

Testimony of
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U.S. SENATE COMMITTEE ON THE JUDICIARY

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Thank you, Mr. Chairman, for this opportunity to address the committee. I'm here today as a conservative to make the conservative case for immigration reform.

Americans are frustrated and angry - and rightly so - at the illegality currently associated with immigration. People are frightened by the security risks created when hundreds of thousands of foreigners enter the country illegally every year. They are disturbed by the pervasive fraud; they are upset about the fiscal consequences for their local communities. And we in Washington must address these concerns. This needn't mean closing our borders. We can have the immigrants we need to keep our economy growing and the rule of law, too - but only if we make significant adjustments in our immigration policy. We must retake control of our borders and restore the rule of law in our communities. We must create an orderly, legal way for the workers we need to enter the country - so that we can remain a nation of immigrants and a nation of laws.

DIAGNOSIS

I'm not going to spend a lot of time today making the economic case for immigration. Others can do that far better than I and already have, here today and at previous Senate hearings. I'll sum up the argument with one set of statistics. In 1960, half of all American men dropped out of high school and went into the unskilled labor force. Today, less than 10 percent of American men drop out of high school - and we now need foreign workers to do the low-skilled, low-paying jobs these men used to do. The native-born American work force is aging; it's shrinking. Today's young people aspire to work inside, with their minds not their muscles. And it's good news for us that there are immigrants eager to come to our country to do the unskilled work that we need done.

What's more, this relatively small number of immigrant workers helps keep a much larger number of American workers employed. Many American businesses could not grow without immigrant workers. Others, including in agriculture and food processing, would find it difficult to remain in the United States. And by helping these businesses prosper, immigrants sustain or create jobs for millions of Americans: white-collar workers at the farm and in the food processing plant, for example, but also all manner of other workers in the town where that farm or plant is located: retail workers, service workers, government workers and more. Immigrants

help grow the pie for everyone, and it's no accident that the economic boom of the 1980s and 90s was accompanied by a historic influx of foreign workers.

So the problem with our immigration system isn't the immigrants. The problem is that our immigration quotas provide so few opportunities for most of them to enter the country legally. According to the Pew Hispanic Center, some 485,000 unskilled, unauthorized migrants come to the U.S. every year to work at jobs Americans do not want to do. But there are only 5,000 visas available for unskilled foreigners seeking year-round work. A Mexican without family in the U.S. who wants to do something other than farm work has virtually no legal way to enter the country. And even a man with family here must wait from 6 to 22 years for a visa, depending on what kind of relatives he has and what their legal status is.

This is the heart of the current crisis. We need the labor; foreign workers want the jobs. But there are no legal channels - so inevitably people come illegally. And it is this mismatch - the mismatch between the size of the flow and our quotas - that creates most of the problems we associate with immigration. It's the mismatch that overwhelms our men on the border. It's the mismatch that creates the need exploited by international smuggling cartels. It's the mismatch that's eroding the rule of law in our communities. And it's the mismatch that endangers our security when, instead of guarding the nation against terrorists, agents have to waste their days chasing after your next busboy and my gardener.

THE THREE PILLARS OF REFORM

As policymakers as diverse as President Bush and Senator Kennedy understand, any workable remedy for our immigration system must include three elements - the three pillars of reform.

Pillar Number One: legal channels for the workers we need to keep our economy growing.

Pillar Number Two: adequate enforcement to make sure that foreign workers use the new legal channels and no others.

Pillar Number Three: a solution for the estimated 11 million illegal immigrants already here and working in the United States.

Most immigration reformers agree on the need for all three elements. But there is wide disagreement about how exactly to construct each pillar, and what I'd like to do today is outline some minimal standards for each component.

LEGAL CHANNELS

We will not retake control of our border or restore the rule of law in our communities unless we create new legal channels for the workers we need to keep our economy growing to enter the country in an orderly, lawful manner. Every serious reform package on the table recognizes this need, and all meet it with temporary worker programs.

The most important test of these programs is that they be realistic - first and foremost, realistic in size. After all, if the channels are too small - if they don't accommodate the workers we need to

keep our economy growing - they will not eliminate the lawlessness we face today. We will still have a mismatch between the size of the flow and our quotas. And we will still be plagued by a spillover, albeit a somewhat smaller spillover, of workers who have no choice but to come illegally - with all of the problems this creates. So that's the first criteria: the new legal channels - whether a guest worker program or some other kind - must be big enough to accommodate our labor needs. And the program must be flexible enough to change in size - both growing and shrinking - in tandem with those labor needs.

But that's not the end of the realism that's required. Because any new visa program must also be based on a realistic understanding of the people coming to the U.S. to work. Some of them, especially the younger ones, come for a short stint and then go home. Many work here for a year or two, then go home for some months - and then come back again for another period of work. But after a while, the most able and successful start to put down roots. This is inevitable, and it isn't a bad thing: by definition these are the foreigners mostly likely to do well in the United States - they've put down roots instead of going home precisely because they are succeeding here and are starting to fit in as Americans. The fact that they want to stay also makes them more valuable workers. After all, few American employers want to replace their workforce every year or two, and the workers they prize most are the ones who stay on and improve their skills.

So the second criteria for any new legal channels is that the program must allow for choice. Yes, let's create incentives for circularity. Let's encourage many of the immigrants who come here to work to go home when their stint is done. But we must also allow those who wish to stay to stay and settle. Otherwise - if we don't devise a way for them to stay legally - we will only drive them underground, creating a new pool of illegal immigrants. And indeed, even as we encourage some to go home, we should also devise incentives for others to become citizens - incentives to put down deeper roots and become Americans. Not only is this the most practical course; it is also the American way of immigration. Unlike many other countries, we have succeeded as a nation of immigrants precisely because we allow newcomers to join as full-fledged members of our society.

ENFORCEMENT

The second sine qua non, every bit as important as legal channels, is a raft of robust enforcement measures to make sure that immigrant workers use these channels and no others. These two elements go together. They are two pillars of a single house, and one without the other will solve nothing. As the past decades have shown, simply cracking down harder is not the answer. Since 1986, we have tripled the number of Border Patrol agents and multiplied their budget by a factor of ten. Yet we have made no appreciable dent in the number of illegal immigrants entering the country. But just as today's unrealistically low quotas all but guarantee futile enforcement - it's extremely difficult to enforce unrealistic rules - so in a new system, once we have enacted workable laws, we can and must make them stick with smart new enforcement measures. This is the promise at the heart of immigration reform - that the combination of these two elements will deliver control. We must replace the old "nudge-nudge-wink-wink" system - overly strict laws that we can't and in many cases don't even try to uphold - with a new bargain: realistic laws, enforced to the letter.

The creation of legal channels should significantly ease the enforcement challenge. After all, most immigrants would prefer come legally (it's both safer and cheaper), and most American employers would prefer to operate on the right side of the law (with a reliable, legal workforce and free from the threat of disruptive enforcement). As things stand today, employers have little choice: it is all but impossible for many to find enough authorized workers to sustain their businesses. And once we have created legal channels, history suggests, we will see a dramatic decrease in illegal activity - as we did in the 1950s under the Bracero program. But creating legal channels will not, in itself, be enough.

The key to successful enforcement is a layered approach: not just more men and more technology on the border, but also intensified cooperation with sending countries, enhanced anti-smuggling efforts, significantly stepped-up interior enforcement and more credible punishments for those who have broken the law - both employers and employees. State and local police have a role to play, particularly when an immigrant has committed a crime - a violation over and above entering the country illegally. But that role must be carefully circumscribed, lest we overburden and distract local police. Finally, most important - the crown jewel of any enforcement package - we must remove the incentive for foreign workers to enter the country illegally by making it impossible for them to work once they get here. How to accomplish this: by giving employers the tools they need to determine who is authorized to work and who isn't - an electronic employment verification system modeled on credit-card verification - combined with tough, new sanctions for businesses that violate the law.

This is no small undertaking. It will require significant resources to improve and coordinate databases at the Social Security Administration and the Department of Homeland Security. All workers will need to be issued one of several different forms of I.D., whether a new drivers' license, a new Social Security card, a tamper-proof visa or some other document. Effective employment verification need not - and should not - take us down the road of a national I.D. card. And the new, reliable, streamlined procedures should ultimately prove welcome to employers and employees alike. But effective employment verification will mean significant adjustments all around - and this will not happen without stiff political resolve and considerable expense.

The bottom line: we can get control - and we must do whatever it takes to be effective. As in the case of the new legal channels, it will not pay to fight reality - the reality of our labor needs or of the people coming into the country to meet them. Enforcement alone will not work. Enforcement of bad policy will only drive people underground. And as with any major change in habits, even the most effective enforcement will have to be accompanied by incentives for both employers and employees to behave differently. It will take both muscle and good design, but the biggest mistake we could make would be to promise and not deliver. After years of ineffective enforcement, the public is deeply skeptical that we can get it right - and we must spare no expense or effort to restore their confidence in an airtight immigration system that works.

A TRANSITION FOR ILLEGAL IMMIGRANTS

The quandary - particularly for conservatives committed to effective reform - is what to do about the estimated 11 million illegal immigrants already living in the country. We cannot create a

sound new system on top of an illegal foundation - cannot deliver the control and legality we have promised unless we eliminate this vast underground economy. But nor can we realistically hope to drive millions of workers and their families to leave the country. For our own sake - in order to reassert the rule of law - we must find a way for them to make good on the past and come in out of the shadows.

National security too demands that we come to terms with the 11 million. As is, they live entirely beyond the reach of authorities. Undocumented or, worse, falsely documented, they have undergone no background checks. We know nothing about their pasts or, in some cases, criminal records. And the underground world they inhabit - a world controlled by criminal syndicates expert is helping foreigners travel around the country undetected by the law - could not be a better staging ground for international terrorists.

It's easy to say let's just get rid of these unauthorized foreigners: let's send them home or make their lives so difficult that they leave voluntarily. But the truth is our economy depends on them - and employers are unlikely, even under the toughest enforcement pressures, to replace them quickly or easily with new, inexperienced temporary workers. The expense of removing them would be prohibitive, and it is all but impossible to imagine the American public acquiescing in a vast national program to deport 11 million people. After years - in some cases, decades - in this country, many of them have put down roots, buying homes and businesses and giving birth to children who are U.S. citizens. They no longer see the countries they left as "home." Nothing we do is likely to make them return, and punitive demands that they go back will only drive them further underground.

The bottom line: most of these people are here to stay, and it is in our interest as much as theirs for us to find a way for them to do so legally - and indeed to assimilate into American society. There is simply no realistic alternative. The question - the only question before us - is how to structure the transition. There are two criteria. Number One: the proposal must be appealing enough so that most if not all of the illegal immigrants now living in the country come forward to take advantage of it - otherwise, it will not work to solve the problem. But, Number Two, it must also address Americans' concerns that we not reward people who have broken the law and do not encourage future illegal behavior. In other words, the proposal must also be tough enough to withstand the charge that it is an "amnesty" and must pass muster among conservatives in Congress. Meeting these two requirements - a proposal that can both work and pass - will be anything but easy. But we will not succeed in fixing our immigration system unless we come up with a provision that does so.

MOVING FORWARD WITH THE PROPOSALS ON THE TABLE

Those of us committed to repairing the system have been encouraged in the past few months by the introduction of two major reform proposals, Senator John McCain and Edward Kennedy's Secure America and Orderly Immigration Act and Senator John Cornyn and Jon Kyl's Comprehensive Enforcement and Immigration Reform Act. Between them, the two plans offer a wealth of innovative ideas. All of the cosponsors have talked promisingly about their commitment to a balanced approach - a package that provides the workers we need to keep our economy growing even as it restores the integrity of our laws and enhances our security. And to me, it has been particularly encouraging to see new ideas emerging from across the political

spectrum: among those long known for their concern about immigrants and those who have made a priority of their commitment to the rule of law.

We will not succeed in the overhauling the system without champions from both camps - and both parties. Not only will we need both Republicans and Democrats to design a package that addresses all aspects of this complex problem: humanitarian imperatives, employment needs, fairness to American workers, the ever intensifying security challenge and more. But in the current climate, it will be all but impossible to pass legislation without strong bipartisan cooperation in both chambers.

The challenge in the months ahead will be to combine the best of both proposals in a single package. It will not be easy to do so. As I hope I have conveyed here today, immigration policy is unusually - perhaps uniquely - difficult to get right. And neither a series of political tradeoffs nor simply splitting the difference between the two bills is going to produce a policy that will work to solve the problem.

I look forward, in the questioning that follows, to the opportunity to look more closely at the merits of both proposals. But I hope the criteria I have laid out today can help point the way toward an effective answer.

An effective temporary worker program will have to be large enough to provide the workers we need to keep our economy growing and flexible enough to accommodate a variety of immigrants, including those who ultimately chose to settle in the United States. Of the two proposals on the table, only the McCain-Kennedy bill meets the second requirement, and it is the only one that seems likely to work realistically to meet our future labor needs.

When it comes to enforcement, the Cornyn-Kyl legislation is the stronger of the two: more comprehensive, more muscular and more reassuring to voters who feel they have been promised enforcement before only to see it fail for lack of resources. Some elements of the bill's enforcement package may need to be tempered or refined: the sections on state and local police, in particular, seem more sweeping than is necessary or likely to be effective. But policymakers could do worse than to start by combining the McCain-Kennedy temporary worker program with the enforcement title of the Cornyn-Kyl bill.

Both pieces of legislation contain additional sections that would enhance the combination package: McCain-Kennedy's ideas for reducing family backlogs, its provisions for immigrant integration, some of Cornyn-Kyl's proposals for agreements with sending countries and its suggestion that we provide for health insurance for immigrant workers.

Finally and most difficult, there is the question of the 11 million. Both pairs of reformers have plainly anguished over the issue, and both have spoken encouragingly about the need for a workable answer: one that would entice illegal immigrants to come forward and participate. But of the bills before us, only the McCain-Kennedy approach comes close to being practical. What we don't know: can it pass muster with skeptical voters?

The compromise solution in the McCain-Kennedy legislation posits a set of conditions that illegal immigrants must meet if they are to earn legal status. They must register with the

government, pay all back taxes and a \$2,000 fine, then fulfill a six-year work requirement before they can apply for green cards. At that point, they must prove they have been studying English and civics, and no one now present illegally in the U.S. will be granted a permanent visa before those now waiting in their home countries. It's not a perfect solution: even fines and conditions may strike some Americans as too generous, and perhaps there is a better answer waiting in the wings. Still, sometimes the perfect is the enemy of the good, and on the matter of the 11 million, McCain-Kennedy is the best proposal on the table so far.

In closing, Mr. Chairman, let me step back from these particulars. Critical as they are - and difficult as the issue is - if I make any impression today let it be to urge you to press ahead. We must fix our broken immigration system not for reasons of compassion or electoral politics or because our neighbors want us to, important as some of that is. We must fix the system because it is in our interest to do so - our economic interest and our security interest and because our commitment to the rule of law demands it. We must create an orderly, legal way for the workers we need to enter the country - so that we can remain a nation of immigrants and a nation of laws.

I welcome any questions you have.