforts that were purportedly implemented to solve the immigration crisis that confronts the United States, is a vision of immigration as a coherent system that needs to work in a coordinated fashion. The interior enforcement mission has been all but neglected and even when interior enforcement is discussed, it usually focuses on punishing employers who intentionally hire illegal aliens and seek to apprehend aliens who have been convicted of serious crimes. These goals are, undeniably essential, however, immigration benefit fraud goes largely undetected and therefore unpunished. Consequently national security is compromised as is the system that is supposed to protect the jobs of high-tech American workers who face unfair competition from foreign workers.

These are not new problems. The predecessor agency, the INS, failed abysmally to secure America's borders and enforce the immigration laws. The evidence of these failures is found in the huge numbers of illegal aliens who are present in the United States. The failures certainly manifested themselves when, in 1993 and again in 2001, terrorists who gamed the visa process and/or the immigration benefits program were able to mount terrorist attacks in the United States, killing thousands of innocent victims and profoundly impacting so many other aspects of life in America and, indeed, around the world in the aftermath of those attacks.

Those terrorist attacks of 9/11 were horrific. They were the stuff of the worst nightmares.

The 9/11 Commission issued a report, as did the 9/11 Commission staff that contained the findings of the investigation the 9/11 Commission conducted in the wake of those attacks with recommendations to make certain that everything that could be reasonably done to protect the United States against future attacks was done.

Here is the link to the 9/11 Commission Staff Report on Terrorist Travel:

[http://govinfo.library.unt.edu/911/staff\\_statements/911\\_TerrTrav\\_Monograph.pdf](http://govinfo.library.unt.edu/911/staff_statements/911_TerrTrav_Monograph.pdf)

Both reports made it clear that the terrorist attacks could not have been carried out if the terrorists could not have entered the United States in the first place and then not had been able to embed themselves afterwards, thereby enabling them to hide in plain sight,

First of all, here is the first paragraph from the preface of the 9/11 Commission Staff Report on Terrorist Travel:

*"It is perhaps obvious to state that terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country. Yet prior to September 11, while there were efforts to enhance border security, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal. Indeed, even after 19 hijackers demonstrated the relative ease of obtaining a U.S. visa and gaining admission into the United States, border security still is not considered a cornerstone of national security policy. We believe, for reasons we discuss in the following pages, that it must be made one."*

Here is a paragraph under the title "Immigration Benefits" found on page 98:

*"Terrorists in the 1990s, as well as the September 11 hijackers, needed to find a way to stay in or embed themselves in the United States if their operational plans were to come to fruition. As already discussed, this could be accomplished legally by marrying an American citizen, achieving temporary worker status, or applying for asylum after entering. In many cases, the act of filing for an immigration benefit sufficed to permit the alien to remain in the country until the petition was adjudicated. Terrorists were free to conduct surveillance, coordinate operations, obtain and receive funding, go to school and learn English, make contacts in the United States, acquire necessary materials, and execute an attack."*

When I was growing up I recall that among the lessons taught to me by my parents was something my dad was absolutely adamant about. He said that there were no mistakes in life- only lessons, provided that we learned from what went wrong and made the appropriate changes in the way we do things. He was forgiving of me if I made a mistake the first time- but was completely intolerant if I failed to learn from previous mistakes.

Albert Einstein has been quoted as saying, "Insanity is doing the same things the same way and expecting a different outcome."

Our government has clearly not learned the lessons that the attacks of 9/11 should have taught us.

The creation of the Department of Homeland Security was our government's response to the terrorist attacks of September 11, 2001. The DHS is, however, hobbled by many factors- first and foremost are two- a lack of personnel and a lack of political will to effectively deal with the failures of the immigration system that made the 9/11 terrorist attacks possible.

Furthermore, with the creation of DHS, the missions of the former INS were divided into different agencies and combined with other law enforcement agencies and missions that diluted the focus of the employees who are charged with enforcing and administering the immigration laws of the United States that are contained in the Immigration and Nationality Act (INA).

At present there are just a few thousand ICE (Immigration and Customs Enforcement) agents who are charged with enforcing the immigration laws. Consider that the New York City Police Department has more than 35,000 police officers who are assigned to protect the City of New York.

According to published statistics, ICE has about 7,000 special agents and more than half of them are assigned to enforcing customs and other laws which have no bearing on violation of the immigration statutes.

This means that there are fewer than 10% as many ICE agents protecting the entire United States of America through the enforcement of immigration laws as there are police officers protecting the City of New York.

Additionally, statements made by the President and members of the administration about the need to place unknown millions of illegal aliens on pathways to citizenship and the implementation of DACA by executive order, have convinced aspiring illegal aliens from around the world that violations of America's borders and immigration laws will not only go unpunished but rewarded.

It has been said that you only have one opportunity to make a first impression. Failures to truly secure America's borders and statements made about how violations of immigration laws will not be enforced send a very dangerous message to folks around the world, including terrorists who seek to enter the United States and embed themselves in the United States awaiting a call to action.

Evidence that the DHS has failed abysmally in enforcing the immigration laws can be found in the fact that there are more illegal aliens present in the United States than ever before. Equally worrying is the fact that USCIS routinely issues immigration benefits and identity documents without even conducting face-to-face, in person interviews, as my answers will address shortly, reinforces the failures of the DHS to address the vulnerabilities that enabled the terrorists to attack the United States on its soil in 1993 and again in 2001.

These failures also result in thousands of people falling victim to criminal aliens who are at large across the United States, committing crimes on a daily basis including members of pernicious and violent transnational gangs and drug trafficking organizations. Each year, many more people fall victim to crimes of violence committed by alien criminals present in the United States than were killed on September 11, 2001. Many of these victims of criminal aliens would still be alive, had DHS lived up to its responsibilities of truly securing America's borders and effectively enforcing America's immigration laws from within the interior of the United States

Additionally, it must be presumed that aliens who support terrorism are also present among the unknown millions of illegal aliens who currently live and work in towns and cities across the United States, hiding in plain sight.

Violations of our immigration laws are not victimless crimes but under the current administration's policies, as I noted when I recently participated in a recent interview on a national news program, today violations of immigration laws have become punishmentless (sic) crimes.

Ample evidence of the failures of the DHS to perform its vital missions abound today.

There is a saying that a chain is as strong as its weakest link. As my responses to your questions will make crystal clear, in my judgement, if we compare the immigration system to a chain, that chain consists of weak and all but non-existent links.

Today there are millions of illegal aliens currently present in the United States whose true identities (including their true nationalities), backgrounds, potential affiliation with criminal and/or terrorist organizations and intentions for coming to the United States in violation of law are unknown and unknowable. This makes it clear, that for determined foreign nationals who desire to enter the United States by any means possible, including running America's borders thereby evading the inspections process that is supposed to protect national security, community safety and the jobs of American workers.

Secretary Napolitano has issued statements at press conferences in which she noted that hundreds of American cities have become infested by members of the extremely violent Mexican drug cartels and other violent transnational gangs. In those statements she provided ample substantiation that DHS is doing an abysmal job of living up to its primary responsibility of protecting American lives.

It is incongruous for her to say that the borders are secure while also reporting that increasing numbers of transnational gang members are operating in cities across our vast nation.

While there has been ample attention paid to the security, or lack thereof, to be found along the U.S. / Mexican border that is *supposed* to separate the United States from Mexico, other components of the immigration system are almost never discussed. While the debate about "border security" rages with an occasional nod given to the need to penalize employers who intentionally hire illegal aliens, the issue of the way that applications for residency and naturalization are processed is never raised. This is a huge oversight because it is through the adjudications process that the United States, in effect, hands out the "Keys to the Kingdom."

In January 2013, the Center for Immigration Studies issued a report on that provided ample examples of naturalized citizens who subsequent to naturalizing and thereby acquiring United States citizenship committed crimes involving that created national security threats for the United States:

- April 7, 2009, Shu Quan-Sheng, a *naturalized U.S. citizen* and Ph.D. physicist originally from China, was sentenced to 51 months in prison for illegally exporting space launch technical data and defense services to the People's Republic of China.
- May 4, 2010, Faisal Shazad, a *naturalized U.S. citizen* originally from Pakistan, is arrested and charged with an attempted bombing in New York City's Times Square.
- July 16, 2010, Jirair Avanesian, aka Jerry Avanes, a *naturalized U.S. citizen* originally from Iran, pled guilty to exporting to Iran in violation of law, vacuum pumps and pump-related equipment required for uranium enrichment.
- October 5, 2010, Faisal Shahzad, a *naturalized U.S. citizen* originally from Pakistan, was sentenced to life in prison after pleading guilty to an attempted bombing in New York City's Times Square.
- June 22, 2011, Hamid "Hank" Seifi, a *naturalized U.S. citizen* originally from Iran, was sentenced to 56 months in federal prison for conspiring to export parts for attack helicopters and fighter jets to Iran.
- July 11, 2011, Boniface Ibe, a *naturalized U.S. citizen* originally from Nigeria, was sentenced to prison for exporting arms and ammunition to Nigeria without a license.
- October 11, 2011, Manssor Arbabsiar, a *naturalized U.S. citizen* originally from Iran, is arrested with an Iranian co-conspirator and charged with plotting to assassinate the Saudi Arabian ambassador to the United States, a plot allegedly masterminded by the Iranian government.
- October 3, 2012, Alexander Fishenko, a *naturalized U.S. citizen* originally from Kazakhstan, is arrested with 11 other subjects after being federally indicted for stealing American military secrets on behalf of Russia over a period of several years.

This report also noted that in 2011 the United States naturalized 694,193 aliens, bestowing United States citizenship upon them. Even though one of the requirements for naturalization is that the person possess Good Moral Character, the extreme lack of resources at USCIS and ICE make it unlikely, if not impossible, that applicants for naturalization will have their backgrounds thoroughly investigated.

Furthermore, prior to a ruling by the federal Ninth Circuit Appeals Court in July 2000, aliens who committed fraud in their applications could be stripped of their citizenship through an administrative process. The decision of the Ninth Circuit eliminated this possibility and currently the only way for a naturalized citizen who commits fraud in his (her) application for citizenship is through civil suit or criminal prosecution in federal court.

Time and again officials at DHS promise to reduce or eliminate the backlog of applications to adjudicate applications for benefits more quickly. During his State of the Union Address President Obama discussed immigration. Here is a brief quote from his address:

*“And real reform means fixing the legal immigration system to cut waiting periods, reduce*



*bureaucracy, and attract the highly-skilled entrepreneurs and engineers that will help create jobs and grow our economy.”*

My concern is that in pushing to clear up backlogs or, in the words of the President, “...fixing the legal immigration system to cut waiting periods, reduce bureaucracy...” the pressure will be on for the Adjudications Officers at USCIS to approve applications. What is not generally known is that an application can be approved in minutes while a denial may take hours or days. This is because a denial requires the preparation of a detailed report to make certain that if a denial is appealed that there is ample documentation to justify the denial.

As more applicants for immigration benefits that contain fraud, and the fraud is not detected, still more aliens will be emboldened to file fraudulent applications, thereby further increasing the workload at USCIS requiring the bureaucratic conveyor belt to run ever faster. It is a well established principle that there is an inverse relationship between speed and accuracy. As the bureaucracy reacts to the influx of more applications by working faster and vestiges of integrity will continue to erode.

Today, in fact, from what I have been told, applications for DACA (Deferred Applications for Childhood Arrivals) are processed without face-to-face interviews. This is a prescription for fraud and a national security nightmare for America.

Let us consider, once again an important excerpt from the 9/11 Commission Staff Report on Terrorist Travel. This is a paragraph under the title "Immigration Benefits" found on page 98:

*"Terrorists in the 1990s, as well as the September 11 hijackers, needed to find a way to stay in or embed themselves in the United States if their operational plans were to come to fruition. As already discussed, this could be accomplished legally by marrying an American citizen, achieving temporary worker status, or applying for asylum after entering. In many cases, the act of filing for an immigration benefit sufficed to permit the alien to remain in the country until the petition was adjudicated. Terrorists were free to conduct surveillance, coordinate operations, obtain and receive funding, go to school and learn English, make contacts in the United States, acquire necessary materials, and execute an attack."*

If USCIS lacks the resources to conduct in person interviews and is largely unable to conduct meaningful field investigation, what would the implementation of Comprehensive Immigration Reform do to this overwhelmed agency? We are told that these applications would be subjected to “security checks.” What is not generally known, however, is that a security check is nothing like a security investigation. All that a security check entails is running the name of the applicant through a series of databases. If the alien applicant provides a false name, this component of the “security check” will be utterly worthless. If the alien in question has never been fingerprinted in the United States, there is a good chance that his (her) fingerprints will also come back as a “no hit” meaning that there is no derogatory information for that applicant. Many countries do not fully share their fingerprint records with the United States and even those that do may not have reliable systems in place- especially when we are dealing with Third World countries.

You asked about the reported loss of 111,000 relating immigration files concerning applications for

immigration benefits. The report that disclosed this shocking state of affairs at USCIS also noted that of the 111,000 files some 30,000 related to applications for United States citizenship. It was reported that the Adjudications Officers processed those applications without having the files available to them. They were literally “flying blind.” I have never seen any reports that indicated that any disciplinary actions were taken as a result of this monumental example of misfeasance and possibly, malfeasance. I have no evidence to support my theory, but it forces me to wonder “out loud” if perhaps the files were intentionally not provided to the Adjudications Officers to enable them to process (approve) applications faster than would have been possible if they had to actually read the relevant files before rendering their decisions.

Again I am compelled to reiterate that I have absolutely no evidence that this happened, but as a former Adjudications Officer (I was detailed to the I-130 Unit back in the mid 1970's to conduct the marriage interviews for approximately one year, I could not imagine adjudicating a single application without the relating file in front of me, hear we are talking about such a process taking place years after the terrorist attacks of September 11, 2001 and tens of thousands of files were not provided to the adjudicators. This is a level of malfeasance that I personally find incomprehensible.

To expand on this point for a moment- On March 19, 2002 I was called to testify before the House Subcommittee on Immigration, Border Security and Claims on March 19, 2002 I joined three other witnesses at a Congressional hearing that was convened by the House Committee on the Judiciary, Subcommittee on Immigration and Claims, on the topic:

***"INS'S MARCH 2002 NOTIFICATION OF APPROVAL OF CHANGE OF STATUS FOR PILOT TRAINING FOR TERRORIST HIJACKERS MOHAMMED ATTA AND MARWAN AL-SHEHHI"***

Here is the link to the transcript of the hearing in its entirety

[http://commdocs.house.gov/committees/judiciary/hju78298.000/hju78298\\_0f.htm](http://commdocs.house.gov/committees/judiciary/hju78298.000/hju78298_0f.htm)

Here is a link to the C-Span video of the hearing:

<http://www.c-spanvideo.org/program/id/165862>

That hearing was convened when it was discovered that six months to the day, after the terrorist attacks of September 11, 2001 two of the dead terrorists, Mohammed Atta and Marwan Al-Shehhi had been granted authority by the former INS to change their immigration status so that they could attend flight school in the United States. You would have thought that this example of gross ineptitude and incompetence would have served as a wake up call to the leadership at USCIS but clearly it did not.

When I worked for the former INS, my colleagues and I were often frustrated and troubled by the failures of the INS to carry out its missions competently. I recall that out of frustration I had said that when I first found examples of incompetence I said the agency was in a state of “free-fall” and that bottom was elusive. In reading the reports and accounts of how the DHS now functions I would have to amend that assessment and tell you that bottom is not elusive- it is illusory- there apparently is no bottom.

You asked me about my perspectives on the H-1B Visa Program and I am so glad that you did. Prior to the Second World War the responsibility of enforcing and administering our nation's immigration laws

was the responsibility of the United States Department of Labor. Back then America's leaders in Washington who were a part of the "Greatest Generation" understood that it was vital to provide opportunities for American workers to excel. The concept behind the immigration laws was to make certain that American workers not face unfair competition from foreign workers. By doing this the United States created the largest most upwardly mobile Middle Class of any nation on the planet. This gave rise to the "American Dream."

Today we are told that unless we import foreign workers America will no longer be successful. According to the oft stated slogans it would appear that American workers are too lazy to do the hard dangerous jobs and too stupid to do the high-tech jobs. This is insulting to every hard working American worker, yet this is precisely what we are being told by all too many politicians who, at least in theory, were elected to represent American workers and their families.

Having raised this issue I am compelled to talk for a bit about Alan Greenspan, the former head of the Federal Reserve Bank.

On April 30, 2009 he was called by the Senate Immigration Subcommittee chaired by Senator Schumer to testify at a hearing conducted by that subcommittee on the topic

***"Comprehensive Immigration Reform in 2009, Can We Do It and How?"***

Here is a link to this hearing as it appears on the Senate Immigration Subcommittee Website:

<http://www.judiciary.senate.gov/hearings/hearing.cfm?id=e655f9e2809e5476862f735da147e5ee>

Mr. Greenspan's prepared testimony can be found at:

[http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da147e5ee&witness\\_id=e655f9e2809e5476862f735da147e5ee-1-2](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da147e5ee&witness_id=e655f9e2809e5476862f735da147e5ee-1-2)

Mr. Greenspan's testimony provided some statements concerning his views on immigration that appear to run contrary to the best interests of American workers but would seem to be consistent with the views of those who favor the implementation of "Comprehensive Immigration Reform."

I would ask that you consider some of these troubling statements:

*"Our skill shortage, I trust, will ultimately be resolved through reform of our primary and secondary education systems. But, at best, that will take many years. An accelerated influx of highly skilled immigrants would bridge that gap and, moreover, carry with it two significant bonuses.*

*First, skilled workers and their families form new households. They will, of necessity, move into vacant housing units, the current glut of which is depressing prices of American homes. And, of course, house price declines are a major factor in mortgage foreclosures and the plunge in value of the vast quantity of U.S. mortgage-backed securities that has contributed substantially to the disabling of our banking system. The second bonus would address the increasing concentration of income in this country. Greatly expanding our quotas for the highly skilled would lower wage premiums of skilled over lesser skilled. Skill shortages in*

*America exist because we are shielding our skilled labor force from world competition. Quotas have been substituted for the wage pricing mechanism. In the process, we have created a privileged elite whose incomes are being supported at noncompetitively high levels by immigration quotas on skilled professionals. Eliminating such restrictions would reduce at least some of our income inequality.”*

First it is important to note that Mr. Greenspan is being, to use a generous term, “disingenuous” when we says that education reform will alleviate what he claims is a “skill shortage” in America. I say this because even if you believe that there is such a skill shortage- and I am not convinced of this, by reducing “wage premiums” as he refers to the salaries paid to American skilled workers, we will remove incentives for Americans to attend universities and trade schools. I believe in providing incentives for achievement. This is at the foundation of capitalism. If we reduce “income inequality” I fear that we will convince many Americans that acquiring skills and education, at great expense, will not likely enable them to earn more money.

Next it would appear that Mr. Greenspan would use a massive influx of foreign workers and their families to shore up the housing market that subprime mortgages undermined. Mr. Greenspan had been a key advocate for those mortgages just a few years earlier. In essence it would appear that in part, he views increases in immigration as a way of importing customers for houses that American families lost to their inability to make mortgage payments and to foreclosure when they lost their jobs.

It is clear that Mr. Greenspan is not a fan of expanding our Middle Class. In fact, it would certainly appear that if he had his way he would reduce the wages of American workers who have skills (or education). Here is the sentence in which he makes this goal of his abundantly clear

*“Greatly expanding our quotas for the highly skilled would lower wage premiums of skilled over lesser skilled.”*

It is disconcerting that Greenspan used the term “*wage premiums*” to describe salaries. Furthermore, the next few sentences illuminate his goals which clearly run contrary to the best interests of hard working Americans and their families:

*“Skill shortages in America exist because we are shielding our skilled labor force from world competition. Quotas have been substituted for the wage pricing mechanism. In the process, we have created a privileged elite whose incomes are being supported at noncompetitively high levels by immigration quotas on skilled professionals. Eliminating such restrictions would reduce at least some of our income inequality.”*

It is the height of chutzpah for Mr. Greenspan to refer to Americans who have worked hard to acquire skills or education to improve their lives as “*a privileged elite*” who, in his judgement, need to face foreign competition to eliminate “*income inequality.*” This last phrase, “*income inequality*” is particularly worrisome and offensive at the same time.

Americans are sensitive to the need to eliminate inequality when it is based on race, religion, ethnicity, gender and age. In fact these concerns have been codified in laws and regulations that are enforced and administered by the federal government as well as state and local governments. Here Mr. Greenspan's use of the term "income inequality" is both deceitful and infuriating— he uses this term to describe the salaries of American workers who are paid more when they achieve more in terms of acquiring skills and education which, I might add, currently often cause these Americans who take the time, money and effort to acquire those skills to owe massive student loans that are the equal of many home mortgages.

For generations the path to attaining success in America was often linked to acquiring skills and education. This was largely responsible for the "American Dream." Today we have come to see the new reality for many American families. For the most part, it is feared that today's young workers will not do as well as their parents did. This is a reversal of America's generations-old trend and expectation that succeeding generations would, by and large, do better financially than their parents did.

Failures to properly administer the H-1B Visa Program has resulted in two problems. First of all, since there is a lack of resources to investigate all but a relative handful of those companies that file applications for H-1B workers and to make certain that once such foreign workers enter the United States that they are not being hired by companies that could have found suitable and qualified American and lawful immigrant workers. The consequence is not only that American and lawful immigrants may have been displaced in the workforce, but that the wages that the American and lawful immigrant would have earned are being earned by foreign workers who are eager to send their wages back to their homelands. This acts as a drain to the economy of the United States. Additionally, by not adhering to the limitations in the number of H-1B visas that are in place, even more high-tech workers are being admitted into the United States exacerbating the plight of American workers who, although qualified, are displaced by foreign workers.

Each month, even as record numbers of American workers who are unemployed or under-employed the United States continues to import tens of thousands of foreign workers who are authorized to work in the United States.

The H-1B Visa Program failures whether by design, ineptitude or both runs parallel to the clearly articulated goals of Mr. Greenspan who would, if he could, eliminate immigration quotas altogether.

It is clear that when he speaks of "Immigration Reform" Greenspan wants to bring an end to the notion that our immigration laws are supposed to protect the jobs, wages and working conditions of dedicated and talented American workers.

Next, you have asked my thoughts about the biometric exit system that was mandated by Congress

in 1996 and further mandated by no less a body than the 9/11 Commission.

Billions of dollars and nearly two decades after Congress mandated the creation of a system that would track the entry and departure of aliens into the United States the system known as US-VISIT is still dysfunctional.

It is worth noting that the company that received the bulk of the funding, Accenture, is an offshore company that had previously been headquartered in Hamilton, Bermuda and is now based in Ireland.

The failure to fully and effectively implement this program creates a national security vulnerability for the United States and also fails to provide important information that was to be a part of the certification process for countries that participate in the Visa Waiver Program.

I personally am of the belief that the Visa Waiver Program that currently enables the citizens of 37 countries to seek to enter the United States for up to 90 days, without first applying for and receiving a visa. Taiwan is the most recent country to join this list of countries— having been added in November 2013. This is an ill-conceived program for reasons I will enumerate shortly. Furthermore, the lack of reliable information about the percentage of nonimmigrant aliens who overstay their authorized period of stay in the United States has an adverse impact on the integrity of the Visa Waiver Program because although one of the key requirements that were to have been met by participating countries cannot be determined. That requirement was that the citizens of those countries that participate in the Visa Waiver Program are not prone to overstaying their authorized period of time. The failure of US-VISIT to track that data has a deleterious impact on the certification process for the Visa Waiver Countries.

This failure also make it impossible to know the true number of illegal aliens who have overstayed their authorized period of admission into the United States. Generally this number is estimated to be approximately 5 million, but there is no reliable way of knowing the actual number, but it is likely even higher.

Having raised the issue of the Visa Waiver Program, here is the list of the 6 benefits that I have compiled, that the visa requirement provides to national security and that the Visa Waiver Program denies airline safety and America's intelligence and law enforcement agencies:

1. By requiring that visas aliens who seek to enter the United States, foreign passengers who intend to fly on airliners to travel to the United States are, in effect, pre-screened by the visa process. To cite one of several examples, Richard Reid, the so-called “Shoe Bomber” was able to board an airliner to come to the United States although he had no intentions of entering the United States, his apparent goal was to blow up the airliner and its many passengers somewhere over the depths of the Atlantic Ocean by detonating explosives he had concealed in his shoes. Because he is a subject of Great Britain, a country that participates in the Visa Waiver Program, Reid did not obtain a visa before he boarded that airliner.
2. The CBP inspectors are supposed to make a decision in one minute or less as to the admissibility of an alien seeking to enter the United States. The visa requirement helps them to do a more effective job.

Their's is a tough job I can certainly relate to, as you know, I began my career at the former INS as an immigration inspector at John F. Kennedy International Airport in New York and worked there for 4 years before I became a special agent.

3. The application for a nonimmigrant visa contains roughly 40 questions that could provide invaluable information to law enforcement officials should that alien become the target of a criminal or terrorist investigation. The information could provide intelligence as well as investigative leads. Here is the link to the application nonimmigrant tourises must complete in order to receive a visa:

<https://evisaforms.state.gov/ds156.asp>

4. If an alien applicant lies about a material fact on the application for a visa that lie constitutes "visa fraud." The maximum penalty for visa fraud starts out at 10 years in jail for those who commit this crime simply in order to come to the United States, ostensibly to seek unlawful employment or other such purpose. The penalty increases to 15 years in jail for those aliens who obtain a visa to commit a felony. For aliens who engage in visa fraud to traffic in narcotics or commit another narcotics-related crime, the maximum jail sentence that can be imposes rises to 20 years. Finally, when an alien can be proven to have engaged in visa fraud in furtherance of terrorism, the maximum penalty climbs to 25 years in prison. It is important to note that while it may be difficult to prove that an individual is a terrorist, it is usually relatively simple to prove that the alien has committed visa fraud when there is fraud involved in the visa application. Indeed, terror suspects are often charged with visa fraud.

5. The charge of visa fraud can also be extremely helpful to law enforcement authorities who want to take a bad guy off the street without tipping their hand to the other members of a criminal organization or terrorist organization that the individual arrested was being arrested for his involvement with that organization and his co-conspirators. In arresting an alien for visa fraud and not for crimes in which he conspired with others, prevents his cohorts from being tipped off that they may also be targets of an investigation that is targeting their criminal or terrorist organization.

6. Even when an alien applies for a visa and his application is denied, the application he (she) filed remains available for law enforcement and intelligence personnel to review to seek to glean intelligence from that application.

Finally, to wrap up my answers to the first series of questions, the issue of the release of more than 2,000 aliens, among whom we must presume had criminal convictions leaves me speechless. For years the administration has claimed that because of the decision to prioritize the use of limited resources, the only aliens who would be taken into custody are aliens with serious criminal histories. If we take those statements at face value, this means that the aliens who have been released would have had serious criminal histories.

Thus far, to my knowledge, the names and backgrounds of these aliens has not been made public. I am greatly concerned that some of these criminals may harm more victims now that they have been released. Without knowing the identities of these liberated criminal aliens there will be no way of knowing if criminal aliens who kill or injure people had been among those set free.

On March 5<sup>th</sup> of this year, Texas Governor Perry referred to this ill-conceived decision as a "Federally sponsored jail-break." I believe he was exactly right in describing it that way.

Every time a law enforcement officer makes an arrest, the potential exists that the officer or others will be injured, or worse. The cost for making arrests can be far higher than a financial cost. I have attended more funerals for law enforcement officers than I wanted to.

By releasing criminals back out onto the street a serious danger is created for public safety and to the safety of law enforcement officers who may encounter that criminal in the future. It makes absolutely no sense to take criminal aliens who are already in custody and then release them.

The ICE (Immigration and Customs Enforcement) website where that agency posts news releases of accomplishments of the valiant enforcement personnel of that agency is replete with a stack of news releases that herald the arrest of criminal aliens. In many, many instances, it is noted that the aliens arrested were fugitives or absconders. The terms “fugitive” and “absconder” implies that the person had been in custody and, in one way or another, was set free.

Sometimes these news releases provide reports on violent crimes that they have committed while they were at large.

They had been in custody and then, somewhere along the way, they came to be released. Each time I read these news releases I am compelled to wonder at the reason that such criminals were released so that weeks, months or years later ICE could mount a field operation, often with a macho name, to try to locate and re-arrest these same criminals. I sincerely doubt that the government needs to make work for these beleaguered law enforcement officers.

2. Because of a Supreme Court ruling, the immigration service can only hold an illegal alien for six months. During this time, the department works with the foreign government to remove the immigrant. Many times, that foreign country puts up barriers and will not provide travel documents. Can you shed light on why a change is needed? Are you aware of any examples where illegal immigrants were released back into the community and committed a violent crime?

**Answer:**

While there are certainly millions of illegal aliens who are present in the United States because they were able to evade the inspections process by running America's borders or by stowing away on various vehicles or vessels without being detected as those means of conveyance entered the United States, it is estimated that there are at least five million aliens who are currently present in the United States who were admitted via the inspections process and then went on to violate the terms of their admission. While the term “overstayed” is often applied to such aliens, in point of fact, often there is far more involved than aliens who don't simply leave within the authorized period of admission. Many



aliens who are admitted with tourist visas or under the auspices of the Visa Waiver Program overstay their authorized period. Most of these do so in order to accept unlawful employment.

In some instances aliens who were admitted to attend universities either never attend those universities (some of which may well exist only on paper) or they drop out of school but remain in the United States without authorization. In other instances, aliens are admitted so that they can perform authorized temporary work either fail to show up at those work sites altogether or work there for a short period of time and then seek unauthorized employment.

Finally, some aliens who were lawfully admitted, either as immigrants or nonimmigrants commit serious crimes for which they are subsequently found guilty and thus become deportable.

However, an alien who is found deportable and ordered deported or who agrees to return to his (her) home country voluntarily will not be removed from the United States if the alien's country of citizenship refuses to provide that alien with a passport or comparable travel document.

When countries refuse to accept their own citizens who violate the immigration laws of the United States, it is often because the citizens in question have serious criminal histories and their countries of citizenship don't want to have these criminals sent home where they are likely to continue their criminal "careers."

Because of the six month limit for detention for such criminal aliens, these aliens ultimately are placed back on the streets in American communities where they pose a serious danger to the members of the communities where they live. In almost every instance, these communities are immigrant communities whose residence are of similar or the same ethnicity and nationality as the criminal alien.

While it is true that the United States cannot force such countries to permit their citizens to return home, I believe that the State Department can apply pressure to accomplish this. I know that there have been efforts at enacting legislation that would impact the visa issuance for citizens of those countries. While such legislation has never been enacted, in my judgement, it would be beneficial to the United States if a strategy can be found and implemented that would address this serious problem. Perhaps the State Department could apply pressure where the United States provides financial assistance to those non-compliant countries to help encourage them to become more cooperative.

As for your question about aliens who had been released from custody who subsequently commit crimes, I was involved in the arrest of a native of Cuba, a Chicago-based drug dealer by the name of Jesus Fidel Morales who entered into a criminal conspiracy to commit a murder of a drug courier, Kedric Bell, that took place in Chicago, Illinois on January 16, 1995.

Following the murder Morales fled from Chicago to New York City. I was a part of the Organized Crime, Drug Enforcement Task Force at the time and was contacted by David Kelley, one of the States Attorneys in Chicago who had been assigned to prosecute the case. I worked with members of the Chicago Police Department, the NYPD and DEA to take Morales into custody. In reviewing his immigration file I found that he had entered the United States as a part of the Mariel Boat Lift and that shortly after being paroled into the United States as a Cuban refugee he organized a car theft ring comprised of young men in Florida. He was arrested for crimes relating to his criminal activities and was subsequently taken into custody by the INS. Ultimately he was released and then became involved in the drug trafficking activities which culminated in the murder of Kedric Bell as noted above.

Additionally, under somewhat different circumstances, I was assigned to physically deport Renaldo Rayside, a criminal alien and citizen of Panama who had originally entered the United States as a lawful immigrant but subsequent to legally immigrating to the United States he was convicted of drug

trafficking felonies. Following his deportation he unlawfully reentered the United States and was, as my subsequent investigation determined, apprehended on two occasion by the NYPD. Because of the sanctuary policies of the NYPD the INS was never notified that Rayside had been arrested and he was subsequently set free.

On March 3, 1989 Rayside was encountered by two members of the NYPD's Brooklyn South Task Force, one of whom was Police Officer Robert Machate. At the time of the encounter, according to various accounts, which emanated from a car stop predicated upon a vehicle and traffic law violation, Rayside scuffled with Police Officer Machate and got hold of the police officer's service weapon and shots were fired. Officer Machate was fatally wounded. He was 24 years old at the time and his wife was pregnant with his daughter he would never see or hold.

I testified at the murder trial.

Had the NYPD notified the INS that they had arrested Rayside who, by having unlawfully reentered the United States following his deportation had committed a felony under federal law, it is likely that Rayside would not have been at large on that fateful day in March 1989.

It is unfathomable to me, as a former INS Special Agent, that when cities or states declare themselves to be "Sanctuaries" for illegal aliens that the federal government takes no action.

It is frustrating that when states or cities declare themselves to be "Sanctuaries" for illegal aliens, an apparent violation of Title 8, United States Code, Section 1324, that the federal government takes no substantive action.

Consider that under [Title 8, United States Code, Section 1324](#), a section of law that is comprehended within the Immigration and Nationality Act (INA), it is a felony to aid, abet, encourage or induce aliens to enter our country illegally or remain in our country illegally.

Here is an excerpt from that section of law:

Title 8, U.S.C. § 1324(a) defines several distinct offenses related to aliens.

Subsection 1324(a)(1)(i)-(v) prohibits alien smuggling, domestic transportation of unauthorized aliens, concealing or harboring unauthorized aliens, encouraging or inducing unauthorized aliens to enter the United States, and engaging in a conspiracy or aiding and abetting any of the preceding acts. Subsection 1324(a)(2) prohibits bringing or attempting to bring unauthorized aliens to the United States in any manner whatsoever, even at a designated port of entry. Subsection 1324(a)(3).

Harboring -- Subsection 1324(a)(1)(A)(iii) makes it an offense for any person who -- knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, conceals harbors, shields from detection, or attempts to conceal, harbor, or shield from detection, such alien in any place, including any building or any means of transportation.

Encouraging/Inducing -- Subsection 1324(a)(1)(A)(iv) makes it an offense for any person who -- encourages or induces an alien to come to, enter, or reside in the United States, knowing or in reckless disregard of the fact that such coming to, entry, or residence is or will be in violation of law.

Conspiracy/Aiding or Abetting -- Subsection 1324(a)(1)(A)(v) expressly makes it an offense to engage in a conspiracy to commit or aid or abet the commission of the foregoing offenses.

Furthermore, On December 18, 2012 the Washington Times published a [news report](#) that focused on a DHS Inspector General report that incompetence and ineptitude at USCIS was so rampant that criminals aliens have been able to remain in the United States, obtain jobs in sensitive locations and participate various social welfare programs.

Here is how the report begins:

*“The federal governments system of tracking immigrants’ status is so broken that it gives a green light to one in eight aliens who have been ordered deported, according to an audit Tuesday that found the government has gone on to approve some of those who slip through for work in sensitive areas of airports and granted them benefits such as Medicaid or food stamps.*

*Some of those aliens who should have been kicked out had serious criminal records, including for assault and extortion, according to the audit by the Homeland Security Department's inspector general.*

*All told, some 800,000 immigrants are living in the U.S. who already have been ordered deported but have not yet left — or been removed by the [government](#) — from the country.”*

3. Some of the witnesses have testified that using alternative methods to detention is an efficient allocation of resources and could fix the issue of overcrowding in detention facilities. What is your view on that?

Answer:

In order to assess alternative methods of detention a number of factors must be known. To begin with the potential danger to community safety and the safety of the people with whom these aliens would be staying with must be the number one concern. I have often testified at bail hearings in federal court as well as in state court. Bail hearings focus on two issues- risk of flight and danger to public safety. Any discussion about alternatives to detention should begin with these two factors.

It is also vital that the alien who is not remanded to a detention facility be effectively monitored to make certain that the alien in question does not simply vanish.

Years ago I recall that the Border Patrol engaged in a program known as “Catch and Release” whereby illegal aliens who were apprehended by the Border Patrol were released and sent on their way with a document known as an NTA (Notice To Appear). It is the equivalent of a summons issued to a motorist who violates vehicle and traffic law. Disgusted Border Patrol agents came to refer to those NTA's by a slightly different name, they called them “Notices To Disappear.” In those instances the aliens involved were purportedly not criminal aliens. While the “Catch and Release” program of the Border Patrol got lots of attention in the media and at Congressional hearings, what was not generally known is that the special agents of ICE engaged in a similar program. However, criminal aliens were not

supposed to be released.

In the past, aliens who were released rarely appeared for hearings and failed to turn themselves in when they are ordered deported. In fact, in years past, when aliens were sent official notification that they needed to depart the United States they often fled. We came to refer to those notifications as “Run letters” because almost invariably, when an alien was sent such notification he (she) was likely to flee or run.

There was some discussion at the hearing about the use of GPS devices being used to keep track of aliens who would otherwise be detained. I have several concerns about this approach. It would be important to know if all of the aliens being released are required to wear such GPS devices and what happens when a device stops functioning or when an alien apparently leaves the areas to which they are limited.

It would be important to know how many aliens who are released are assigned to each ICE Deportation Officer who serve the equivalent function of a Probation or Parole Officer in the criminal justice system.

Finally, It would also be worth considering if such aliens are being given authority to work. To an unemployed or underemployed American or lawful immigrant worker a job is a valuable commodity. Aliens who are unlawfully present in the United States should not be able to be gainfully employed in the United States. Therefore the obvious question is, who will pay for the housing and related expenses of aliens who are not detained?

4. Under this administration, ICE detainer policy prohibits ICE agents from detaining illegal aliens unless they have committed a criminal offense independent of their illegal status. The administration says enforcement priorities allow law enforcement to focus on dangerous criminals and terrorists making our communities safer. Do you agree with that?

Answer:

Law enforcement has to make appropriate use of honest prosecutorial discretion to create a sort of triage to make certain that we get the most “bang for the buck.”

However: while I have been a long-time advocate for prioritizing the use of limited resources to get the greatest impact from efforts and money expended, this should never mean that we wind up convincing those who would violate the laws that their violations might not have ramifications. As I noted in the conclusion of my testimony at the hearing:

Law enforcement is at its best when it creates a climate of deterrence to convince those who might be contemplating violating the law that such an effort is likely to be discovered and that if discovered, adverse consequences will result for the law violators. Current policies and statements by the administration, in my view, encourages aspiring illegal aliens around the world to head for the United

States. In effect the starter's pistol has been fired and for these folks, the finish line to this race is the border of the United States.

It is one thing for enforcement personnel at ICE to seek to apprehend aliens who have criminal histories, for example while not routinely looking to arrest aliens who violate the terms of their nonimmigrant visas. However, when ICE agent encounter illegal aliens who have no criminal histories during the course of their routine work- conducting fraud investigations, seeking to execute criminal and administrative warrants concerning criminal aliens, etc., these aliens need to be taken into custody and processed for deportation. When possible some should be detained. This is essential to maintain the integrity of the immigration system.

For decades the enforcement of America's immigration laws was hobbled by the mindset that if an alien managed to get past the Border Patrol or managed to gain entrance to the United States through the inspections process that it was not important for immigration enforcement personnel operating within the United States to seek to take these aliens into custody. It is an odd way to do business and as a direct consequence convinces people around the world that the United States is not serious about its borders or its laws.

As you may know, I like to use analogies to make a point. Imagine playing baseball and telling your outfielders to sit out the game when they should be playing their respective positions in the outfield. Under such a bizarre situation, any player on the opposing team who could hit the ball over the heads of the infield players would be almost certain to get an “in the park” home run. This would make it all but impossible for your team to win the game.

By not backing up the Border Patrol and the CBP Inspectors at ports of entry by having an adequate number of enforcement personnel dedicated to enforcing the immigration laws from within the interior of the United States, the immigration enforcement program is as hobbled as that mythical baseball team that has no outfielders. The consequence of this is evident in every city and town in the United States- we have unknown millions of illegal aliens present in the United States.

It is not “Anti-Immigrant” to find this situation unacceptable.

First of all, the United States admits more than 1.1 million lawful immigrants into the United States each and every year. These aliens are immediately placed on the pathway to United States citizenship. By not effectively enforcing the immigration laws we are devaluing the worth of lawful immigration and United States citizenship.

The immigration laws, as I noted during my testimony at the hearing, were enacted to protect innocent lives and the jobs of American workers. To substantiate this, just consider the categories of aliens who are deemed excludible under the provisions of the Immigration and Nationality Act.

The inspections process conducted at ports of entry is designed to prevent the entry of aliens whose presence would be detrimental to the United States and its citizens. [Title 8, United States Code, Section 1182](#) enumerates the categories of aliens who are to be excluded. Among these classes are aliens who suffer from dangerous communicable diseases or extreme mental illness. Additionally convicted felons, human rights violators, war criminals, terrorists and spies are

excluded as well as aliens who would seek unlawful employment or become public charges.

Aliens who evade the inspections process apparently have something to hide. This is why they do not comply with the requirements of the Immigration and Nationality Act that they present themselves for inspection at a port of entry but rather sneak into the United States entering surreptitiously. In entering in “stealth mode” they create no record of their entry and there is no way of knowing who they are or why they are truly here.

We are being told that illegal aliens simply want to do the work that Americans won't do. This is not true- it is that while most are desperate and hence vulnerable to exploitation, they do work for wages and under conditions that Americans won't do. However, we know nothing about their true identities and backgrounds. This creates a monumental national security threat to the United States. In a number of Congressional hearings Robert Mueller, the Director of the FBI testified about his concerns about “sleeper agents.” A sleeper agent is an foreign national (alien) who enters the United States in whatever method is available and best suits his (her) goals. They maintain a low profile until they are called into action. In point of fact, a day or two before a terrorist participates in a terrorist attack he is likely to hide in plain sight by going to his job which almost always is a job that is nondescript and provides camouflage and mobility.

It is naïve to not understand how we are endangering national security by providing opportunities for terrorists and transnational criminals opportunities to enter the United States, acquire official identity documents in false names and facilitate their efforts to embed themselves in the United States.

By ignoring virtually all aliens who have no criminal convictions we are providing those who would kill innocent victims and undermine America's national security with a clear strategy that would enable them to be successful. All that a terrorist has to do is enter the United States and make his way to the interior of the United States and be careful to not get arrested for committing a felony. The administration's policies have removed a vital layer of national security by removing the immigration laws from the tool box of our law enforcement and intelligence agencies.

Additionally, by not arresting and deporting aliens who have no criminal convictions for serious crimes we are also enabling millions of illegal aliens to find work in the United States, displacing desperate American workers. The added “bonus” is that as might be expected, the vast majority of foreign workers send as much of their illegally earned money out of the United States to their home countries. Each year tens of billions of dollars that are earned by illegal aliens are drained out of the American economy. This is money not earned by American workers of every race, religion, and ethnicity.

This is money that is not spent in America and money that is not invested in America. Meanwhile it has been estimated that one in six Americans is currently receiving food stamps.

In his February 1, 2013 editorial, Mortimer Zuckerman, the chairman of *U.S. News & World Report* wrote:

[“Mort Zuckerman: How We Can End Our Modern-Day Depression”](#)

Zuckerman noted that the biggest difference between today's economic crisis and the Great Depression is that in the 1930s there were long lines of starving Americans waiting to be fed at soup kitchens while today's poor are invisible, staying home and receiving Social Security checks and food stamps.

Here is how Zuckerman described the growing American economic crisis:

*“Today millions are assisted by checks from Social Security and by food stamps. Food-stamp enrollment has been rising at the rate of 400,000 per month. More than 47 million Americans now depend on that program, an almost incredible record, for it is 15 percent of the population compared with the 7.9 percent who received food stamps from 1970 to 2000.*

*“Meanwhile, nearly 11 million Americans are now collecting federal disability checks from Social Security, and half have signed on since President Obama came to office. In 1992, there was one person on disability for every 35 workers. Today it is one for every 16. Such an increase simply cannot have been caused by direct disability experienced during employment. This is in effect another unemployment program, one without end. Many of the people on disability would normally be considered unemployed.”*

With all of the talk about the need to create jobs for unemployed and under-employed American workers, why is the administration not willing to *liberate* jobs by removing millions of illegal aliens from the workforce by simply enforcing the immigration laws that are already on the books?

Creating jobs takes time and money- often lots of both. As an INS agent I have seen numerous instances where we raided a factory and removed a significant percentage of the illegal alien workforce and often within a day or two every job was taken by lawful immigrant and United States citizen workers. No expenditure of time or money was necessary. Only the resolve by the federal government to enforce the immigration laws that are already in place.

Refusing to lodge detainers against illegal aliens unless they have been convicted of committing serious crimes creates further encouragement for still more foreign workers to head for the United States confident that if they don't get arrested for committing felonies that for them, if not for American citizens and lawful immigrants, that America is indeed the “Land of Opportunity.”

5. You testified that it is impossible to verify the information contained in applications for participation in any comprehensive immigration reform or the President's deferred action and prosecutorial discretion programs. Can you expand upon that?

Answer:

I provided a bit of information about the shortcomings and vulnerabilities inherent in the way that

USCIS fails to adjudicate the applications to make certain that there is meaningful integrity to the process in my response the the first question. Because of the extreme importance of this I will gladly provide some more information about my concerns which have been troubling me for many years. In fact, on June 22, 2007 the Washington Times published a commentary I had written about my concerns regarding the then pending “Comprehensive Immigration Reform Act” that bore the title, Immigration bill a 'No go.'

Here is the link to my commentary:

<http://www.washingtontimes.com/news/2007/jun/22/immigration-bill-a-no-go/>

Before we consider that commentary I want to make a few important points.

I have attached a copy of my piece at the end of my response.

One of the greatest challenges in law enforcement is to accurately and completely identify the person that a law enforcement officer comes into contact with during the course of his (her) official duties.

It is taken for granted that when a suspect is arrested that he will be fingerprinted and photographed as a part of the booking process. It is taken for granted that criminals and terrorists will use multiple false identities to disguise who they are. Criminals, terrorists and spies use changes in identity the same way that a chameleon uses changes in coloration as a form of camouflage, enabling them to hide in plain sight. In the parlance of the 9/11 Commission, this is how terrorists embed themselves.

There is a mistaken belief that by taking an individual's fingerprints a definitive identification of the person being fingerprinted can be made. The reality may be far different. When an alien evades the inspections process no record is created of that person's entry into the United States. Consequently there is no way of knowing when, where or how that alien actually entered the United States.

If that person claims to have no identity documents to verify his (her) identity, this is what “undocumented means,” it becomes difficult if not impossible to determine that individual's true name or even nationality. This means that the background of the individual in question may never be accurately determined. Under any circumstance this would create grave national security vulnerabilities for the United States. However, in the post 9/11 world in which we live, the potential exists that terrorists would game any massive immigration benefits program such the proposed Comprehensive Immigration Reform program being debated by members of Congress including the “Gang of Eight” as well as the deferred action program created by the administration under the guise of “prosecutorial discretion” that is referred to as DACA (Deferred Action for Childhood Arrivals) that largely parallels the failed DREAM Act.

What is not widely known is that, according to what I have been told, is that applicants for participation in DACA are not being routinely interviewed in person. Furthermore the lack of resources at USCIS and ICE precludes the possibility of routine field investigations being conducted to determine the accuracy and truthfulness of the information contained in those applications. Essentially the aliens who apply for this program are on the “honor system.” As we all know, the honor system only works for honorable people and without the proverbial “scorecard” there is no way of knowing anything about how honorable these applicants are.

It is all well and good to say that it is proper to provide aliens who were brought to the United States by their parents when they were children, however, in order to participate in DACA those who participate had to have been under 31 years of age as of June 15, 2012. It would not be difficult for someone to falsely claim to have entered the United States prior to their 16<sup>th</sup> birthday, especially if they claim to



have used multiple false names. Remember, there is little or no likelihood that any field investigations will be conducted to determine if fraud has been committed in these applications.

The only thing worse than no security is false security. Background checks that are not able to truly determine the identity and background of alien applicants for lawful status create false security and to make matters worse- the documents that USCIS would provide these aliens would enable the aliens who participate in the program to obtain Social Security cards, driver's licenses, library cards, credit cards and bank accounts- potentially in false names.

These documents would enable these aliens to obtain jobs that even if they don't have national security implications might well have critical infrastructure implications. These documents would enable these aliens to have access to government and corporate office buildings and other such facilities.

To sum it up, these documents would provide millions of illegal aliens with a level of credibility that they are not really entitled to.

Finally I want to make note of something that no one is talking about-

Comprehensive Immigration Reform might involve many millions of applications. In fact, while we are constantly told that there are about 11 or 12 million illegal aliens currently in the United States, the reality is that no one has any real idea as to what the true number is. I previously discussed the Immigration Reform and Control Act of 1986 and how it had been believed that about 1 million illegal aliens would come forward to participate in that amnesty program. The highest estimate we were given at the INS, back then, was that 1.5 million would come forward. Ultimately more than 3.5 million participated. The lesson here is that if our government ultimately enacts Comprehensive Immigration Reform- something I am very much opposed to, if the same sort of thing happens where the estimated numbers are greatly eclipsed by the actual numbers it would mean that between 30 million and 40 million aliens would seek lawful status. They would be eligible to bring in their spouses and children.

How in the world would America's schools, hospitals and infrastructure deal with this? What would this do to the economy of the United States and to America's unemployment rates?

Quality control of any sort would be impossible to maintain. Fraud currently permeates many of the immigration benefits programs, Comprehensive Immigration Reform would cause the bureaucracy at USCIS to implode.

Yet all that is being talked about as a prerequisite to Comprehensive Immigration Reform is to secure the U.S. / Mexican border.

As I noted previously, this lack of integrity to the process by which applications for immigration benefits are adjudicated was the focus of my concerns back in 2007, the last time that Comprehensive Immigration Reform was being proposed.

I had testified before several Congressional hearings back then, on the issue of Comprehensive Immigration Reform and drew the analogy of those hearings with the countdown for the launch of the space shuttle. I made the point that the purpose for the countdown the preceded the launch of the space shuttle was to provide the engineers, scientists and technicians with the opportunity to weigh in as to whether or not it was safe to launch. The hearings at which I and other experts testified were convened to provide the experts in this field with an opportunity to weigh in as to the feasibility and wisdom in passing and enacting legislation that was, at the time, being proposed in the Senate that would have provided millions of illegal aliens with lawful status.

In both situations lives hung in the balance. The shuttle launch involved the safety of the seen valiant

astronauts who sat poised to be hurtled into space while the legislation would have a profound impact on a multitude of issues that went to issue of national security and the safety and well being of 300 million Americans.

I was so concerned about the national security of this legislation that in my article I recommended that it be given a more honest and descriptive name than “Comprehensive Immigration Reform.” I suggested that it be referred to as the “Terrorist Assistance and Facilitation Act.”

Because the concerns I had back in 2007 are identical with the concerns I have today I have decided to end my response to your question by providing a copy of that commentary, in its entirety here:

## **Immigration bill a ‘No Go’**

The Washington Times

Friday, June 22, 2007

Most of us have seen how mission control at Cape Canaveral conducts a countdown before the space shuttle is launched.

Many engineers, scientists and other essential personnel sit before their consoles monitoring various factors that determine if the launch should be made. Generally, they respond with a “Go” or “No Go” response when asked by the flight director if their respective element of the launch is functioning properly. Generally, each of these highly trained personnel is backed up by a staff of many others sitting in a back room along with banks of computers.

In most cases, if any member of the launch team does not give a “thumbs up” indicating satisfaction with his area of responsibility, the launch is postponed. This is done to ensure the safety of crewmembers and space shuttle and to make certain the objectives of the mission will be successfully carried out.

The [Senate](#) is poised to begin a debate about an extremely critical mission advocated by the president and the majority of the members of the [Senate committee](#) that came up with a proposed immigration reform bill. The implications for the [United States](#), where this bill is concerned, are of the utmost significance for our nation. Immigration impacts so many other aspects of the [United States](#), starting with national security and criminal justice, and including the economy, education, health care and the environment.

We could compare the debate about the wisdom of the proposed legislation with the preflight preparation of scientists and engineers charged with launching the space shuttle who provide their perspectives in determining whether to launch. If I had a seat at that debate, much like a member of a launch team, I would give the legislation an emphatic “No Go.”

There are many reasons I adamantly oppose the legislation, but first and foremost is national security. This aspect has not been addressed in any public debate, including the televised debates involving the presidential candidates. No matter which scheme we are to consider concerning the fate of the unknown millions of illegal aliens present in our country, one common factor remains: The United States Citizenship and Immigration Services (USCIS) would have to provide identity documents to those millions of undocumented aliens who have absolutely no documentary evidence to verify their true identities.

Though former New York City Mayor [Rudolph Giuliani](#) and Arizona’s [Sen. John McCain](#) are eager to invoke the recommendations of the September 11 Commission and provide those undocumented illegal aliens with what they describe as “tamper-proof” identity documents, there really is no way to know what name or even what nationality should be imprinted on those millions of supposedly secure identity documents.

There is no way an adjudicator at USCIS can look at an applicant and know who he or she is. The USCIS also would be unable to know when, where or how the applicant entered the [U.S.](#) That is what the term “undocumented” means.

Those who advocate for a guest worker amnesty program attempt to gloss over this critical issue by saying that our government would simply use “high-tech” biometric methods. What does that mean? If a person lies about his or her identity and has never been fingerprinted in our country, what will enable the bureaucrats at USCIS to know that person’s true identity? If the adjudicators simply run a fictitious identity through a computerized database, they will simply find the name has no known connection to any criminal or terrorist watch lists. What is the value? Remember, we are talking about a false name.

There is absolutely no way this program would have even a shred of integrity and the identity documents that would be given these millions of illegal aliens would enable every one of them to receive a driver’s license, Social Security card and other such official identity documents in a false name.

Undoubtedly, terrorists would be among those applying to participate in this ill-conceived program. They would then be able to open bank accounts and obtain credit cards in that same false name. Finally, these cards would enable these aliens to board airliners and trains even if their true names appear on all of the various terrorist watch lists and “no fly” lists. That is why I have come to refer to this legislation as the “Terrorist Assistance and Facilitation Act of 2007.”

A final thought. To once again draw an analogy between the debate concerning this legislation and the launch process at Cape Canaveral: On Jan. 28, 1986, members of the launch team warned the flight director and others that the cold weather should cause them to postpone the flight of the space shuttle Challenger. They were ignored and the Challenger and its precious and irreplaceable crew of seven astronauts, including the astronaut-teacher Christa McAuliffe, were obliterated in an explosion 73 seconds after liftoff.

The astronauts paid the ultimate price because management at the National Aeronautics and Space Administration (NASA) refused to listen to the advice of those with legitimate concerns about the safety of the launch procedure that terrible day. I fear if our nation’s leaders rush to create a fatally flawed program in the name of “comprehensive immigration reform” that many [U.S.](#) citizens will ultimately pay a similar price because our government is failing to take into account the advice of the September 11 Commission and many experts in an effort to please special-interest groups and deep-pocket campaign contributors.

Lead, follow or get out of the way.

*Michael Cutler, is a retired U.S. Immigration and Naturalization Service (INS) senior agent who led major INS drug-trafficking investigations for more than two decades.*