CRIMINAL ALIENS

HEARING

BEFORE THE

SUBCOMMITTEE ON INTERNATIONAL LAW, IMMIGRATION, AND REFUGEES

OF THE

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

ONE HUNDRED THIRD CONGRESS

SECOND SESSION

ON

H.R. 723, H.R. 1067, H.R. 1279, H.R. 1459, H.R. 1496, H.R. 2041, H.R. 2438, H.R. 2730, H.R. 2993, H.R. 3302, H.R. 3320 (Title IV), H.R. 3860 (Titles II, V, VI), H.R. 3872, and H. Con. Res. 47

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CRIMINAL ALIENS

WEDNESDAY, FEBRUARY 23, 1994

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON INTERNATIONAL LAW,
IMMIGRATION, AND REFUGEES,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The subcommittee met, pursuant to notice, at 10:07 a.m., in room 2226, Rayburn House Office Building, Hon. Romano L. Mazzoli (chairman of the subcommittee) presiding.

Present: Representatives Romano L. Mazzoli, Charles E. Schumer, George E. Sangmeister, Xavier Becerra, Bill McCollum, Lamar S. Smith, and Charles T. Canady.

Also present: Eugene Pugliese, counsel; Leslie L. Megyeri, assistant counsel; Judy Knott, secretary; and Carmel Fisk, minority counsel.

OPENING STATEMENT OF CHAIRMAN MAZZOLI

Mr. MAZZOLI. The subcommittee will come to order. I have a brief opening statement, and then I will yield to my colleagues, and, as I mentioned, at least four of our panelists themselves have bills which have been noticed for today's hearing. I will call upon my colleagues before we call upon the Members of Congress, not members of this panel, who have bills also.

Today we are conducting a hearing to discuss the continuing problem of criminal aliens in the United States and to consider a series of bills which address this problem. The Immigration Act of 1990 required the Immigration Service to detain all aliens convicted of aggravated felonies during the time periods between their release from prison and their deportation.

Unfortunately, the Immigration Service's detention facilities have not been able to keep up with the growing numbers of deportable alien criminals, and there are simply more felons than there are beds in the INS detention facilities. Our Federal and State prisons house over 53,000 aliens. In 1980 this number was below 9,000. The annual cost per prisoner of maintenance and housing is about $20,000.

We all, I think, were pleased to note that Commissioner Meissner on February 3, announced that with the funding of some $55 million the Immigration Service will be able to deport up to 20,000 additional criminal aliens using what is called the Institutional Hearing Program which we will discuss further this morning. During fiscal year 1993, 8,764 cases under the IHP were completed.

The individual States have also experienced this explosion in the number of aliens committing crimes which necessitate incarceration. Those States with large numbers of immigrants also have large numbers of deportable aliens in their prison population, and all too often the prison facilities are overcrowded, forcing the State to either attempt to control the situation or release inmates prior to completion of their sentences.

INS assists with the identification of aliens in both the State and the Federal prison systems. This initial determination of a prisoner's immigration status is vital. Before a determination on deportability can be made, the prisoner must be identified as an alien who was either in the United States as an illegal alien or who, by virtue of the conviction, is deportable under U.S. immigration law.

However, the determination of a defendant's immigration status is often very difficult to make. Often the question of a defendant's status does not even arise until his sentencing phase or at some initial processing into the prison.

The various bills we have before us today offer different approaches to addressing the criminal alien problem. Four of these bills, as I earlier said, are sponsored by members of this panel, two of whom are with us at this moment.

I look forward to hearing from our witnesses who are Members of Congress, and some of them are gathering, as well as representatives of the administration; those representatives will be on later this morning.

We have many witnesses to hear from today, and, as a result, we were not able to schedule testimony from nongovernmental witnesses who have interest in this entire body of law. I can assure my colleagues and people who are interested that we will, before proceeding to markup on these measures, hear from the additional persons and groups whose background is in this field of criminal alien activities.

I would also mention, however, that we have to be aware that the Senate-passed crime bill contains a number of provisions concerning criminal aliens, and there is a push to move the crime bill both on the House and the Senate side very quickly, and there is the consequent result that we could be dealing with this entire subject not necessarily in the hearing process and in the more normal markup at the subcommittee and full committee and floor process, but in the form of the conference which could be called in the crime bill.

[The bills, H.R. 723, H.R. 1067, H.R. 1279, H.R. 1459, H.R. 1496, H.R. 2041, H.R. 2438, H.R. 2730, H.R. 2993, H.R. 3302, H.R. 3320 (Title IV), H.R. 3860 (Titles II, V, VI), H.R. 3872, and H. Con. Res. 47, follow:]

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103D CONGRESS
1ST SESSION

H. R. 723

To amend the Immigration and Nationality Act to expedite the deportation and exclusion of criminal aliens.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 2, 1993

Mr. LEWIS of Florida (for himself, Mr. MCCOLLUM, Mr. LEHMAN, Mr. GINGRICH, Mr. HYDE, Mr. SOLOMON, Mr. LIVINGSTON, Mr. SHAW, Mr. BILIRAKIS, Mr. OXLEY, Mr. SENSENBRENNER, Mr. GOSS, Mr. MCMILLAN, Mr. GREENWOOD, Mr. PACKARD, Mr. STUMP, Mr. WELDON, Mr. WALSH, Mr. BARTLETT of Maryland, Mr. BAKER of California, Mr. MICA, Mr. JOHNSON of Texas, and Mr. MILLER of Florida) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to expedite the deportation and exclusion of criminal aliens.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Alien Deportation and Exclusion Amendments of 1993".

SEC. 2. EXPEDITING CRIMINAL ALIEN DEPORTATION AND EXCLUSION.

(a) CONVICTED DEFINED.—Section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)) is amended by adding at the end the following new subparagraph:

"(E) CONVICTED DEFINED.—In this paragraph, the term 'convicted' means a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere, whether or not the alien appeals therefrom.".

(b) DEPORTATION OF CONVICTED ALIENS.—

(1) IMMEDIATE DEPORTATION.—Section 242(h) of such Act (8 U.S.C. 1252(h)) is amended—

(A) by striking "(h) An alien" and inserting "(h)(1) Subject to paragraph (2), an alien";

(B) by adding at the end the following new paragraph:

"(2) An alien sentenced to imprisonment may be deported prior to the termination of such imprisonment by the release of the alien from confinement, if the Service petitions the appropriate court or other entity with authority concerning the alien to release the alien into the custody of the Service for execution of an order of deportation.".

(2) PROHIBITION OF REENTRY INTO THE UNITED STATES.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended—

(A) by redesignating subparagraph (F) as subparagraph (G); and

(B) by inserting after subparagraph (E) the following new subparagraph:

"(F) ALIENS DEPORTED BEFORE SERVING MINIMUM PERIOD OF CONFINEMENT.—An alien deported pursuant to section 242(h)(2) is excludable during the minimum period of confinement to which the alien was sentenced.".

(c) EXECUTION OF DEPORTATION ORDERS.—Section 242(i) of such Act (8 U.S.C. 1252(i)) is amended by adding at the end the following: "An order of deportation may not be executed until all direct appeals relating to the conviction which is the basis of the deportation order have been exhausted.".

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103D CONGRESS
1ST SESSION

H. R. 1067

To amend the Immigration and Nationality Act to require a report by the Federal Bureau of Investigation on the criminal record for aliens who are residing in the United States and who apply to immigrate to the United States.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1993

Mr. THOMAS of California introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to require a report by the Federal Bureau of Investigation on the criminal record for aliens who are residing in the United States and who apply to immigrate to the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. CRIMINAL RECORD REPORT FOR IMMIGRANTS.

(a) REQUIREMENT.—Section 222(b) of the Immigration and Nationality Act (8 U.S.C. 1202(b)) is amended by inserting "(1)" after "(b)" and by adding at the end the following:

"(2) In the case of an alien who is applying for an immigrant visa (or for adjustment of status under section 245(a)) and who has resided within the United States for more than 6 months during the 5-year period before the date of application, such application shall include such a report, by the Federal Bureau of Investigation on the alien's criminal record, as the Attorney General specifies.".

(b) FEES.—Section 286 of such Act (8 U.S.C. 1356) is amended—

(1) in subsection (m)—

(A) by inserting "(1)" after "(m)", and

(B) by adding at the end the following new paragraph:

"(2) The Attorney General (in consultation with the Secretary of State) shall establish, as an adjudication fee under this subsection, a fee in an amount sufficient to provide for the preparation and submission of a report on a criminal record (described in section 222(b)(2)). With respect to applicants for an immigrant visa, such a fee may be collected by the Secretary of State and forwarded to the Attorney General."; and

(2) in subsection (n), by inserting before the period at the end the following: ", except that the amount of such deposits attributable to the fees de-

scribed in subsection (m)(2) shall remain available until expended to the Attorney General to reimburse any appropriation the amount paid out of such appropriation for the preparation and submittal of reports referred to in such subsection".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to applications for visas or adjustment of status made on or after the first day of the first month beginning more than 60 days after the date of the enactment of this Act.

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103D CONGRESS
1ST SESSION

H. R. 1279

To amend the Immigration and Nationality Act to provide that members of Hamas (commonly known as the Islamic Resistance Movement) be considered to be engaged in a terrorist activity and ineligible to receive visas and excluded from admission into the United States.

IN THE HOUSE OF REPRESENTATIVES

MARCH 10, 1993

Mr. DEUTSCH (for himself, Mr. HASTINGS, Ms. ROS-LEHTINEN, and Mr. SAXTON) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act to provide that members of Hamas (commonly known as the Islamic Resistance Movement) be considered to be engaged in a terrorist activity and ineligible to receive visas and excluded from admission into the United States.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. TERRORIST ACTIVITIES.

Section 212(a)(3)(B)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)(i)) is amended by adding at the end "An alien who is a member, officer, official, representative, or spokesperson of Hamas (com-

monly known as the Islamic Resistance Movement) is considered, for purposes of this Act, to be engaged in a terrorist activity.".

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103D CONGRESS
1ST SESSION

H. R. 1459

To amend the Immigration and Nationality Act to expand the definition of "aggravated felony", to eliminate the administrative deportation hearing and review process for aliens convicted of aggravated felonies who are not permanent residents, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 24, 1993

Mr. MCCOLLUM (for himself, Mr. MOORHEAD, Mr. SMITH of Texas, Mr. GALLEGLY, and Mrs. ROUKEMA) introduced the following bill; which was referred to the Committee on the Judiciary

---

A BILL

To amend the Immigration and Nationality Act to expand the definition of "aggravated felony", to eliminate the administrative deportation hearing and review process for aliens convicted of aggravated felonies who are not permanent residents, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Aliens Deportation Act of 1993".

SEC. 2. EXPANSION IN DEFINITION OF "AGGRAVATED FELONY".

(a) EXPANSION IN DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including any drug trafficking crime as defined in section 924(c) of title 18, United States Code;

"(C) any illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code, or in explosive materials as defined in section 841(c) of title 18, United States Code;

"(D) any offense described in (i) section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or (ii) section 1957 of such title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the value of the funds exceeded $100,000;

"(E) any offense described in—

"(i) subsections (h) or (i) of section 842, title 18, United States Code, or subsection (d), (e), (f), (g), (h), or (i) of section 844 of title 18, United States Code (relating to explosive materials offenses),

"(ii) paragraph (1), (2), (3), (4), or (5) of section 922(g), or section 922(j), section 922(n), section 922(o), section 922(p), section 922(r), section 924(b), or section 924(h) of title 18, United States Code (relating to firearms offenses), or

"(iii) section 5861 of title 26, United States Code (relating to firearms offenses);

"(F) any crime of violence (as defined in section 16 of title 18, United States Code, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(G) any theft offense (including receipt of stolen property) or any burglary offense, where a sentence of 5 years imprisonment or more may be imposed;

"(H) any offense described in section 875, section 876, section 877, or section 1202 of

title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) any offense described in section 2251, section 2251A or section 2252 of title 18, United States Code (relating to child pornography);

"(J) any offense described in—

"(i) section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or

"(ii) section 1084 (if it is a second or subsequent offense) or section 1955 of such title (relating to gambling offenses),

where a sentence of 5 years imprisonment or more may be imposed;

"(K) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, where a sentence of 5 years imprisonment or more may be imposed;

"(L) any offense—

"(i) relating to the owning, controlling, managing or supervising of a prostitution business,

"(ii) described in section 2421, section 2422, or section 2423 of title 18, United

States Code (relating to transportation for the purpose of prostitution) for commercial advantage, or

"(iii) described in sections 1581 through 1585, or section 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(M) any offense relating to perjury or subornation of perjury where a sentence of 5 years imprisonment or more may be imposed;

"(N) any offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), section 798 (relating to disclosure of classified information), section 2153 (relating to sabotage) or section 2381 or section 2382 (relating to treason) of title 18, United States Code, or

"(ii) section 421 of title 50, United States Code (relating to protecting the identity of undercover intelligence agents);

"(O) any offense—

"(i) involving fraud or deceit where the loss to the victim or victims exceeded $200,000; or

"(ii) described in section 7201 of title 26, United States Code (relating to tax evasion), where the tax loss to the Government exceeds $200,000;

"(P) any offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

"(Q) any violation of section 1546(a) of title 18, United States Code (relating to document fraud), for the purpose of commercial advantage; or

"(R) any offense relating to failing to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony, where a sentence of 2 years or more may be imposed;

or any attempt or conspiracy to commit any such act. Such term applies to offenses described in this paragraph whether in violation of Federal or State law and applies to such offenses in violation of the laws of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to all convictions entered before, on, or after the date of enactment of this Act.

SEC. 3. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following:

"(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

"(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

"(2) An alien is described in this paragraph if the alien—

"(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

"(3) The Attorney General may delegate the authority in this section to the Commissioner or to any District Director of the Service.

"(4) No alien described in this section shall be eligible for—

"(A) any relief from deportation that the Attorney General may grant in his discretion, or

"(B) relief under section 243(h).

"(5) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, in order that the alien has an opportunity to apply for judicial review under section 106.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242A)" after "aggravated felony"; and

(3) by adding at the end the following new subsection:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AND CONFORMING CHANGES.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended as follows:

(1) In subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting "(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) In subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) By striking out subsection (c);

(4) In subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any"; and

(C) by striking "(2)" and inserting "(B)";

(5) In subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)".

(6) By inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(7) The heading of such section is amended to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 4. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony), if such an order has been requested prior to sentencing by the United States Attorney with the concurrence of the Commissioner.

"(2) PROCEDURE.—

"(A) The United States Attorney shall provide notice of intent to request judicial deportation promptly after the entry in the record of an adjudication of guilt or guilty plea. Such notice shall be provided to the court, to the alien, and to the alien's counsel of record.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 20 days

prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and satisfaction by the defendant of the definition of aggravated felony.

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from deportation under section 212(c), the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief under such section. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates by clear and convincing evidence that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF DEPORTATION.—

"(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 106.

"(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period described in section 106(a)(1), or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the

end of the prison term in accordance with the terms of the order.

"(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order or deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AND CONFORMING CHANGES.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking out "The" and inserting in lieu thereof, "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 5. RESTRICTING DEFENSES TO DEPORTATION FOR CERTAIN CRIMINAL ALIENS.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking out "has served for such felony or felonies" and all that follows through the period and inserting in lieu thereof "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years, provided that the time for appealing such conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by—

(1) striking out the final sentence and inserting in lieu thereof the following new subparagraph:

"(E) the alien has been convicted of an aggravated felony."; and

(2) striking out the "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 6. ENHANCING PENALTIES FOR FAILING TO DEPART, OR REENTERING, AFTER FINAL ORDER OF DEPORTATION.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking out "paragraph (2), (3), or 4 of" the first time it appears, and

(2) by striking out "shall be imprisoned not more than ten years" and inserting in lieu thereof, "shall be imprisoned not more than two years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (2), (3), or (4) of section 241(a).".

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1), by (A) inserting after "commission of" the following: "three or more misdemeanors or", and (B) striking out "5" and inserting in lieu thereof "10",

(2) in paragraph (2), by striking out "15" and inserting in lieu thereof "20", and

(3) by adding at the end the following sentence: "For the purposes of this subsection, the term 'deportation' shall include any agreement where an alien stipu-

lates to deportation during a criminal trial under either Federal or State law.".

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by inserting after subsection (b) the following new subsection:

"(c) In any criminal proceeding under this section, no alien may challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates—

"(1) that the alien exhausted the administrative remedies (if any) that may have been available to seek relief against such order,

"(2) that the deportation proceedings at which such order was issued improperly deprived the alien of the opportunity for judicial review, and

"(3) that the entry of such order was fundamentally unfair.".

SEC. 7. EXPANDED FORFEITURE FOR SMUGGLING OR HARBORING ILLEGAL ALIENS.

Subsection 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended—

(1) by amending paragraph (1) to read as follows:

"(b) SEIZURE AND FORFEITURE.—(1) Any property, real or personal, which facilitates or is intended to facilitate, or which has been used in or is intended to be used in the commission of a violation of subsection (a) or of sections 274A(a)(1) or 274A(a)(2), or which constitutes or is derived from or traceable to the proceeds obtained directly or indirectly from a commission of a violation of subsection (a), shall be subject to seizure and forfeiture, except that—

"(A) no property, used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under the provisions of this section unless it shall appear that the owner or other person in charge of such property was a consenting party or privy to the illegal act;

"(B) no property shall be forfeited under the provisions of this section by reason of any act or omission established by the owner thereof to have been committed or omitted by any person other than such owner while such property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State; and

"(C) no property shall be forfeited under this paragraph to the extent of an interest of any owner,

by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of the owner, unless such action or omission was committed by an employee or agent of the owner, and facilitated or was intended to facilitate, or was used in or intended to be used in, the commission of a violation of subsection (a) or of section 274A(a)(1) or 274A(a)(2) which was committed by the owner or which intended to further the business interests of the owner, or to confer any other benefit upon the owner.".

(2) in paragraph (2)—

(A) by striking "conveyance" both places it appears and inserting in lieu thereof "property"; and

(B) by striking "is being used in" and inserting in lieu thereof "is being used in, is facilitating, has facilitated, or was intended to facilitate";

(3) in paragraphs (4) and (5) by striking "a conveyance" and "conveyance" each place such phrase or word appears and inserting in lieu thereof "property"; and

(4) in paragraph (4) by—

(A) striking "or" at the end of subparagraph (C),

(B) by striking the period at the end of subparagraph (D) and inserting "; or", and

(C) by inserting at the end the following new subparagraph:

"(E) transfer custody and ownership of forfeited property to any Federal, State, or local agency pursuant to the Tariff Act of 1930, as amended (19 U.S.C. 1616a(c)).".

SEC. 8. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien.".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.— No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)), shall be construed to create any right or benefit, substantive or procedural, which is

legally enforceable by any party against the United States, its agencies, its officers or any other person.

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103D CONGRESS
1ST SESSION

H. R. 1496

To amend the Immigration and Nationality Act to authorize the registration of aliens on criminal probation or criminal parole.

IN THE HOUSE OF REPRESENTATIVES

MARCH 25, 1993

Mr. SMITH of Texas (for himself, Mr. MCCOLLUM, Mr. GALLEGLY, Mr. GILMAN, Mr. COMBEST, Mr. CANADY, and Mr. COBLE) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to authorize the registration of aliens on criminal probation or criminal parole.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. AUTHORIZING REGISTRATION OF ALIENS ON CRIMINAL PROBATION OR CRIMINAL PAROLE.

Section 263(a) of the Immigration and Nationality Act (8 U.S.C. 1303(a)) is amended by striking "and (5)" and inserting "(5) aliens who are or have been on criminal

probation or criminal parole within the United States, and (6)".

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103D CONGRESS
1ST SESSION

H. R. 2041

To provide that members of terrorist organizations are ineligible to receive visas for admission to the United States, to improve the State Department Visa Lookout System procedures, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MAY 6, 1993

Ms. SNOWE (for herself, Mr. GILMAN, and Mr. MCCOLLUM) introduced the following bill; which was referred jointly to the Committees on the Judiciary and Foreign Affairs

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A BILL

To provide that members of terrorist organizations are ineligible to receive visas for admission to the United States, to improve the State Department Visa Lookout System procedures, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Terrorist Interdiction Act of 1993".

SEC. 2. AUTOMATED VISA LOOKOUT SYSTEM.

Not later than 6 months after the date of the enactment of this Act, the Secretary of State shall implement

an upgrade of all overseas visa lookout operations to computerized systems with automated multiple-name search capabilities.

SEC. 3. NATIONAL CRIME INFORMATION CENTER.

For the purpose of access to the National Crime Information Center and other Federal Bureau of Investigation criminal records, with respect to functions involving the processing of visas and passports and for other immigration-related purposes the Department of State shall be considered a law enforcement agency.

SEC. 4. MEMBERSHIP IN A TERRORIST ORGANIZATION AS A BASIS FOR EXCLUSION FROM THE UNITED STATES UNDER THE IMMIGRATION AND NATIONALITY ACT.

Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)(II) by inserting "or" at the end;

(2) by adding after clause (i)(II) the following:

"(III) is a member of an organization that engages in terrorist activity or who actively supports or advocates terrorist activity,";

(3) by adding after clause (iii) the following:

"(iv) TERRORIST ORGANIZATION DEFINED.—As used in this Act, the term 'terrorist organization' means an organization which commits terrorist activity as determined by the Attorney General, in consultation with the Secretary of State.".

SEC. 5. PROCESSING OF VISAS FOR ADMISSION TO THE UNITED STATES.

(a) VISA LOOKOUT SYSTEM CHECK.—

(1) Whenever a United States consular official issues a visa for admission to the United States, that official shall certify, in writing, that a check of the Automated Visa Lookout System, or any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act, has been made and that there is no basis under such system for the exclusion of such alien.

(2) If a consular official issues a visa to an alien for admission to the United States and the alien was named on the Automated Visa Lookout System as excludable from the United States at the time of the consular officer's review and issuance of such visa, a notation shall be entered into the personnel file of such consular officer and such infor-

mation shall be considered as a serious negative factor in the officer's annual performance evaluation.

(b) ACCOUNTABILITY REVIEW BOARD.—In any case where a serious loss of life or property in the United States involves the issuance of a visa to an alien listed on the Automated Visa Lookout System, or any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act, the Secretary of State shall convene an Accountability Review Board under the authority of title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986.

SEC. 6. CONGRESSIONAL REPORT.

The Secretary of State shall submit to the Congress a report for each of the fiscal years 1994 and 1995 which details the number and circumstances of each visa denial due to the amendment made by section 4.

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103D CONGRESS
1ST SESSION

H. R. 2438

To amend the Immigration and Nationality Act to provide for confinement in a Federal facility of illegal aliens sentenced to imprisonment under State law and to authorize the Attorney General to deport aliens sentenced to imprisonment before the completion of the sentence.

IN THE HOUSE OF REPRESENTATIVES

JUNE 16, 1993

Mr. SCHUMER introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act to provide for confinement in a Federal facility of illegal aliens sentenced to imprisonment under State law and to authorize the Attorney General to deport aliens sentenced to imprisonment before the completion of the sentence.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Aliens Incarceration Act of 1993".

SEC. 2. DEPORTATION PRIOR TO COMPLETION OF SENTENCE OF IMPRISONMENT.

Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

"(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

"(2) The Attorney General may deport an alien prior to the completion of a sentence of imprisonment—

"(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that the alien has been adequately punished and that such deportation of the alien is appropriate; or

"(B) in the case of an alien in the custody of a State, if the chief State official exercising authority with respect to the incarceration of the alien determines (i) that the alien has been adequately punished and that such deportation is appropriate, and (ii) submits a written request to the Attorney General that such alien be so deported.".

SEC. 3. JUDICIAL ORDER OF DEPORTATION FOR CERTAIN ALIENS AT TIME OF CONVICTION.

(a) IN GENERAL.—Subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following:

"§ 3560. Order of deportation for certain aliens

"The court, upon sentencing an individual who is an alien for an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act), shall include in a sentencing order a declaration that the individual is deportable. Any presentence report required under the Rules of Criminal Procedure with respect to the sentencing of any individual for such a felony shall include whether or not such individual is an alien.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following new item:

"3560. Order of deportation for certain aliens.".

(c) DEPORTATION PROCEDURES.—Section 242A of the Immigration and Nationality Act (18 U.S.C. 1252a) is amended by adding at the end the following:

"(f) DEPORTATION PURSUANT TO A JUDICIAL ORDER.—An alien subject to a judicial order of deportation under section 3560 of title 18, United States Code, shall be deported consistent with section 242(h).".

SEC. 4. FEDERAL INCARCERATION OF UNDOCUMENTED CRIMINAL ALIENS.

(a) FEDERAL INCARCERATION.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following:

"(j)(1) The Attorney General shall take into the custody of the Federal Government, and shall incarcerate for a determinate sentence of imprisonment, an undocumented criminal alien if—

"(A) the chief State official exercising authority with respect to the incarceration of the undocumented criminal alien submits a written request to the Attorney General; and

"(B) the undocumented criminal alien is sentenced to a determinate term of imprisonment.

"(2) Undocumented criminal aliens taken into the custody of the Attorney General under paragraph (1) may be deported under subsection (h)(2)(A).

"(3) For purposes of this subsection, the term 'undocumented criminal alien' means an alien who—

"(A) has been convicted of a felony and sentenced to a term of imprisonment, and

"(B)(i) entered the United States without inspection or at any time or place other than as designated by the Attorney General, or

"(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State.".

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103D CONGRESS
1ST SESSION

H. R. 2730

To amend the Immigration and Nationality Act concerning exclusion from the United States on the basis of membership in a terrorist organization.

IN THE HOUSE OF REPRESENTATIVES

JULY 23, 1993

Ms. SNOWE (for herself, Mr. MCCOLLUM, and Mr. GILMAN) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend the Immigration and Nationality Act concerning exclusion from the United States on the basis of membership in a terrorist organization.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. MEMBERSHIP IN A TERRORIST ORGANIZATION AS A BASIS FOR EXCLUSION FROM THE UNITED STATES UNDER THE IMMIGRATION AND NATIONALITY ACT.

Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)(II) by inserting "or" at the end;

(2) by adding after clause (i)(II) the following:

"(III) is a member of an organization that engages in, or has engaged in, terrorist activity or who actively supports or advocates terrorist activity,"; and

(3) by adding after clause (iii) the following:

"(iv) TERRORIST ORGANIZATION DEFINED.—As used in this Act, the term 'terrorist organization' means an organization which commits terrorist activity as determined by the Attorney General, in consultation with the Secretary of State.".

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103D CONGRESS
1ST SESSION

H. R. 2993

To provide that information concerning the deportation of certain aliens shall be available through the National Crime Information Center.

IN THE HOUSE OF REPRESENTATIVES

AUGUST 6, 1993

Mr. SANGMEISTER introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To provide that information concerning the deportation of certain aliens shall be available through the National Crime Information Center.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. NATIONAL CRIME INFORMATION CENTER.

(a) IMMIGRATION AND NATURALIZATION SERVICE ACCESS.—Notwithstanding any other provision of law, information shall be entered and available through the computerized information system of the National Crime Information Center concerning any alien against whom a final order of deportation has been entered pursuant to section 242(b) of the Immigration and Nationality Act and any

alien who has failed to appear for any reason for a scheduled deportation proceeding under section 242(b) of such Act and whose whereabouts are unknown.

(b) AUTHORIZATION OF APPROPRIATIONS.—In addition to such other sums as are authorized to be appropriated, there are authorized to be appropriated for the Immigration and Naturalization Service such sums as may be necessary for fiscal year 1994 to improve recordkeeping and provide staff to meet response requirements of the National Crime Information Center in carrying out subsection (a).

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103D CONGRESS
1ST SESSION

H. R. 3302

To amend title 18, United States Code, to modify the penalties for certain passport and visa related offenses.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 19, 1993

Mr. GILMAN (for himself, Mr. MCCOLLUM, Mr. HYDE, and Mr. SOLOMON) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To amend title 18, United States Code, to modify the penalties for certain passport and visa related offenses.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Passport and Visa Offenses Penalties Improvement Act of 1993".

SEC. 2. PASSPORT AND VISA OFFENSES PENALTIES IMPROVEMENT.

(a) IN GENERAL.—Chapter 75 of title 18, United States Code, is amended—

(1) in section 1541, by striking "not more than $500 or imprisoned not more than one year" and inserting "under this title or imprisoned not more than 10 years";

(2) in each of sections 1542, 1543, and 1544, by striking "not more than $2,000 or imprisoned not more than five years" and inserting "under this title or imprisoned not more than 10 years";

(3) in section 1545, by striking "not more than $2,000 or imprisoned not more than three years" and inserting "under this title or imprisoned not more than 10 years";

(4) in section 1546(a), by striking "five years" and inserting "10 years";

(5) in section 1546(b), by striking "in accordance with this title, or imprisoned not more than two years" and inserting "under this title or imprisoned not more than 10 years"; and

(6) by adding at the end the following:

"§ 1547. Alternative imprisonment maximum for certain offenses

"Notwithstanding any other provision of this title, the maximum term of imprisonment that may be imposed for an offense under this chapter (other than an offense under section 1545)—

"(1) if committed to facilitate a drug trafficking crime (as defined in 929(a) of this title) is 15 years; and

"(2) if committed to facilitate an act of international terrorism (as defined in section 2331 of this title) is 20 years.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of chapter 75 of title 18, United States Code, is amended by adding at the end the following new item:

"1547. Alternative imprisonment maximum for certain offenses.".

(c) ASSET FORFEITURE.—Section 981(a)(1) of title 18, United States Code, is amended by inserting after subparagraph (F) the following:

"(G) Any property used in committing an offense under section 1543 or 1546 of this title or for which the maximum authorized imprisonment is set by section 1547 of this title.".

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103D CONGRESS
1ST SESSION

H. R. 3320

To curb criminal activity by aliens, to defend against acts of international terrorism, to protect American workers from unfair labor competition, and to relieve pressure on public services by strengthening border security and stabilizing immigration into the United States.

IN THE HOUSE OF REPRESENTATIVES

OCTOBER 20, 1993

Mr. BILBRAY (for himself, Mr. GOODLATTE, Mr. HUNTER, Mr. LEHMAN, and Mr. TRAFICANT) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To curb criminal activity by aliens, to defend against acts of international terrorism, to protect American workers from unfair labor competition, and to relieve pressure on public services by strengthening border security and stabilizing immigration into the United States.

TITLE IV—CRIMINAL ALIENS

SEC. 401. EXPANSION IN DEFINITION OF "AGGRAVATED FELONY".

(a) EXPANSION IN DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including any drug trafficking crime as defined in section 924(c) of title 18, United States Code;

"(C) any illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code, or in explosive materials as defined in section 841(c) of title 18, United States Code;

"(D) any offense described in (i) section 1956 of title 18, United States Code (relating to laundering of monetary instruments) or (ii) section 1957 of such title (relating to engaging in monetary transactions in property derived from specific unlawful activity) if the value of the funds exceeded $100,000;

"(E) any offense described in—

"(i) subsection (h) or (i) of section 842, title 18, United States Code, or subsection (d), (e), (f), (g), (h), or (i) of section 844 of title 18, United States Code (relating to explosive materials offenses),

"(ii) paragraph (1), (2), (3), (4), or (5) of section 922(g), or section 922(j), section 922(n), section 922(o), section 922(p), section 922(r), section 924(b), or section 924(h) of title 18, United States Code (relating to firearms offenses), or

"(iii) section 5861 of title 26, United States Code (relating to firearms offenses);

"(F) any crime of violence (as defined in section 16 of title 18, United States Code, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(G) any theft offense (including receipt of stolen property) or any burglary offense, where a sentence of 5 years imprisonment or more may be imposed;

"(H) any offense described in section 875, section 876, section 877, or section 1202 of title 18,

United States Code (relating to the demand for or receipt of ransom);

"(I) any offense described in section 2251, section 2251A or section 2252 of title 18, United States Code (relating to child pornography);

"(J) any offense described in—

"(i) section 1962 of title 18, United States Code (relating to racketeer influenced corrupt organizations), or

"(ii) section 1084 (if it is a second or subsequent offense) or section 1955 of such title (relating to gambling offenses), where a sentence of 5 years imprisonment or more may be imposed;

"(K) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, where a sentence of 5 years imprisonment or more may be imposed;

"(L) any offense—

"(i) described in section 2421, section 2422, or section 2423 of title 18, United States Code (relating to transportation for the purpose of prostitution) for commercial advantage, or

"(ii) described in section 1581 through 1585, or section 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(M) any offense relating to perjury or subornation of perjury where a sentence of 5 years imprisonment or more may be imposed;

"(N) any offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), section 798 (relating to disclosure of classified information), section 2153 (relating to sabotage) or section 2381 or section 2382 (relating to treason) of title 18, United States Code, or

"(ii) section 421 of title 50, United States Code (relating to protecting the identity of undercover intelligence agents);

"(O) any offense—

"(i) involving fraud or deceit where the loss to the victim or victims exceeded $200,000; or

"(ii) described in section 7201 of title 26, United States Code (relating to tax evasion), where the tax loss to the Government exceeds $200,000;

"(P) any offense described in section 274(a)(1) of title 18, United States Code (relating to alien smuggling) for the purpose of commercial advantage;

"(Q) any violation of section 1546(a) of title 18, United States Code (relating to document fraud), for the purpose of commercial advantage;

"(R) any offense relating to failing to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony, where a sentence of 2 years or more may be imposed; or any attempt or conspiracy to commit any such act. Such term applies to offenses described in this paragraph whether in violation of Federal or State law and applies to such offenses in violation of the laws of a foreign country for which the term of imprisonment was completed within the previous 15 years; or

"(S) any felony committed by an alien on or after the date that alien had received a waiver of deportation under sections 212 or 241 of this Act (8 U.S.C. 1182 or 1251) after commission of a prior felony.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to all convictions entered before, on, or after the date of enactment of this Act.

SEC. 402. DEPORTATION PROCEDURES.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following:

"(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

"(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

"(2) An alien is described in this paragraph if the alien—

"(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

"(3) The Attorney General may delegate the authority in this section to the Commissioner or to any District Director of the Service.

"(4) No alien described in this section shall be eligible for—

"(A) any relief from deportation that the Attorney General may grant in his discretion, or

"(B) relief under section 243(h).

"(5) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, in order that the alien has an opportunity to apply for judicial review under section 106.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242(A)" after "aggravated felony"; and

(3) by adding at the end the following new subsection;

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien

is in fact as alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AND CONFORMING CHANGES.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended as follows:

(1) In subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting "(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) In subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) By striking out subsection (c);

(4) In subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any"; and

(C) by striking "(2)" and inserting "(B)";

(5) In subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)".

(6) By inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States.".

(7) The heading of such section is amended to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 403. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—In any criminal case subject to the jurisdiction of any court of the United States

or of any State, such court may enter a judicial order of deportation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of a felony).

"(2) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AND CONFORMING CHANGES.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking out "The" and inserting in lieu thereof, "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 404. DEFENSES TO DEPORTATION.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C.

1182(c)) is amended by striking out "has served for such felony or felonies" and all that follows through the period and inserting in lieu thereof "has been sentenced for such felony or felonies to a term of imprisonment of at least 5 years: *Provided,* That the time for appealing such conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by—

(1) striking out the final sentence and inserting in lieu thereof the following new subparagraph:

"(E) the alien has been convicted of a felony."; and

(2) striking out the "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 405. ENHANCED PENALTIES FOR REENTRY OR FAILURE TO DEPART.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking out "paragraph (2), (3), or 4 of" the first time it appears, and

(2) by striking out "shall be imprisoned not more than ten years" and inserting in lieu thereof, "shall be imprisoned not more than two years, or shall be imprisoned not more than ten years if the alien is a member of any of the classes described in paragraph (2), (3), or (4) of section 241(a)".

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1), by (A) inserting after "commission of" the following: "two or more misdemeanors or", and (B) striking out "5" and inserting in lieu thereof "10",

(2) in paragraph (2), by striking out "15" and inserting in lieu thereof "20", and

(3) by adding at the end the following sentence: "For the purposes of this subsection, the term 'deportation' shall include any agreement where an alien stipulates to deportation during a criminal trial under either Federal or State law.".

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by inserting after subsection (b) the following new subsection:

"(c) In any criminal proceeding under this section, no alien may challenge the validity of the deportation order described in subsection (a)(1) or subsection (b).".

SEC. 406. DEPORTATION OF IMPRISONED ALIENS.

Section 242(h) of the Immigration and Nationality Act (8 U.S.C. 1252(h)) is amended to read as follows:

"(h)(1) Except as provided in paragraph (2), an alien sentenced to imprisonment may not be deported until such imprisonment has been terminated by the release of the alien from confinement. Parole, supervised release, probation, or possibility of rearrest or further confinement in respect of the same offense shall not be a ground for deferral of deportation.

"(2) The Attorney General may deport an alien prior to the completion of a sentence of imprisonment—

"(A) in the case of an alien in the custody of the Attorney General, if the Attorney General determines that the alien has been adequately punished and that such deportation of the alien is appropriate; or

"(B) in the case of an alien in the custody of a State, if the chief State official exercising authority with respect to the incarceration of the alien determines (i) that the alien has been adequately punished and that such deportation is appropriate, and

(ii) submits a written request to the Attorney General that such alien be so deported.".

SEC. 407. JUDICIAL ORDER OF DEPORTATION.

(a) IN GENERAL.—Subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following:

"§ 3560. Order of Deportation for certain aliens

"The court, upon sentencing an individual who is an alien for an aggravated felony (as defined in section 101(a)(43) of the Immigration and Nationality Act, shall include in a sentencing order a declaration that the individual is deportable. And presentence report required under the Rules of Criminal Procedure with respect to the sentencing of any individual for such a felony shall include whether or not such individual is an alien.".

(b) CLERICAL AMENDMENT.—The table of sections at the beginning of subchapter A of chapter 227 of title 18, United States Code, is amended by adding at the end the following new item:

"3560. Order of deportation for certain aliens.".

(c) DEPORTATION PROCEDURES.—Section 242A of the Immigration and Nationality Act (18 U.S.C. 1252a) is amended by adding at the end the following:

"(f) DEPORTATION PURSUANT TO A JUDICIAL ORDER.—An alien subject to a judicial order of deporta-

tion under section 3560 of title 18, United States Code, shall be deported consistent with section 242(h).".

SEC. 408. FEDERAL INCARCERATION.

(a) FEDERAL INCARCERATION.—Section 242 of the Immigration and Nationality Act (8 U.S.C. 1252) is amended by adding at the end the following:

"(j)(1) The Attorney General shall take into the custody of the Federal Government, and shall incarcerate for a determinate sentence of imprisonment, a criminal alien described in paragraph (3) if—

"(A) the chief State official exercising authority with respect to the incarceration of the undocumented criminal alien submits a written request to the secretary;

"(B) the undocumented criminal is sentenced to a determinate term of imprisonment;

"(C) the State in which the official described in paragraph A exercises authority cooperates, and requires local governments or agencies in such State to cooperate, with Federal immigration authorities with respect to the identification, location, arrest, prosecution, detention, and deportation of aliens who are not lawfully present in the United States; and

"(D) adequate Federal facilities are available for the incarceration of the criminal alien.

"(2) Criminal aliens taken into the custody of the Attorney General under paragraph (1) may be deported under subsection (h)(2)(A).

"(3) An alien is described in this paragraph if the alien—

"(A) has been convicted of a felony and sentenced to a term of imprisonment, and

"(B)(i) had entered the United States without inspection or at any time or place other than as designated by the Attorney General, or

"(ii) was the subject of exclusion or deportation proceedings at the time he or she was taken into custody by the State.".

SEC. 409. INCREASED PENALTY FOR VISA FRAUD.

(a) FALSE STATEMENT.—Section 1542 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(b) FORGERY.—Section 1543 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(c) MISUSE OF PASSPORT.—Section 1544 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(d) SAFE CONDUCT VIOLATION.—Section 1545 of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than three years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

(e) FRAUD AND MISUSE OF VISAS.—Section 1546(a) of title 18, United States Code, is amended by striking "fined not more than $2,000 or imprisoned not more than five years, or both" and inserting "fined under this title or imprisoned not more than 10 years, or both".

SEC. 410. NOTIFICATION OF ALIEN ARREST.

Whenever a State or local law enforcement agency arrests an immigrant or nonimmigrant alien for the commission of a felony, that State or local law enforcement agency shall provide the District Director of the Immigration and Naturalization Service for the district in which the State or local law enforcement agency has jurisdiction the following information within 72 hours of the arrest: the name of the alien; the alien's place of birth; the alien's date of birth; the alien's alien registration number, if any;

the nature of the offense for which the alien was arrested; and any available information on bond, future hearings and proceedings.

SEC. 411. EXCLUDABILITY OF UNLAWFUL ENTRANTS.

Section 204(c) of the Immigration and Nationality Act is amended by adding a comma after the word "laws" the first time it appears, striking the word "or" prior to "(2)" and inserting the following before the period: "or (3) the petition was submitted by or on behalf of any alien who entered or attempted to enter the United States unlawfully, who entered or attempted to enter with fraudulent, forged or stolen documents, who failed to present the immigration officer any document produced when the alien boarded a common carrier for travel to the United States, or who entered the United States lawfully as a nonimmigrant but violated the terms of his or her nonimmigrant visa".

SEC. 412. EXCLUSION OF IMMIGRATION LAW VIOLATORS.

(a) EXCLUSION OF CRIMINAL ALIEN.—Section 212(a)(2)(A)(i) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(2)(A)(i)) is amended by striking "or" at the end of subparagraph (I) and inserting the following new subparagraph prior to the phrase "is excludable": "or (III) any violation of any immigration law or any violation

of any federal or State statute prohibiting fraud, including any statutes prohibiting income tax evasion".

(b) EXCLUSION REFORM.—Section 212 of the Immigration and Nationality Act (8 U.S.C. 1182) is amended by striking paragraph (c) and inserting the following as new paragraph (c):

"(c) Aliens lawfully admitted for permanent residence who temporarily proceeded abroad voluntarily and not under an order of deportation shall not be admitted if that alien is excludable under paragraph (a).".

SEC. 413. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.—No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)), shall be construed to create any right or benefit, substantive or procedural, which is

legally enforceable by any party against the United States, its agencies, its officers, or any other person.

I

103D CONGRESS
2D SESSION

H. R. 3860

To amend the Immigration and Nationality Act and other laws of the United States relating to border security, illegal immigration, alien eligibility for Federal financial benefits and services, criminal activity by aliens, alien smuggling, fraudulent document use by aliens, asylum, terrorist aliens, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 10, 1994

Mr. SMITH of Texas (for himself, Mr. ARMEY, Mr. BAKER of California, Mr. BARTON of Texas, Mr. BURTON of Indiana, Mr. CANADY, Mr. COLLINS of Georgia, Mr. CUNNINGHAM, Mr. DELAY, Mr. DOOLITTLE, Mr. FISH, Mr. GALLEGLY, Mr. GILMAN, Mr. GINGRICH, Mr. GOODLATTE, Mr. GOSS, Mr. GREENWOOD, Mr. HUNTER, Mr. SAM JOHNSON of Texas, Mr. KIM, Mr. KINGSTON, Mr. LEVY, Mr. LEWIS of Florida, Mr. MCCOLLUM, Mr. MCKEON, Mrs. MEYERS of Kansas, Mr. MILLER of Florida, Ms. MOLINARI, Mr. MOORHEAD, Mr. ROHRABACHER, Mr. ROYCE, Mr. SHAW, Mr. STEARNS, and Mr. SHAYS) introduced the following bill; which was referred jointly to the Committees on the Judiciary, Ways and Means, Energy and Commerce, Banking, Finance and Urban Affairs, Foreign Affairs, and Government Operations

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A BILL

To amend the Immigration and Nationality Act and other laws of the United States relating to border security, illegal immigration, alien eligibility for Federal financial benefits and services, criminal activity by aliens, alien smuggling, fraudulent document use by aliens, asylum, terrorist aliens, and for other purposes.

TITLE II—ALIEN SMUGGLING

SEC. 201. EXPANDED FORFEITURE FOR SMUGGLING OR HARBORING ILLEGAL ALIENS.

(a) IN GENERAL.—Paragraph (1) of section 274(b) of the Immigration and Nationality Act (8 U.S.C. 1324(b)) is amended to read as follows:

"(1)(A) Except as provided in subparagraph (B), the following property shall be subject to seizure and forfeiture:

"(i) Any conveyance, including any vessel, vehicle, or aircraft, which has been or is being used in the commission of a violation of subsection (a).

"(ii) Any property, real or personal, which—

"(I) constitutes, or is derived from or traceable to, the proceeds obtained directly or indirectly from the commission of a violation of subsection (a), or

"(II) is used to facilitate, or is intended to be so used in the commission of, a violation of subsection (a)(1)(A).

"(B)(i) No property used by any person as a common carrier in the transaction of business as a common carrier shall be forfeited under this section, unless the owner or other person with lawful custody of the property was a

consenting party to or privy to the violation of subsection (a) or of section 274A(a)(1) or 274A(a)(2).

"(ii) No property shall be forfeited under the provisions of this section by reason of any act or omission established by the owner to have been committed or omitted by a person other than the owner while the property was unlawfully in the possession of a person other than the owner in violation of the criminal laws of the United States or of any State.

"(iii) No property shall be forfeited under the provisions of this section to the extent of an interest of the owner, by reason of any act or omission established by the owner to have been committed or omitted without the knowledge, consent, or willful disregard of the owner, unless the act or omission was committed or omitted by an employee or agent of the owner or other person with lawful custody of the property with the intent of furthering the business interests of, or to confer any other benefit upon, the owner or other person with lawful custody of the property.".

(b) CONFORMING AMENDMENTS.—Section 274(b) of such Act (8 U.S.C. 1324(b)) is amended—

(1) in paragraph (2)—

(A) by striking "conveyance" and inserting "property" each place it appears, and

(B) by striking "is being used in" and inserting "is being used in, is facilitating, has facilitated, is facilitating or was intended to facilitate"; and

(2) in paragraphs (4) and (5), by striking "a conveyance", "any conveyance", and "conveyance" and inserting "property" each place it appears.

SEC. 202. INCLUDING ALIEN SMUGGLING AS A RACKETEERING ACTIVITY FOR PURPOSES OF RACKETEERING INFLUENCED AND CORRUPT ORGANIZATIONS (RICO) ENFORCEMENT AUTHORITY.

Section 1961(1) of title 18, United States Code, is amended—

(1) by striking "or" before "(E) any act", and

(2) by inserting before the period at the end the following: ", or (F) any act which is indictable under section 274(a)(1) of the Immigration and Nationality Act (relating to alien smuggling)".

SEC. 203. ENHANCED PENALTIES FOR CERTAIN ALIEN SMUGGLING AND FOR EMPLOYERS WHO KNOWINGLY EMPLOY SMUGGLED ALIENS.

Section 274(a)(1) (8 U.S.C. 1324(a)(1)) is amended—

(1) by striking "or" at the end of subparagraph (C),

(2) by striking the comma at the end of subparagraph (D) and inserting "; or",

(3) by inserting after subparagraph (D) the following:

"(E) contracts or agrees with another party for that party to provide, for employment by the person or another, an alien who is not authorized to be employed in the United States, knowing that such party intends to cause such alien to be brought into the United States in violation of the laws of the United States,", and

(4) by striking "five years" and inserting "ten years".

SEC. 204. WIRETAP AUTHORITY FOR ALIEN SMUGGLING INVESTIGATIONS.

Section 2516(1) of title 18, United State Code, is amended—

(1) in paragraph (c) by inserting after "weapons)," the following: "or a felony violation of section 1028 (relating to production of false identification documentation), section 1542 (relating to false statements in passport applications), section 1546

(relating to fraud and misuse of visas, permits, and other documents),";

(2) by striking out "or" after paragraph (l) and redesignating paragraphs (m), (n), and (o) as paragraphs (n), (o), and (p), respectively; and

(3) by inserting after paragraph (l) the following new paragraph:

"(m) a violation of section 274 of the Immigration and Nationality Act (8 U.S.C. 1324) (relating to alien smuggling), of section 277 of the Immigration and Nationality Act (8 U.S.C. 1327) (relating to the smuggling of aliens convicted of aggravated felonies or of aliens subject to exclusion on grounds of national security), or of section 278 of the Immigration and Nationality Act (8 U.S.C. 1328) (relating to smuggling of aliens for the purpose of prostitution or other immoral purpose);".

TITLE V—CRIMINAL ALIENS

SEC. 501. AUTHORIZING REGISTRATION OF ALIENS ON CRIMINAL PROBATION OR CRIMINAL PAROLE.

Section 263(a) of the Immigration and Nationality Act (8 U.S.C. 1303(a)) is amended by striking "and (5)" and inserting "(5) aliens who are or have been on criminal probation or criminal parole pursuant to the laws of the United States or of any State, and (6)".

SEC. 502. EXPANSION IN DEFINITION OF "AGGRAVATED FELONY".

(a) EXPANSION IN DEFINITION.—Section 101(a)(43) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(43)) is amended to read as follows:

"(43) The term 'aggravated felony' means—

"(A) murder;

"(B) any illicit trafficking in any controlled substance (as defined in section 102 of the Controlled Substances Act), including any drug trafficking crime as defined in section 924(c) of title 18, United States Code;

"(C) any illicit trafficking in any firearms or destructive devices as defined in section 921 of title 18, United States Code, or in explosive materials as defined in section 841(c) of title 18, United States Code;

"(D) any offense described in sections 1951 through 1963 of title 18, United States Code;

"(E) any offense described in—

"(i) subsections (h) or (i) of section 842, title 18, United States Code, or subsection (d), (e), (f), (g), (h), or (i) of section 844 of title 18, United States Code (relating to explosive materials offenses),

"(ii) paragraph (1), (2), (3), (4), or (5) of section 922(g), or section 922(j), section 922(n), section 922(o), section 922(p), section 922(r), section 924(b), or section 924(h) of title 18, United States Code (relating to firearms offenses), or

"(iii) section 5861 of title 26, United States Code (relating to firearms offenses);

"(F) any crime of violence (as defined in section 16 of title 18, United States Code, not including a purely political offense) for which the term of imprisonment imposed (regardless of any suspension of such imprisonment) is at least 5 years;

"(G) any theft offense (including receipt of stolen property) or any burglary offense, where a sentence of 5 years imprisonment or more may be imposed;

"(H) any offense described in section 875, section 876, section 877, or section 1202 of title 18, United States Code (relating to the demand for or receipt of ransom);

"(I) any offense described in section 2251, section 2251A or section 2252 of title 18,

United States Code (relating to child pornography);

"(J) any offense described in section 1084 of title 18, United States Code, where a sentence of 5 years imprisonment or more may be imposed;

"(K) any offense relating to commercial bribery, counterfeiting, forgery or trafficking in vehicles whose identification numbers have been altered, where a sentence of 5 years imprisonment or more may be imposed;

"(L) any offense—

"(i) relating to the owning, controlling, managing or supervising of a prostitution business,

"(ii) described in section 2421 through 2424 of title 18, United States Code, for commercial advantage, or

"(iii) described in sections 1581 through 1585, or section 1588, of title 18, United States Code (relating to peonage, slavery, and involuntary servitude);

"(M) any offense relating to perjury or subornation of perjury where a sentence of 5 years imprisonment or more may be imposed;

"(N) any offense described in—

"(i) section 793 (relating to gathering or transmitting national defense information), section 798 (relating to disclosure of classified information), section 2153 (relating to sabotage) or section 2381 or section 2382 (relating to treason) of title 18, United States Code, or

"(ii) section 421 of title 50, United States Code (relating to protecting the identity of undercover intelligence agents);

"(O) any offense—

"(i) involving fraud or deceit where the loss to the victim or victims exceeded $200,000; or

"(ii) described in section 7201 of title 26, United States Code (relating to tax evasion), where the tax loss to the Government exceeds $200,000;

"(P) any offense described in section 274(a)(1) of the Immigration and Nationality Act (relating to alien smuggling) for the purpose of commercial advantage;

"(Q) any violation of section 1546(a) of title 18, United States Code (relating to docu-

ment fraud), for the purpose of commercial advantage; or

"(R) any offense relating to failing to appear before a court pursuant to a court order to answer to or dispose of a charge of a felony, where a sentence of 2 years or more may be imposed;

or any attempt or conspiracy to commit any such act. Such term applies to offenses described in this paragraph whether in violation of Federal or State law and applies to such offenses in violation of the laws of a foreign country for which the term of imprisonment was completed within the previous 15 years.".

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to all convictions entered before, on, or after the date of enactment of this Act.

SEC. 503. DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) ELIMINATION OF ADMINISTRATIVE HEARING FOR CERTAIN CRIMINAL ALIENS.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by adding at the end the following:

"(c) DEPORTATION OF ALIENS WHO ARE NOT PERMANENT RESIDENTS.—

"(1) Notwithstanding section 242, and subject to paragraph (5), the Attorney General may issue a final order of deportation against any alien described in paragraph (2) whom the Attorney General determines to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony).

"(2) An alien is described in this paragraph if the alien—

"(A) was not lawfully admitted for permanent residence at the time that proceedings under this section commenced, or

"(B) had permanent resident status on a conditional basis (as described in section 216) at the time that proceedings under this section commenced.

"(3) The Attorney General may delegate the authority in this section to the Commissioner or to any District Director of the Service.

"(4) No alien described in this section shall be eligible for—

"(A) any relief from deportation that the Attorney General may grant in his discretion, or

"(B) relief under section 243(h).

"(5) The Attorney General may not execute any order described in paragraph (1) until 14 calendar days have passed from the date that such order was issued, in order that the alien has an opportunity to apply for judicial review under section 106.".

(b) LIMITED JUDICIAL REVIEW.—Section 106 of the Immigration and Nationality Act (8 U.S.C. 1105a) is amended—

(1) in the first sentence of subsection (a), by inserting "or pursuant to section 242A" after "under section 242(b)";

(2) in subsection (a)(1) and subsection (a)(3), by inserting "(including an alien described in section 242A)" after "aggravated felony"; and

(3) by adding at the end the following new subsection:

"(d) Notwithstanding subsection (c), a petition for review or for habeas corpus on behalf of an alien described in section 242A(c) may only challenge whether the alien is in fact an alien described in such section, and no court shall have jurisdiction to review any other issue.".

(c) TECHNICAL AND CONFORMING CHANGES.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended as follows:

(1) In subsection (a)—

(A) by striking "(a) IN GENERAL.—" and inserting "(b) DEPORTATION OF PERMANENT RESIDENT ALIENS.—(1) IN GENERAL.—"; and

(B) by inserting in the first sentence "permanent resident" after "correctional facilities for";

(2) In subsection (b)—

(A) by striking "(b) IMPLEMENTATION.—" and inserting "(2) IMPLEMENTATION.—"; and

(B) by striking "respect to an" and inserting "respect to a permanent resident";

(3) By striking out subsection (c);

(4) In subsection (d)—

(A) by striking "(d) EXPEDITED PROCEEDINGS.—(1)" and inserting "(3) EXPEDITED PROCEEDINGS.—(A)";

(B) by inserting "permanent resident" after "in the case of any"; and

(C) by striking "(2)" and inserting "(B)";

(5) In subsection (e)—

(A) by striking "(e) REVIEW.—(1)" and inserting "(4) REVIEW.—(A)";

(B) by striking the second sentence; and

(C) by striking "(2)" and inserting "(B)";

(6) By inserting after the section heading the following new subsection:

"(a) PRESUMPTION OF DEPORTABILITY.—An alien convicted of an aggravated felony shall be conclusively presumed to be deportable from the United States."; and

(7) The heading of such section is amended to read as follows:

"EXPEDITED DEPORTATION OF ALIENS CONVICTED OF COMMITTING AGGRAVATED FELONIES".

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens against whom deportation proceedings are initiated after the date of enactment of this Act.

SEC. 504. JUDICIAL DEPORTATION.

(a) JUDICIAL DEPORTATION.—Section 242A of the Immigration and Nationality Act (8 U.S.C. 1252a) is amended by inserting at the end the following new subsection:

"(d) JUDICIAL DEPORTATION.—

"(1) AUTHORITY.—Notwithstanding any other provision of this Act, a United States district court shall have jurisdiction to enter a judicial order of de-

portation at the time of sentencing against an alien whose criminal conviction causes such alien to be deportable under section 241(a)(2)(A)(iii) (relating to conviction of an aggravated felony), if such an order has been requested prior to sentencing by the United States Attorney with the concurrence of the Commissioner.

"(2) PROCEDURE.—

"(A) The United States Attorney shall provide notice of intent to request judicial deportation promptly after the entry in the record of an adjudication of guilt or guilty plea. Such notice shall be provided to the court, to the alien, and to the alien's counsel of record.

"(B) Notwithstanding section 242B, the United States Attorney, with the concurrence of the Commissioner, shall file at least 20 days prior to the date set for sentencing a charge containing factual allegations regarding the alienage of the defendant and satisfaction by the defendant of the definition of aggravated felony.

"(C) If the court determines that the defendant has presented substantial evidence to establish prima facie eligibility for relief from

deportation under section 212(c), the Commissioner shall provide the court with a recommendation and report regarding the alien's eligibility for relief under such section. The court shall either grant or deny the relief sought.

"(D)(i) The alien shall have a reasonable opportunity to examine the evidence against him or her, to present evidence on his or her own behalf, and to cross-examine witnesses presented by the Government.

"(ii) The court, for the purposes of determining whether to enter an order described in paragraph (1), shall only consider evidence that would be admissible in proceedings conducted pursuant to section 242(b).

"(iii) Nothing in this subsection shall limit the information a court of the United States may receive or consider for the purposes of imposing an appropriate sentence.

"(iv) The court may order the alien deported if the Attorney General demonstrates by clear and convincing evidence that the alien is deportable under this Act.

"(3) NOTICE, APPEAL, AND EXECUTION OF JUDICIAL ORDER OF DEPORTATION.—

"(A)(i) A judicial order of deportation or denial of such order may be appealed by either party to the court of appeals for the circuit in which the district court is located.

"(ii) Except as provided in clause (iii), such appeal shall be considered consistent with the requirements described in section 106.

"(iii) Upon execution by the defendant of a valid waiver of the right to appeal the conviction on which the order of deportation is based, the expiration of the period described in section 106(a)(1), or the final dismissal of an appeal from such conviction, the order of deportation shall become final and shall be executed at the end of the prison term in accordance with the terms of the order.

"(B) As soon as is practicable after entry of a judicial order of deportation, the Commissioner shall provide the defendant with written notice of the order of deportation, which shall designate the defendant's country of choice for deportation and any alternate country pursuant to section 243(a).

"(4) DENIAL OF JUDICIAL ORDER.—Denial of a request for a judicial order of deportation shall not preclude the Attorney General from initiating deportation proceedings pursuant to section 242 upon the same ground of deportability or upon any other ground of deportability provided under section 241(a).".

(b) TECHNICAL AND CONFORMING CHANGES.—The ninth sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by striking out "The" and inserting in lieu thereof, "Except as provided in section 242A(d), the".

(c) EFFECTIVE DATE.—The amendments made by this section shall apply to all aliens whose adjudication of guilt or guilty plea is entered in the record after the date of enactment of this Act.

SEC. 505. RESTRICTING DEFENSES TO DEPORTATION FOR CERTAIN CRIMINAL ALIENS.

(a) DEFENSES BASED ON SEVEN YEARS OF PERMANENT RESIDENCE.—The last sentence of section 212(c) of the Immigration and Nationality Act (8 U.S.C. 1182(c)) is amended by striking out "has served for such felony or felonies" and all that follows through the period and inserting in lieu thereof "has been sentenced for such felony or felonies to a term of imprisonment of at least

5 years, provided that the time for appealing such conviction or sentence has expired and the sentence has become final.".

(b) DEFENSES BASED ON WITHHOLDING OF DEPORTATION.—Section 243(h)(2) of the Immigration and Nationality Act (8 U.S.C. 1253(h)(2)) is amended by—

(1) striking out the final sentence and inserting in lieu thereof the following new subparagraph:

"(E) the alien has been convicted of an aggravated felony."; and

(2) striking out the "or" at the end of subparagraph (C) and inserting "or" at the end of subparagraph (D).

SEC. 506. ENHANCING PENALTIES FOR FAILING TO DEPART, OR REENTERING, AFTER FINAL ORDER OF DEPORTATION.

(a) FAILURE TO DEPART.—Section 242(e) of the Immigration and Nationality Act (8 U.S.C. 1252(e)) is amended—

(1) by striking out "paragraph (2), (3), or 4 of" the first time it appears, and

(2) by striking out "shall be imprisoned not more than ten years" and inserting in lieu thereof, "shall be imprisoned not more than two years, or shall be imprisoned not more than ten years if the

alien is a member of any of the classes described in paragraph (2), (3), or (4) of section 241(a).".

(b) REENTRY.—Section 276(b) of the Immigration and Nationality Act (8 U.S.C. 1326(b)) is amended—

(1) in paragraph (1), by (A) inserting after "commission of" the following: "three or more misdemeanors or", and (B) striking out "5" and inserting in lieu thereof "10",

(2) in paragraph (2), by striking out "15" and inserting in lieu thereof "20", and

(3) by adding at the end the following sentence: "For the purposes of this subsection, the term 'deportation' shall include any agreement where an alien stipulates to deportation during a criminal trial under either Federal or State law.".

(c) COLLATERAL ATTACKS ON UNDERLYING DEPORTATION ORDER.—Section 276 of the Immigration and Nationality Act (8 U.S.C. 1326) is amended by inserting after subsection (b) the following new subsection:

"(c) In any criminal proceeding under this section, no alien may challenge the validity of the deportation order described in subsection (a)(1) or subsection (b) unless the alien demonstrates—

"(1) that the alien exhausted the administrative remedies (if any) that may have been available to seek relief against such order,

"(2) that the deportation proceedings at which such order was issued improperly deprived the alien of the opportunity for judicial review, and

"(3) that the entry of such order was fundamentally unfair.".

SEC. 507. MISCELLANEOUS AND TECHNICAL CHANGES.

(a) FORM OF DEPORTATION HEARINGS.—The second sentence of section 242(b) of the Immigration and Nationality Act (8 U.S.C. 1252(b)) is amended by inserting before the period the following: "; except that nothing in this subsection shall preclude the Attorney General from authorizing proceedings by electronic or telephonic media (with or without the consent of the alien) or, where waived or agreed to by the parties, in the absence of the alien.".

(b) CONSTRUCTION OF EXPEDITED DEPORTATION REQUIREMENTS.— No amendment made by this Act and nothing in section 242(i) of the Immigration and Nationality Act (8 U.S.C. 1252(i)), shall be construed to create any right or benefit, substantive or procedural, which is legally enforceable by any party against the United States, its agencies, its officers or any other person.

SEC. 508. CRIMINAL ALIEN TRACKING CENTER.

(a) OPERATION.—The Commissioner of Immigration and Naturalization, with the cooperation of the Director of the Federal Bureau of Investigation and the heads of other agencies, shall, under the authority of section 242(a)(3)(A) of the Immigration and Nationality Act (8 U.S.C. 1252(a)(3)(A)), operate a criminal alien tracking center.

(b) PURPOSE.—The criminal alien tracking center shall be used to assist Federal, State, and local law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies.

(c) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section $2,000,000 for fiscal year 1995 and $5,000,000 for each of the fiscal years 1996, 1997, 1998, and 1999.

SEC. 509. PRISONER TRANSFER TREATY STUDY.

(a) REPORT TO CONGRESS.—Not later than 180 days after the date of the enactment of this Act, the Secretary of State and the Attorney General shall submit to the Congress a report that describes the use and effectiveness of the Prisoner Transfer Treaty (in this section referred to as the "Treaty") with Mexico to remove from the United States aliens who have been convicted of crimes in the United States.

(b) USE OF TREATY.—The report under subsection (a) shall include the following information:

(1) The number of aliens convicted of a criminal offense in the United States since November 30, 1977, who would have been or are eligible for transfer pursuant to the Treaty.

(2) The number of aliens described in paragraph (1) who have been transferred pursuant to the Treaty.

(3) The number of aliens described in paragraph (2) who have been incarcerated in full compliance with the Treaty.

(4) The number of aliens who are incarcerated in a penal institution in the United States who are eligible for transfer pursuant to the Treaty.

(5) The number of aliens described in paragraph (4) who are incarcerated in State and local penal institutions.

(c) EFFECTIVENESS OF TREATY.—The report under subsection (a) shall include the recommendations of the Secretary of State and the Attorney General to increase the effectiveness and use of, and full compliance with, the Treaty. In considering the recommendations under this subsection, the Secretary and the Attorney General shall consult with such State and local officials in areas dis-

proportionately impacted by aliens convicted of criminal offenses as the Secretary and the Attorney General consider appropriate. Such recommendations shall address the following areas:

(1) Changes in Federal laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States.

(2) Changes in State and local laws, regulations, and policies affecting the identification, prosecution, and deportation of aliens who have committed a criminal offense in the United States.

(3) Changes in the Treaty that may be necessary to increase the number of aliens convicted of crimes who may be transferred pursuant to the Treaty.

(4) Methods for preventing the unlawful reentry into the United States of aliens who have been convicted of criminal offenses in the United States and transferred pursuant to the Treaty.

(5) Any recommendations of appropriate officials of the Mexican Government on programs to achieve the goals of, and ensure full compliance with, the Treaty.

(6) An assessment of whether the recommendations under this subsection require the renegotiation of the Treaty.

(7) The additional funds required to implement each recommendation under this subsection.

SEC. 510. EXPEDITING CRIMINAL ALIEN DEPORTATION AND EXCLUSION.

(a) CONVICTED DEFINED.—Section 241(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1251(a)(2)) is amended by adding at the end the following new subparagraph:

"(E) CONVICTED DEFINED.—In this paragraph, the term 'convicted' means a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere, whether or not the alien appeals therefrom.".

(b) DEPORTATION OF CONVICTED ALIENS.—

(1) IMMEDIATE DEPORTATION.—Section 242(h) of such Act (8 U.S.C. 1252(h)) is amended—

(A) by striking "(h) An alien" and inserting "(h)(1) Subject to paragraph (2), an alien"; and

(B) by adding at the end the following new paragraph:

"(2) An alien sentenced to imprisonment may be deported prior to the termination of such imprisonment by the release of the alien from confinement, if the Service petitions the appropriate court or other entity with authority concerning the alien to release the alien into the custody of the Service for execution of an order of deportation.".

(2) PROHIBITION OF REENTRY INTO THE UNITED STATES.—Section 212(a)(2) of such Act (8 U.S.C. 1182(a)(2)) is amended—

(A) by redesignating subparagraph (F) as subparagraph (G); and

(B) by inserting after subparagraph (E) the following new subparagraph:

"(F) ALIENS DEPORTED BEFORE SERVING MINIMUM PERIOD OF CONFINEMENT.—In addition to any other period of exclusion which may apply an alien deported pursuant to section 242(h)(2) is excludable during the minimum period of confinement to which the alien was sentenced.".

(c) EXECUTION OF DEPORTATION ORDERS.—Section 242(i) of such Act (8 U.S.C. 1252(i)) is amended by adding at the end the following: "An order of deportation may not be executed until all direct appeals relating to the con-

viction which is the basis of the deportation order have been exhausted.".

TITLE VI—TERRORIST ALIENS

SEC. 601. REMOVAL OF ALIEN TERRORISTS.

The Immigration and Nationality Act (8 U.S.C. 1101 et seq.) is amended by inserting the following new section:

"REMOVAL OF ALIEN TERRORISTS

"SEC. 242C. (a) DEFINITIONS.—As used in this section—

"(1) the term 'alien terrorist' means any alien described in section 241(a)(4)(B);

"(2) the term 'classified information' has the same meaning as defined in section 1(a) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(3) the term 'national security' has the same meaning as defined in section 1(b) of the Classified Information Procedures Act (18 U.S.C. App. IV);

"(4) the term 'special court' means the court described in subsection (c) of this section; and

"(5) the term 'special removal hearing' means the hearing described in subsection (e) of this section.

"(b) APPLICATION FOR USE OF PROCEDURES.—The provisions of this section shall apply whenever the Attorney General certifies under seal to the special court that—

"(1) the Attorney General or Deputy Attorney General has approved of the proceeding under this section;

"(2) an alien terrorist is physically present in the United States; and

"(3) removal of such alien terrorist by deportation proceedings described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information.

"(c) SPECIAL COURT.—(1) The Chief Justice of the United States shall publicly designate up to 7 judges from up to 7 United States judicial districts to hear and decide cases arising under this section, in a manner consistent with the designation of judges described in section 103(a) of the Foreign Intelligence Surveillance Act (50 U.S.C. 1803(a)).

"(2) The Chief Justice may, in the Chief Justice's discretion, designate the same judges under this section as are designated pursuant to 50 U.S.C. 1803(a).

"(d) INVOCATION OF SPECIAL COURT PROCEDURE.—(1) When the Attorney General makes the application described in subsection (b), a single judge of the special court shall consider the application in camera and ex parte.

"(2) The judge shall invoke the procedures of subsection (e), if the judge determines that there is probable cause to believe that—

"(A) the alien who is the subject of the application has been correctly identified;

"(B) a deportation proceeding described in sections 242, 242A, or 242B would pose a risk to the national security of the United States because such proceedings would disclose classified information; and

"(C) the threat posed by the alien's physical presence is immediate and involves the risk of death or serious bodily harm.

"(e) SPECIAL REMOVAL HEARING.—(1) Except as provided in paragraph (4), the special removal hearing authorized by a showing of probable cause described in subsection (d)(2) shall be open to the public.

"(2) The alien shall have a right to be present at such hearing and to be represented by counsel. Any alien financially unable to obtain counsel shall be entitled to have counsel assigned to represent such alien. Counsel may be appointed as described in section 3006A of title 18, United States Code.

"(3) The alien shall have a right to introduce evidence on his own behalf, and except as provided in para-

graph (4), shall have a right to cross-examine any witness or request that the judge issue a subpoena for the presence of a named witness.

"(4) The judge shall authorize the introduction in camera and ex parte of any item of evidence for which the judge determines that public disclosure would pose a risk to the national security of the United States because it would disclose classified information.

"(5) With respect to any evidence described in paragraph (4), the judge shall cause to be delivered to the alien either—

"(A)(i) the substitution for such evidence of a statement admitting relevant facts that the specific evidence would tend to prove, or (ii) the substitution for such evidence of a summary of the specific evidence; or

"(B) if disclosure of even the substituted evidence described in subparagraph (A) would create a substantial risk of death or serious bodily harm to any person, a statement informing the alien that no such summary is possible.

"(6) If the judge determines—

"(A) that the substituted evidence described in paragraph (4)(B) will provide the alien with sub-

stantially the same ability to make his defense as would disclosure of the specific evidence, or

"(B) that disclosure of even the substituted evidence described in paragraph (5)(A) would create a substantial risk of death or serious bodily harm to any person,

then the determination of deportation (described in subsection (f)) may be made pursuant to this section.

"(f) DETERMINATION OF DEPORTATION.—(1) If the determination in subsection (e)(6)(A) has been made, the judge shall, considering the evidence on the record as a whole, require that the alien be deported if the Attorney General proves, by clear and convincing evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(2) If the determination in subsection (e)(6)(B) has been made, the judge shall, considering the evidence received (in camera and otherwise), require that the alien be deported if the Attorney General proves, by clear, convincing, and unequivocal evidence, that the alien is subject to deportation because he is an alien as described in section 241(a)(4)(B).

"(g) APPEALS.—(1) The alien may appeal a determination under subsection (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such

court within 20 days of the determination under such subsection.

"(2)(A) The Attorney General may appeal a determination under subsection (d), (e), or (f) to the court of appeals for the Federal Circuit, by filing a notice of appeal with such court within 20 days of the determination under any one of such subsections.

"(B) When requested by the Attorney General, the entire record of the proceeding under this section shall be transmitted to the court of appeals under seal. If the Attorney General is appealing a determination under subsection (d) or (e), the court of appeals shall consider such appeal in camera and ex parte.".

SEC. 602. MEMBERSHIP IN A TERRORIST ORGANIZATION AS A BASIS FOR EXCLUSION FROM THE UNITED STATES UNDER THE IMMIGRATION AND NATIONALITY ACT.

Section 212(a)(3)(B) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(B)) is amended—

(1) in clause (i)(II) by inserting "or" at the end;

(2) by adding after clause (i)(II) the following:

"(III) is a member of an organization that engages in, or has engaged in, terrorist activity or who actively

supports or advocates terrorist activity,"; and

(3) by adding after clause (iii) the following:

"(iv) TERRORIST ORGANIZATION DEFINED.—As used in this Act, the term 'terrorist organization' means an organization which commits terrorist activity as determined by the Attorney General, in consultation with the Secretary of State.".

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103D CONGRESS
2D SESSION

H. R. 3872

To require the Federal Government to incarcerate or to reimburse State and local governments for the cost of incarcerating criminal aliens.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 22, 1994

Mr. CONDIT (for himself, Mr. PETERSON of Florida, Ms. SCHENK, Mr. CUNNINGHAM, and Mr. CANADY) introduced the following bill; which was referred to the Committee on the Judiciary

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A BILL

To require the Federal Government to incarcerate or to reimburse State and local governments for the cost of incarcerating criminal aliens.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "Criminal Aliens Federal Responsibility Act of 1994".

SEC. 2. INCARCERATION OF CRIMINAL ALIENS BY OR AT THE EXPENSE OF THE FEDERAL GOVERNMENT.

(a) DEFINITION.—In this section, "criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility" means an alien who—

(1)(A) is in the United States in violation of the immigration laws; or

(B) is deportable or excludable under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.); and

(2) has been convicted of a felony under State or local law and incarcerated in a correctional facility of the State or a subdivision of the State.

(b) FEDERAL CUSTODY.—At the request of a State or political subdivision of a State, the Attorney General shall—

(1)(A) take custody of a criminal alien who has been convicted of a felony and is incarcerated in a State or local correctional facility; and

(B) provide for the imprisonment of the criminal alien in a Federal prison in accordance with the sentence of the State court; or

(2) enter into a contractual arrangement with the State or local government to compensate the

State or local government for incarcerating alien criminals for the duration of their sentences.

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103D CONGRESS
1ST SESSION

H. CON. RES. 47

Concerning criminal aliens.

IN THE HOUSE OF REPRESENTATIVES

FEBRUARY 23, 1993

Mr. BEILENSON submitted the following concurrent resolution; which was referred to the Committee on the Judiciary

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CONCURRENT RESOLUTION

Concerning criminal aliens.

Whereas the Federal Government has sole jurisdiction over the enforcement of United States immigration laws;

Whereas the Federal Government has failed to enforce such laws adequately, resulting in the unlawful entry into the United States of millions of illegal immigrants each year;

Whereas the Federal Government also has sole jurisdiction over the deportation of immigrant aliens who have been convicted of certain felonies;

Whereas illegal and legal immigrants represent a substantial portion of the prison populations of several States and local communities in the United States;

Whereas the presence of large numbers of c. ninal aliens has placed an enormous financial burden on the criminal justice systems of the affected communities;

Whereas Congress recognized this burden in the Immigration Reform and Control Act of 1986 (IRCA), and called for the "expeditious deportation" by the Federal Government of convicted aliens;

Whereas IRCA also called for the reimbursement to States for costs incurred for the imprisonment of illegal aliens; and

Whereas none of the commitments made by Congress in IRCA to alleviate the burden of criminal aliens on States and local communities have been fulfilled: Now, therefore, be it

Resolved by the House of Representatives (the Senate concurring), That the Federal Government should acknowledge its responsibility to enforce United States immigration law, and that the Attorney General should establish as a priority, through the allocation of adequate resources, the identification and deportation of criminal aliens in an expeditious manner.

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Mr. MAZZOLI. But having said that, I ask Mr. Canady if he wishes to make an opening statement.

Mr. CANADY. Yes, thank you, Mr. Chairman, briefly.

I would like to address this issue because it is an important issue. It is a particularly important issue in my home State of Florida. In Florida, in our State prison system, we have about 3,500 inmates who are incarcerated by the State, costing the State around $60 million a year, who are criminal aliens. I believe this is a burden that should not be borne by the State of Florida, and other States face similar problems. I believe that this is an example of how the Federal Government has failed to carry out its responsibilities, a fundamental responsibility to maintain the integrity of our borders, and as a result the States are shouldering an enormous burden. I think we have to take steps to shift that burden back to the Federal Government where it rightfully belongs.

Now I think there are some very simple things. In looking through these bills, I think one indication of the magnitude of this problem is the number of bills we have. This is something that is getting a lot of attention, and it is of concern to a number of Members from all different parts of the country.

It is clear that we need to take steps to expedite deportation procedures for criminal aliens. We also need to be certain, however, that aliens who commit crimes against persons within the United States are, in fact, punished in a meaningful way for their crimes. That is a principle that we have to keep in mind as we are looking at the issue of deportation also.

I think that one thing that this whole issue brings home to me is that we must do a better job of keeping illegal aliens out of the country in the first place.

Finally, I would say that, although this is an important problem—it is very significant in certain States such as Florida—it is only part of our crime problem in this country, and the things that we need to do and that we should make a priority on this issue are not going to solve the overall problem by any stretch of the imagination, but this is an important step for us to take, and I look forward to the testimony.

Mr. MAZZOLI. I thank my colleague, and now I would yield to the gentleman from Texas, Mr. Smith, who has a bill noticed today. The gentleman from Texas is recognized to speak on behalf of his bill, to make an opening statement, or to approach it however he wishes.

Mr. SMITH. Mr. Chairman, thank you for holding this hearing today on such an important issue, that being the subject of criminal aliens. The number of Americans demanding a solution to the problem of criminal aliens clearly demonstrates that the issue should be of paramount importance to Congress.

There are two pieces of legislation that I would like to discuss today. The first is H.R. 1496 which would provide a simple remedy to the problem of aliens who get "lost in the system" once they are released on probation or parole. It would require aliens who have been convicted of a felony and sentenced to probation or who have served a portion of their sentence and been released on parole to register with the Attorney General. Thus, we will finally have an

opportunity to monitor these individuals by having them report to the INS for registration as a condition of their parole.

The INS attempts to place as many aliens who are deportable as criminals into deportation proceedings as resources permit. However, they do not have sufficient staff to process more than a fraction of the incarcerated aliens, let alone those aliens out on probation and parole.

The second bill I would like to discuss is broader in its scope. The Illegal Immigration Control Act of 1994, H.R. 3860, aims to do nothing less than reduce the flood of illegal immigration to a trickle. This bill resulted from months of work by the Republican Task Force on Illegal Immigration and has several sections that deal with criminal aliens.

In this bill, we borrowed heavily from the work of my colleague who is on his way to this meeting, Bill McCollum, and all the work that he has done on the subject of criminal aliens. Thanks to him, criminal alien reform was a major component of the Republican crime bill.

Our bill also had input from several other members of the task force, and I think all those individuals are here today, and they include Duncan Hunter, Tom Lewis, and Ben Gilman, who are also going to talk about criminal alien bills they have introduced. So I will leave those sections of H.R. 3860 for them to discuss.

We on the task force believe that all aliens who abuse the privilege of residing in this country by committing aggravated felonies should be deported. No excuses, no delay. Incomprehensively, under current law this is unfortunately not the case.

We also need to expand the definition of "aggravated felony" to include such offences as child pornography and failure to appear before a court to answer a felony charge. Furthermore, Federal trial courts should be able to issue deportation orders during sentencing of an alien convicted of an aggravated felony.

Law enforcement authorities should have access to a criminal alien tracking center that can assist them in keeping up with deportable aliens. Law enforcement also needs additional powers such as wiretap authority to aid the investigation of alien smuggling. In this bill, alien smuggling is also including as a racketeering activity for purposes of RICO enforcement authority. In contrast to the oversight of current law, our bill sees to it that these needed changes will happen.

The number of criminal aliens continues to outpace our ability to detain and deport them. These provisions are essential to any effort to control illegal immigration. Approximately one-quarter of the Nation's Federal prison population is now foreign born, and in Texas they make up a staggering 41 percent of our Federal prison population. The vast majority of these aliens released from prison go back on the street to be arrested at least one more time. I think the figure is 77 percent who are arrested again.

Mr. Chairman, I am pleased that this subcommittee is holding these hearings today. Meaningful reform on illegal immigration must address the criminal alien problem, and I hope this subcommittee will act quickly and forcefully on this issue, and, Mr. Chairman, let me add and also say to you and my colleagues who are here on the panel and who are here to testify that, unfortu-

nately, I have an unavoidable conflict at 10:45, so I will have to leave, and I hope to get back for the hearing a little bit later on today, and once again thank you for your always consideration of the bills of members of this panel and for your fairness and the evenhandedness with which you run this subcommittee.

Mr. MAZZOLI. I thank my friend from Texas.

The gentleman from Illinois, also a distinguished member of the panel, of course, and author of one of the bills noticed today.

The gentleman is recognized.

Mr. SANGMEISTER. Mr. Chairman, as a member of this committee, I have had the privilege and opportunity to hear the many sides of the immigration debate presently raging before Congress and the American people. I understand that many of these issues being discussed are under direct consideration as either amendments to or provisions within crime, welfare reform, health care, and other bills in the House and the Senate.

The Senate crime bill, for example, has a provision similar to my prohibition of benefits to illegal aliens, bill H.R. 3594, which I introduced last fall, and which you graciously agreed to hold a hearing on.

While we are holding hearings, however, Congress is acting upon these same issues in areas outside this committee's jurisdiction. How is this committee going to ensure that our collective concerns are fully addressed and that we maintain a voice in this debate? How do we want to frame this immigration issue in light of the strong public interest and concern? If the President would rather deal with these issues administratively rather than legislatively, as has been expressed through various briefings from INS, how can we ensure that our concerns and proposals will be given full consideration?

These are but a few of the questions which I hope can be answered by this committee within the context of debating immigration reform this year.

Today we have a unique opportunity to discuss one aspect of this debate, criminal aliens. Unfortunately, as many of you know, the political and economic realities of today no longer allow the United States to enjoy the same immigration policies of a century ago. There are as many as 5 million undocumented aliens in the United States with a growth rate of 200,000 to 250,000 a year. The estimated cost in 1992 alone to Federal, State, and local governments, to public service, education, criminal justice, and correction programs for illegal immigrants was $7.7 billion. This burden is staggering, and it is deeply affecting our States' economic and social well-being. This Nation needs to address these difficult problems now. We in Congress must find intelligent and innovative ways to do this.

Last year, I introduced H.R. 2993 to ensure that information concerning the deportation of certain aliens be made available through the FBI National Crime Information Center, the NCIC system, as it is called. My bill will establish a centralized information bank to give Federal, State, and local law enforcement officials a means to track suspected undocumented aliens who have been arrested for an unrelated crime. This system would provide the means to detain and deport aliens who have been issued final orders of deportation,

who fail to appear for a scheduled deportation or asylum proceeding, and whose wherabouts are unknown. It would allow the system to work so that those who are in this country illegally could be more easily identified, processed, and deported.

Recently, it has come to my attention that investigations to locate aliens who fail to appear for hearings and have been lost in this country have a low priority under the INS investigative case management system. I understand the INS's need for additional money and personnel, but there should be no reason for not improving this system.

Presently, the NCIC system provides the criminal justice community with a central file of criminal histories and information on wanted individuals. This system connects about 48,000 State, local, and Federal law enforcement agencies to each other.

Currently the only information in the NCIC system concerns those aliens who have committed a crime or have an official warrant of deportation issued. The INS and the FBI do not enter information to the NCIC for those aliens who fail to show up at their asylum or deportation hearings and had their case administratively closed or those who have already been found deportable and failed to leave the country. Such types of information are not entered into the NCIC because it is considered outside the criminal scope of the program as initially enacted.

However, in 1987 the NCIC Advisory Policy Board concluded that several immigration functions including administrative functions that are taken in connection with deportation fall within the definition of a criminal justice function.

The question remains as to how we can best utilize the resources of the INS, the FBI, or any other agency so that we can ensure that the inefficiencies and wastes in our country's immigration system are eliminated and that the system works for the people it was intended for.

I sent a list of questions to the INS regarding my bill and, with this committee's permission, at the proper time would like to submit those answers into the record, and I believe that by quickly providing information on individuals who come into contact with the law NCIC would enhance the probability of apprehending alien fugitives and other individuals of interest to the INS and the criminal justice system.

It is my hope this committee can work with the administration to resolve this important matter. Although I am troubled by the depth of these problems, I am greatly encouraged by the fact that this country is now ready to move forward on the issue of immigration reform. It is my hope that this committee will aggressively establish itself as a player in this debate.

I thank you, Mr. Chairman and members of the committee, for your time and consideration.

Mr. MAZZOLI. I thank my friend, and without objection that letter and material from the INS will be made a part of the record.

I want to thank both of my friends here for their statements and for their bills and all of the ones that I am about to call up, because I think that having these bills on the table does give us an opportunity to synthesize and try to figure out what can be done, and I go back, as I so steadily do and have for the last 12 years, to this

subject that unless we make the best available effort to solve the problems of illegal entry, we suffer the loss of the heart and soul of our legal entry program. And so while some might argue that these may be hard hearted and they might have a sharp edge, the fact of the matter is, they come from people who I think do recognize the advantages this country has been given over many years by having people come to us with new talents and new ideas and new dreams, but we can't continue to do this sort of thing unless we make every available effort to stop the gaming, stop the abuse, and stop the illegal behavior. I think that is what my friends and I are trying to do.

So with that, I am very happy and pleased and honored to call forward our first congressional panel. We will take them in the order in which the staff has printed them out here in the list: the Honorable Ben Gilman of New York, Honorable Henry Hyde of the State of Illinois, Honorable Jim Bilbray of Nevada, Honorable Duncan Hunter of California, and the Honorable Rick Lehman of California.

I don't think that the staff put them down in either seniority or beauty or wit, but they must have had some reason for doing it, so I don't want to get afoul of my staff, they keep me going here, so let me call on Ben Gilman first, and we will proceed on that basis.

STATEMENT OF HON. BENJAMIN GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. GILMAN. Thank you, Mr. Chairman and members of the committee. I want to thank you first of all for arranging this timely hearing, and I welcome the opportunity to discuss legislation that I have introduced, H.R. 3302, the Passport and Visa Offenses Penalties Improvements Act of 1993.

I am pleased to note that this bill has as original cosponsors both the ranking member of your committee, Mr. McCollum, and Mr. Hyde of this distinguished Judiciary Committee, and I am pleased also that Mr. Solomon of New York has joined us as an original cosponsor.

Mr. Chairman, this measure will help us modernize our Nation's laws as they relate to the outdated criminal penalties dealing with visa and passport fraud and other offenses involving the misuse of these vital travel and entry documents.

Our Nation received a terrorist wake-up call last February which we certainly can't ignore. The World Trade Center bombing in New York City made it vividly clear that our Nation can be the target of international terrorism, especially on the streets and in the offices of our cities. Some of the defendants in this case have been charged with possession and the use of fraudulent travel documents. Subsequent disclosures of other terrorist plots in New York serve to further shake our confidence and our very safety and internal security from acts of international terrorism.

In light of these events, our Nation must be vigilant and concerned about international terrorism. In particular, we need to be concerned about the thousands of illegal travel documents that are circulating out there and that can facilitate terrorism and other se-

rious criminal activity, such as drug trafficking, all directed against our Nation.

The Inspector General of the State Department in a September 1993 audit of the Department's machine-readable visa program said—and I quote—"The use of fraudulent nonimmigrant visas known as NIV's to enter the United States illegally is a serious growing problem."

Earlier, Newsweek in an August 9, 1993, article on our out-of-control borders said—and I quote—"The lax controls have spawned a robust market for counterfeit documents. Stolen U.S. passports, usually altered with a new photograph, are in special demand."

I think we are all aware of the extent of the problem, and I think now is the time for us in the Congress to try to fix it and help restore our own security and control over illegal entry into our Nation, and for that reason we welcome what you are doing here in this subcommittee today.

A post Trade Center bombing review of the Federal criminal penalties currently on the books regarding visa and passport fraud which facilitate the illegal entry of illegal aliens capable of committing acts of terrorism against our Nation reveals a very serious need for improvement.

Recently, for example, it was reported that agents of the State Department's Bureau of Diplomatic Security arrested a document counterfeiter who had produced numerous forged U.S. travel visas using a color copier whose inauthenticity were almost undetectable. Some of these rather excellent forged U.S. visas were sold to the very followers of the radical Sheik Rahman.

This is a serious, deadly business that exists, and yet it is currently not unusual for major criminals convicted of passport and visa crimes, most of which are felonies, to receive very light sentences, even probation. Few U.S. attorneys are willing to take on such low level penalty cases involving 5 years or less under current law.

So I say that now is the time to change that, and my legislation does so effectively by making the punishment fit the crime. Our bill increases the maximum imprisonment time for these offenses specified in title 18 of the U.S. Code, sections 1541 to 1546, increases it to 10 years in most of the cases, and the penalties which have not been raised since 1948, more than 45 years ago, need to be redefined.

In addition, I have also added a new maximum 15-year term for offenses committed to facilitate drug trafficking and a 20-year term for offenses done to facilitate terrorism.

Also included in the bill for the first time ever in cases of this nature are asset forfeiture penalties that will make the tools of these crimes as well as the fruits subject to civil forfeiture just as we have done in drug cases. For example, in the case of the many forged U.S. visas, such items as copiers, printers, and other counterfeit equipment, the vehicle used to transport them, and any illicit gains can all be seized by the Government as an additional deterrent to those crimes.

Mr. Chairman and members of the committee, I was pleased to see that the provisions of H.R. 3302 have been incorporated into the recently announced Republican immigration reform proposal,

and I ask this committee to move promptly to enact the provisions of H.R. 3302 as part of any immigration reform or crime bill enacted this year. I think the American people, after the events of the Trade Tower in New York last year, expect nothing less from us as their elected representatives here in the Congress, and I thank you, Mr. Chairman and the subcommittee members.

Mr. MAZZOLI. Thank you, Mr. Gilman.

I hope my friends can indulge us for a few moments. The gentleman from New York is one of the sponsors of legislation noticed today. He is chairing a hearing on criminal justice this morning. So with your permission and indulgence, I would like to yield to my friend from New York for his statement about his bill and any other comments.

Mr. HYDE. Mr. Chairman, I think we would insist on it.

Mr. MAZZOLI. Not just permit it but insist on it.

Mr. SCHUMER. OK. I was going to speak for 2 minutes, but if the gentleman would like, I can expand it to 20 or 25.

Mr. HYDE. Whatever.

Mr. SCHUMER. I can speak on any subject on any given day for any length of time and any time, any place. It is an occupational hazard.

Let me thank you, and I just would ask unanimous consent that my entire record be read into the record,.

Mr. MAZZOLI. Without objection.

Mr. SCHUMER. And very briefly just let me thank you, Mr. Chairman, for holding these hearings and for your leadership on this issue. We have been working closely together, and I apologize to all of my colleagues, both on the committee and on the panel. I am chairing a hearing on the crime bill over a few doors down, and so I will just say my basic piece and go.

I just want to say, Mr. Chairman, that the repeated violence and costly burden of criminal aliens is one of the most vexing problems of our criminal justice system. It has astounded ordinary people. If you look at it through the eyes of our constituents, here we have tens of thousands of violent criminals, repeat offenders of the worst kind, many of them who entered the country illegally, all of them have forfeited their right to reside here, and yet our system is paralyzed; it doesn't promptly deport these violent criminals.

It amazes me: Someone will be arrested, serve their time in jail, and then they go out, and the INS isn't there ready to deport them the day they walk through the jailhouse door. They go back and commit another crime. That is astounding. It is a classic case of the left hand of government not knowing what the right hand is doing.

This is not a question of constitutional rights, this is not a question of what is the right thing to do, it is simply a question of inertia of the Government, and I would say to my colleagues, those of us who care about the Government working ought to make it work.

So here's what it doesn't do: It doesn't promptly deport these violent criminals. It also doesn't allocate the burden of dealing with them fairly between the States and Federal governments. I see my colleagues from other States that have the burden the way we do in New York, Mr. Gilman and I, and this is not fair, this is just not right, and so something is wrong here. The Federal Govern-

ment is failing in its first duty, and that is to protect citizens from violent crime which we have to fix now.

It is not an academic problem, it affects the lives of real people, and I just want to go over one story in my home State in conclusion. This is about—we will call this person P. He was documented for my staff by New York State law enforcement officials. He came to the United States in 1980. In 1981 he was convicted of attempted second degree murder. He shot another gambler three times for refusing to loan him a quarter. In 1987, after serving 6 years, P was released into the custody of the INS. Rather than deport P, INS released him.

Back on the streets, P continued his violent predatory ways. He soon earned another criminal conviction in New Jersey. Once again the INS made no effort to detain or deport him.

On June 3, 1991, P took another life in New York City. Driving without a license, he ran a red light. Sadly, at that very moment, a mother was crossing the street with her child in a stroller. P ran them down. The mother was seriously injured, the child was decapitated. So the simple fact has been that if P had been deported or if the INS had held him in custody, a child's life wouldn't have been taken that day.

Well, I say that this is not unique. There are lots of reforms that have to be done. This story is a particularly bothersome and sad one, but it can be repeated in a variety of ways over and over and over again, and so I would say to all of my colleagues, whatever our political party, whatever our stripe, whatever our ideology, this is an issue where I don't think there can be any dispute, and we ought to act and act quickly.

The bill that I have introduced, H.R. 2438, does that from both the criminal justice side and the immigration side, and I look forward to working with you, Mr. Chairman, and other Members, and my colleagues on the committee to come up with a rational, fair law so that we can end these kind of abuses.

Mr. MAZZOLI. I thank my colleague very much for that excellent statement and for his work on this subject area, and we look forward to working with him definitely.

[The prepared statement of Mr. Schumer follows:]

Prepared Statement of Hon. Charles E. Schumer, a Representative in Congress From the State of New York

GOOD MORNING.

I WANT TO THANK MY COLLEAGUE, CHAIRMAN MAZZOLI, FOR HOLDING THIS HEARING. THE REPEATED VIOLENCE AND COSTLY BURDEN OF CRIMINAL ALIENS IS ONE OF THE MOST VEXING PROBLEMS OF OUR CRIMINAL JUSTICE SYSTEM. IT ASTOUNDS ORDINARY PEOPLE.

LOOK AT IT THROUGH THE EYES OF OUR CONSTITUENTS: HERE WE HAVE TENS OF THOUSANDS OF VIOLENT CRIMINALS -- REPEAT OFFENDERS OF THE WORST KIND. MANY OF THEM ENTERED THE COUNTRY ILLEGALLY. ALL OF THEM HAVE FORFEITED THE RIGHT TO RESIDE HERE.

AND YET, OUR SYSTEM IS PARALYZED.

IT DOES NOT PROMPTLY DEPORT THESE VIOLENT CRIMINALS. IT DOES NOT FAIRLY ALLOCATE THE BURDEN OF DEALING WITH THEM BETWEEN THE STATES AND THE FEDERAL GOVERNMENT. IT IS POWERLESS TO STOP THEM FROM COMMITTING MORE VIOLENT CRIMES.

SOMETHING IS VERY WRONG HERE. THE FEDERAL GOVERNMENT IS FAILING IN ITS FIRST DUTY -- TO PROTECT THE CITIZENS FROM VIOLENT CRIME. WE NEED TO FIX THIS NOW.

THIS IS NOT MERELY AN ACADEMIC PROBLEM. IT AFFECTS THE LIVES OF REAL PEOPLE. HERE IS JUST ONE STORY FROM MY HOME STATE ABOUT THE HARM ONE CRIMINAL ALIEN CAUSED.

I'LL CALL HIM "P." HIS CASE WAS DOCUMENTED FOR MY STAFF BY NEW YORK STATE LAW ENFORCEMENT OFFICIALS.

P CAME TO THE UNITED STATES IN 1980. ONE YEAR LATER, IN 1981, HE WAS CONVICTED OF ATTEMPTED SECOND DEGREE MURDER. HE SHOT ANOTHER GAMBLER THREE TIMES -- SIMPLY FOR REFUSING TO LOAN HIM A QUARTER.

IN 1987, NEW YORK RELEASED P INTO THE CUSTODY OF THE IMMIGRATION AND NATURALIZATION SERVICE. RATHER THAN DEPORT P, INS RELEASED HIM. BACK ON THE STREETS, P CONTINUED HIS VIOLENT, PREDATORY WAYS. HE SOON EARNED ANOTHER CRIMINAL CONVICTION IN NEW JERSEY. ONCE AGAIN, THE INS MADE NO EFFORT TO DETAIN OR DEPORT HIM.

ON JUNE 3, 1991, P. TOOK ANOTHER LIFE IN NEW YORK CITY. DRIVING WITHOUT A LICENSE, HE RAN A RED LIGHT.

SADLY, AT THAT VERY MOMENT A MOTHER WAS CROSSING THE STREET WITH HER CHILD IN A STROLLER. P RAN THEM DOWN. THE MOTHER WAS SERIOUSLY INJURED.

THE CHILD WAS DECAPITATED.

THE SIMPLE FACT IS THAT IF P. HAD BEEN DEPORTED, OR IF THE INS HAD HELD HIM IN CUSTODY, THAT CHILD'S LIFE WOULD NOT HAVE BEEN TAKEN THAT DAY.

P.'S STORY IS NOT UNIQUE. WE'VE LEARNED OF OTHER, SIMILAR STORIES FROM ALL OVER THE COUNTRY. WE NEED TO STOP THESE NEEDLESS TRAGEDIES. WE NEED TO MAKE SURE THAT STORIES LIKE THAT OF P AND OTHERS ARE NOT REPEATED.

I'VE OFFERED ONE SOLUTION IN MY BILL, H.R. 2438.

THE HEART OF MY BILL IS A STREAMLINED DEPORTATION PROCEDURE. IT WILL GET CRIMINAL ALIENS OUT OF THE COUNTRY BEFORE THEY CAN DO MORE HARM.

RIGHT NOW, EVEN AN ALIEN CONVICTED OF MURDER IS ENTITLED TO REMAIN IN THE U.S. UNTIL THE INS COMPLETES ITS DEPORTATION PROCESS. THIS OFTEN TAKES YEARS. UNDER MY BILL, IF AN ALIEN IS CONVICTED IN FEDERAL COURT OF A FELONY, THE JUDGE MAY ISSUE A DEPORTATION ORDER RIGHT THEN AND THERE. THE MINUTE THE SENTENCE IS OVER, THE ALIEN CAN BE DEPORTED.

MY BILL OFFERS OTHER REFORMS.

CURRENT LAW PROHIBITS DEPORTING A CRIMINAL ALIEN UNTIL THE ENTIRE SENTENCE HAS RUN. THAT PUTS STATES IN A DIFFICULT POSITION. THEIR PRISONS ARE FULL OF ALIENS WHO HAVEN'T SERVED A

FULL SENTENCE, BUT HAVE SERVED ENOUGH TIME TO PUNISH THEM. YET THE STATES DON'T WANT TO RELEASE VIOLENT ALIENS TO THE STREETS WHERE THEY CAN DO MORE HARM.

THIS DILEMMA WOULD BE SOLVED IF SUCH PERSONS COULD BE DEPORTED. MY BILL WOULD PERMIT EARLY DEPORTATION OF CRIMINAL ALIENS, AT THE DISCRETION OF PRISON OFFICIALS.

FINALLY, MY BILL RECOGNIZES THAT THE RESPONSIBILITY FOR INCARCERATING ALIENS WHO ENTER THE COUNTY UNLAWFULLY AND THEN COMMIT CRIMES BELONGS TO THE FEDERAL GOVERNMENT. IT WOULD TRANSFER CUSTODY OF UNDOCUMENTED ALIENS IN STATE PRISONS TO THE FEDERAL BUREAU OF PRISONS.

MR. CHAIRMAN, I COMMEND YOU FOR ORGANIZING THIS IMPORTANT HEARING. I LOOK FORWARD TO A FULL DISCUSSION OF THESE ISSUES.

Mr. MAZZOLI. The gentleman from Illinois.

STATEMENT OF HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. HYDE. Thank you very much, Mr. Chairman and my colleagues on the committee.

Let me just say parenthetically as Charlie is leaving, one of the problems with arresting an illegal alien for committing a crime and deporting him immediately is that many times they are deported and do no time at all for the crime they have committed and, because our borders are so porous, come right back in to commit another one, never having been punished for the original crime, and that creates a dilemma, because if someone has committed a crime, they ought to do some time and then be deported.

Unfortunately, many of these people are illegal aliens whom we are pleased to call undocumented workers, but if they are deported immediately upon arrest because they are illegally in the country, it may be—may be—and often is that they don't—they go back to their own country where they are not going to go to jail in their own country. Why should that government pick up the expense when no crime has been committed in that country? And that is one of the problems.

Mr. SCHUMER. Right, I agree with the gentleman, that is a real dilemma, and we certainly want people who commit crimes here to serve.

The case I have documented is after they have served.

Mr. HYDE. Sure.

Mr. SCHUMER. You know, all they have to do is find out from the local correctional authorities that Mr. X is supposed to get out in 6 months and have the documents prepared so after they have served their sentence they are deported, and they are not.

Mr. HYDE. I agree. I think that is an outrage, right.

Thank you.

Well, thank you, Mr. Chairman, and I am certainly pleased to join Representative Gilman in support of H.R. 3302, the Visa and Passport Penalties Improvement Act of 1993. I am very pleased to be an original cosponsor of his measure along with Mr. McCollum. This bill addresses a serious need with regard to our outdated criminal penalties in the area of visa and passport offenses.

There is much debate in Congress today on what should be a Federal crime and what the appropriate role of the Federal Government should be in law enforcement. However, we can all agree, I think, with regard to visa and passport offenses there is a clear need for a strong and effective Federal presence. What is needed today are effective Federal criminal penalties to serve as a deterrent to the serious nature of crimes such as forgery of U.S. passports and entry visas. H.R. 3302 provides that much needed deterrent.

Nineteen forty-eight was the last time the Federal criminal penalties for visa and passport offenses were raised, and the crime problem in America has, as we all know, not diminished but has increased since then. The U.S. attorneys are swamped with competing claims for their time, energy, and limited resources for prosecutions. The Diplomatic Security Bureau at the State Department

which has jurisdiction over visa and passport crimes has been relegated to the sidelines waiting for some law enforcement attention. This is largely because current penalties are only 5 years or less in many cases for serious visa and passport offenses.

Several of the New York Trade Center terrorist bombing suspects were charged in the multicount indictments in that case with illegal possession of some of these key travel documents. A recent major case in Newark, NJ, brought by the Diplomatic Security agents resulted in a Federal indictment of an individual for counterfeiting hundreds of U.S. entry visas. The work was so good, it was hard to tell fakes from originals. Some were sold to followers of radical Sheik Rahman who is linked to the terrorist plots in New York last year. This is a serious and dangerous business.

As the Republican Policy Committee chairman, our committee last October 27 issued a statement on illegal immigration, and we said, quote, "A major increase in the antiquated penalties for passport fraud, especially when it involves drug trafficking and terrorism is needed." Let's give the agents of the Diplomatic Security Bureau the legal resources to do their very important job. We have got to punish those who threaten the integrity of our borders and in some instances our own physical safety and security.

Now H.R. 3302 raises the outdated penalties in most cases to 10 years. This is similar to what is in the Senate crime bill and a technical immigration reform bill also sent over by the Senate. It increases the time to be served for offenses committed to facilitate drug trafficking to 15 years and for facilitating terrorism to 20 years, and, finally, H.R. 3302, for the first time, civil forfeiture penalties. It provides under appropriate circumstances for the Diplomatic Security Bureau to seize conveyances and the tools of forgery, such as copiers and printers. Also subject to seizure will be the proceeds of visa and passport crimes, which often can be substantial.

I suggest that the provisions of H.R. 3302 be incorporated in any crime bill or immigration bill that moves forward before this Congress ends, and I certainly will work with you to help bring that about. Only then will we have learned some lessons from that dark billowing smoke of the Trade Center in New York last year and done something to possibly help prevent another such terrible tragedy.

I compliment Mr. Gilman for his leadership in this area. He lost a constituent in that terrorist bombing, and so he knows very well what is at stake here, and I urge the provisions of H.R. 3302 be enacted promptly so we can begin the process of once again controlling our borders and restoring national security which the illegal trade in traffic and entry documents threatens.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Well thank you, both of my colleagues from New York and Illinois, both of whom sit on the Foreign Affairs Committee as well, which puts them in a very important position to help us as this whole thing moves down the track. We do appreciate it.

[The prepared statement of Mr. Hyde follows:]

PREPARED STATEMENT OF HON. HENRY J. HYDE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ILLINOIS

Mr. Chairman, I am pleased to join Representative Gilman today in support of H.R. 3302, the "Visa and Passport Penalties Improvement Act of 1993." I was pleased to be an original co-sponsor of his measure along with Mr. McCollum. The bill addresses a serious need with regard to our outdated criminal penalties in the area of visa and passport offenses. This nation must provide appropriate and adequate criminal penalties for those who engage in violation of our federal laws with regard to visas, passports, and other key travel documents, under 18 U.S.C. secs. 1541-46.

There is much debate in the Congress today on what should be a federal crime, on what the appropriate role for the federal government should be in law enforcement. However, we can all agree that with regard to visa and passport offenses there is a clear need for a strong and effective federal presence. What is needed today are effective federal criminal penalties to serve as a deterrent to the serious nature of crimes such as forgery of U.S. passports and entry visas. H.R. 3302 provides that much needed deterrent.

Nineteen forty-eight was the last time that the federal criminal penalties for visa and passport offenses were raised. The crime problem in America has, as we all know, gotten much worse since then. U.S. Attorneys are swamped with competing claims for their time, energy, and limited resources for prosecutions. The Diplomatic Security Bureau at the State Department, which has jurisdiction over visa and passport crimes, has been relegated to the sidelines waiting for some attention. This is largely because current penalties are only five years or less in many cases for serious visa and passport offenses.

Several of the New York Trade Center terrorist bombing suspects were charged in the multi-count indictments in that case with illegal possession of some of these key travel documents. A recent major case in Newark, New Jersey, brought by Diplomatic Security agents resulted in a federal indictment of an individual for counterfeiting hundreds of U.S. entry visas. The work was so good it was hard to tell fakes from originals. Some were sold to followers of radical Sheik Rahman, who is linked to the terrorist plots in New York last year. This is serious and dangerous business we are dealing with. We ought not stand idly by without taking appropriate action.

As the Republican Policy Committee, which I am honored to chair, said in its October 27, 1993, statement on illegal immigration, we need "a major increase in the antiquated penalties for passport fraud, especially when it involves drug trafficking and terrorism."

Let us give the agents of the Diplomatic Security Bureau the legal resources to do the job. We must punish those who threaten the very integrity of our borders, and in some instances America's physical safety and security.

H.R. 3302 raises the outdated penalties, in most cases to ten years. This is similar to what is in the Senate crime bill, and a technical immigration reform bill also sent over by the Senate. It increases the time to be served for offenses committed to facilitate drug trafficking to 15 years, and for facilitating terrorism to 20 years.

Finally, H.R. 3302 adds for the first time civil forfeiture penalties. It provides under appropriate circumstances for the Diplomatic Security Bureau to seize conveyances and the tools of forgery such as copiers and printers. Also subject to seizure will be the proceeds of visa and passport crimes, which can often be enormous.

I suggest that the provisions of H.R. 3302 be incorporated in any crime bill or immigration bill that moves forward before this 103rd Congress ends. I will work with you to help bring that about. Only then will we have learned some lessons from that dark billowing smoke of the Trade Center in New York last year, and done something to possibly help prevent another such terrible tragedy. I compliment Mr. Gilman for his leadership in this area. Having lost a constituent in the terrorist bombing, he knows well what is at stake here.

I urge that the provisions of H.R. 3302 be enacted promptly so that we can begin the process of once again controlling tour borders, and restoring national security which the illegal trade in travel and entry documents threatens.

Mr. Chairman, thank you.

Mr. MAZZOLI. And now we will hear from our friend from Nevada, Mr. Bilbray.

STATEMENT OF HON. JAMES H. BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. BILBRAY. Thank you, Mr. Chairman. I think this was done by age, certainly not by seniority.

Mr. MAZZOLI. I am not guilty one way or the other. I am not guilty.

Mr. BILBRAY. Because some of the others have been here a lot longer than I have.

I will ask that my entire statement be put into the record because I am going to summarize this.

Mr. MAZZOLI. Without objection.

Mr. BILBRAY. I have introduced the Immigration Stabilization Act, H.R. 3320. It is a comprehensive overhaul of the immigration laws, because I believe that piecemeal reform is not the answer, it will take comprehensive reform. As members of the committee have stated, as my colleagues have stated, illegal immigration has become a serious crime problem.

Currently, 25 percent of all Federal prisoners are illegal immigrants into this country; 450,000 criminal aliens are currently imprisoned or on probation or on parole in this country. The INS deported 18,000 criminal aliens last year, and we spend $723 million per year on illegal aliens in prison.

Just last year, I flew over the area of southern California, the area close to where Mr. Hunter represents, and watched the flow of illegal immigrants coming across the Tijuana Slew. We flew over in a Navy helicopter and watched the illegal aliens wave to us as we went over. They were a very friendly bunch. Unquestionably, they were waving at us. I asked the Navy pilots "Is this common? Do they always wave at you?" And he said, "Yes, they do; they know that we are not going to cause them any trouble."

Mr. Hunter said they were Democrats. I don't think they were registered yet.

[Laughter.]

Mr. BILBRAY. The fact was that it was just unbelievable. They were lined up for half a block on the other side to crawl under holes or come through breaks in the wall. You could see this, just this handful of agents on the other side at little peninsulas sticking out into the slew in their Jeeps waiting to catch them, but for every one they caught, it was obvious that 10, 15, 20 would get through.

My bill, as well as the others, increases penalties for visa fraud and so forth, and I agree that this is necessary. But what it does beyond that, it also provides for some provisions for summary denial of amnesty at five major ports of entry into this country. We can't get every place they come in, we haven't got that kind of money available that we could have summary disposition of those cases right there, but in the five major ports of entry, and it could be seven, it could be nine, depending on the wisdom of this committee, you will have immigration judges that will judge the amnesty claims of these persons coming into this country and will be able to summarily turn them around and send them back out of the country.

Second, it charges a $3 fee for border crossing per person or $5 per car and also provides for permanent cards that would be paid once a year for those that frequently go back and forth for business

reasons. This would raise $600 million additional revenue which provides in my bill for the hiring of 5,000 new immigration agents. There are some that are set, that there would be a charge for going back and forth across the border.

But I feel that we have got to have the new agents. Our budget certainly is stretched to do that, and $3 per person, $5 per car, or a one-time fee for coming across the border is not unreasonable.

Right now, if you check ships coming into port, the Holiday Lines or the Love Boat Lines or whatever this is, Carnival Lines, pay a fee for those people going in and out. All I am asking is that at the borders across from Texas and Arizona, New Mexico and California such a fee would also be charged.

I think this is very important to add additional agents because if we don't get more people out there, we can talk about all we want to do here, we can talk about increased penalties, deporting people, summary adjudication of amnesty claims, but we need more people, and the only way we can do it is by additional fees, and I think that is very important. If we don't do these things, and if we hope to have a comprehensive bill, and if we do it piecemeal, if we just take a little bit here and a little bit there, we are not going to get this solution happening.

Another thing it does, it calls for the scaling back of the amount of legal immigrants in this country. For a little history, for those that are uninitiated—I know this committee has been working with this for years—in the early 1980's it was decided to raise the number of legal immigrants. Our economy was robust, everything was going very well, and we felt that we would need more legal immigrants coming into this country to supply the needed work force to meet this growing, robust economy that began in the early eighties, but by the late eighties it had petered out, and we should go back, and all I have done is traditionally go back to the lower figure that traditionally was the figure, which is a little over 300,000 legal aliens per year, because when we bring people in this country, except for some provisions for the rich aliens that come in that bring a certain amount of money and create a certain amount of jobs that we passed a few years ago, we don't really check to make sure that these people can function in society, and even where people say that they will aid the alien and be supportive of them, many of these people end up on welfare and other social services impacting many States.

Now Nevada is not a State that has been seriously hurt by this matter. I am here because I really believe as an inland State that it is a serious problem for my sister States, California and other States, Texas, New York, and other States.

Nevadans have traditionally been involved in immigration, as you well know, beginning with Senator McCarran, that have always looked at this particular matter. So I really believe that it is a matter that affects all Americans whether their States are immensely impacted.

We certainly have our share of illegal immigrants in our prison system, and we feel that something has to be done, and what I am urging again and again is that this committee, in looking at it, please don't do it piecemeal, do it comprehensively and give us the additional moneys needed because, as I said, please look at this im-

migration border crossing fee because without that money, the money is not there to really hire more people, and it is one that you can't argue because the fact is that those that get up and argue for restraint on spending have to know that this bill has been rated by the CBO as revenue neutral. We actually think it will be revenue positive, and maybe we can hire more than 5,000.

I urge this committee to act fast on this matter because every day that we don't act, more and more illegal immigrants flow into this country, more and more immigrants are set on to the economy because they can claim amnesty, and we have all seen the "20/20's" and the "PrimeTimes" and the "48 Hours" on these people just flowing into this country, and we believe it is a responsibility we should act on this year.

Thank you for the consideration.

Mr. MAZZOLI. Thank you very much, Jim. We appreciate your comprehensive look at this subject, and a lot of what you said is certainly reflected in attitudes that have been identified in the country. You certainly reflect that, even though Nevada is inland.

[The prepared statement of Mr. Bilbray follows:]

PREPARED STATEMENT OF HON. JAMES. H. BILBRAY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEVADA

Mr. Chairman, thank you for the opportunity to testify today before this Subcommittee. Last October I introduced the Immigration Stabilization Act, which seeks a comprehensive overhaul of our immigration laws. Specifically, title IV of this bill deals with the issue of criminal aliens.

All of us are familiar with the bombing of the World Trade Center, which injured hundreds of people and crippled our financial business for days. We are also aware of the murder of government employees at our CIA Headquarters. But I would like to talk about the statistics that deal with the crimes that are committed everyday by criminal aliens which do not receive national attention:

Currently, 25% of our federal prison population is immigrants.

There are more than 450,000 criminal aliens currently imprisoned, on probation or on parole.

The INS deported more than 18,000 criminal aliens last year.

Federal and state prisons spend $723 million per year on illegal aliens in prison. In my home state of Nevada, taxpayers paid $3.5 million for incarceration of criminal aliens. That may not seem like a great deal of money, but in a time of shrinking revenues, that is money that could have been used to educate 865 more American children. Or to build a homeless shelter.

My bill, H.R.3320, addresses criminal aliens in the following manners:

It expands the definition of aggravated felony to include among others, child pornography, counterfeiting, document fraud and tax evasion.

It institutes procedures for deporting criminal aliens who are not permanent residents.

It would expedite the deportation of criminal aliens by changing the sentencing required to be eligible for deportation from 7 to 5 years, allows the judge to order deportation at the time of sentencing and provides any court the authority to issue a judicial order of deportation.

It increases the penalties for failure to depart or for re-entering after deportation .

Authorizes the seizure & forfeiture of property involved in alien smuggling, adds alien smuggling to crimes covered by U.S. racketeering statutes, and grants wiretap authority for smuggling investigations.

Increases the penalties for visa fraud—a means by which many criminal aliens enter our country and disappear into the system.

Legal immigrants are barred from re-entry once they have been deported for criminal activity.

State and local law enforcement agencies must notify INS within 72 hours of an alien's arrest whether the alien is legal or illegal.

I believe that we must crack down on the problem of criminal aliens, but I believe that we must look at it in the larger context of immigration reform.

In Los Angeles county about 40% of illegal aliens are rearrested later for new criminal offenses. This last statistic, I believe, is very important. It is important because if we take action to deal with criminal aliens and do nothing about the ease of entering the United States illegally, then criminal aliens that we deport will continue to re-enter the country and commit crimes. That is why I believe that Congress must reform, not just one section of the law, but our nation's laws governing both legal and illegal immigration in their entirety .

Immigration reform has become one of the most serious domestic issues in the minds of the public, perhaps because it has an enormous impact on other domestic issues. The issue of immigration is raised at virtually every town meeting I hold in my district. I know that this is the case with many of my colleagues and is evidenced by the growing number of bills being introduced to deal with immigration.

Our immigration policies have simply ceased to function in the national interest. We seem to have lost sight of the fact that it is a public policy and like all public policies, our immigration policies should serve the public interest. Currently they do not.

With regard to legal immigrants, we now admit the equivalent of the city of Las Vegas every year without having any idea how we will pay to educate, provide housing, jobs or other basic needs for these people. We also have no idea whether these newcomers are likely to become contributing members of our society.

Last year, this Congress engaged in a bitter debate over President Clinton's job stimulus program. Not once during the course of the debate did we consider that in 1992 we granted the right to work to 1 million aliens, while roughly 1.1 million workers already in our country filed new claims for unemployment. Since the last major overhaul of our immigration laws in 1986, the employment needs of our nation have changed. No longer do we require a massive influx of unskilled labor as we did when current immigration law was written.

This huge influx of people, both legal and illegal, affects every major issue before us. Our social services system is on the verge of collapse under the weight of our own citizens. We must take action so that we may retake control of our future.

Some people will say this legislation is xenophobic—simply fearing foreigners and immigrants. Nothing could be further from the truth. Our immigrant past is one of the greatest contributions to our nation's strength today.

What this bill says, is that the United States should, like every other industrialized country, control the flow of people into our country, ensuring the best interests of our nation are served.

Again, thank you for the opportunity to be here, and I look forward to working with you on lasting and meaningful immigration reform.

Mr. MAZZOLI. The gentleman from California, Mr. Hunter.

STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. HUNTER. Thank you, Mr. Chairman, and it is appropriate that I follow Mr. Bilbray because I am a cosponsor of his bill, as well as a cosponsor of the Republican immigration bill. Because both of these bills add sufficient border patrolmen to control the border, I think the message with respect to criminal aliens to this committee and to Congress should be there is no substitute for controlling the border.

Very simply—and I have been briefed, as I am sure you have, by INS—the experiments we have undertaken with respect to deporting criminal felons back to their country of origin, especially when we deport them back to Mexico, tells us that within a short period of time after they have been deported deep into the interior, in some cases going back to Mexico City, a number of them are apprehended coming back across the Mexican border into the United States.

So absent a strong, enforceable border, we can solve other immigration problems by cutting off the magnets, the social magnets, the welfare payments, the moneys and services that go to illegal

aliens once they come across, but we will still have the criminal alien problem.

Now let me just put this into perspective, Mr. Chairman, because I think the problem with the House of Representatives is that we have not placed enough emphasis on the criminal alien problem and the illegal alien problem. It has been stated that criminal aliens cost over $700 million a year with respect to criminal justice costs. It has been stated by the Huddle study, I believe, that some $14 million a year net loss to U.S. taxes is experienced because of illegal immigration in general. It has been stated accurately that 22 percent of the Federal inmates are criminal aliens, and in my district in San Diego, CA, about 22 percent of the county jail inmates are illegal aliens.

So you have a massive drain on the Federal Treasury and a massive loss in terms of property loss and human life loss and a misery index with respect to the damage that criminal aliens inflict on this country and on our people.

Now if you look at the solution side, the problem is that this is an overwhelming national priority that unfortunately has to fit into a very small funding box. We have about 4,500 border patrolmen for the entire country. We need 10,000 border patrolmen, and we need 10,000 border patrolmen because there are 12 smuggler corridors across the Southwest from San Diego, Tijuana, to Brownsville, Matamoros in Texas.

Very briefly, alien smuggling and criminal alien entry into the United States generally takes place in an area where you have a large population on both sides of the border. It is very difficult to smuggle people or to come across in the outback stretches of the Southwest, in the rural areas.

For example, in my district you get down into Imperial Valley, it is 120 degrees in the summertime, there are no major arteries or roads in the desert areas of the Southwest outside of the areas that are urban. So you have basically 12 urban areas across the border of the Southwest from San Diego to Brownsville, TX, and in between that you have desert, you have remote country.

If we cut off the smugglers' corridors that attend each one of these urban areas, we could substantially stop the flow of illegal aliens, including criminal aliens. That is because the smugglers need that urban area, they need the Grand Central Station effect, as you know, to get lost in the crowd once they get across; they need the urban area for a logistical base, they need the highway arteries that come down close to the borders so they can get on that freeway, get on that highway, and go to where they are going, disperse into the United States.

If you measure the 12 smugglers corridors across the Southwest starting in San Diego where we go from the ocean to the coastal foothills where almost half of the alien smuggling in the country takes place, it is about 15 miles, and if you take that, if you measure the Mexicali, Calexico, and all the way across to Brownsville-Matamoros, you have about 165 miles of smugglers' corridors across the Southwest.

To control that, if you talk to border patrolmen and if you look at the El Paso experiment, you need about two border patrolmen every several hundred yards in their mobile command vehicle or

their Dodge Ram Charger, their four-wheel-drive vehicle. That is about 1 border patrolmen every 100 yards, 17 per mile, and that means if you look at the shifts that are required, you need about 50 patrolmen per mile for this 165 miles or so of smugglers' corridor. That adds up to about 8,250 border patrolmen required.

If you take about another 1,000 border patrolmen so you can have a reaction force to these banzai runs such as the ones that come across the Tijuana Channel, which I think Mr. Bilbray may have alluded to, where you see literally hundreds of people overwhelming or overrunning a certain portion of the border—if you have 1,000 border patrolmen that you can use across the border for a response force, and if you have another 1,000 border patrolmen or so for headquarters personnel and to also handle other parts of the country, then you need over 10,000 border patrolmen.

Now here's the problem, and it is a case of national will. We have about 4,500 under the Clinton administration's program that you and I attended the other day when the Attorney General outlined it; we are going to have 5,000. So we need 5,000 people to handle this enormous problem. Now let's put that into context. We are cashiering 2,000 young people every week out of the armed services. So if you simply took 3 weeks of personnel being discharged out of the armed services, you would have enough people to control the border. We have over 300,000 Federal workers in Washington, DC, doing administrative and paperwork. If you took 6,000 of those 300,000 people, you would be able to control the borders of the United States.

And so I think it is incumbent upon us, to those of us—and I want to applaud you for everything that you have done, and, incidentally, you are one of the greatest guys on the Hill to work with, Mr. Chairman. A lot of us really hate to see you go. But for everybody here who has really worked on this problem, we have to get our colleagues in the House to address this national priority of great magnitude with some funding magnitude, and it is absolutely ridiculous that we have this enormous national problem, and yet we torture ourselves over very small percentages of the Federal budget if you look at it in its realistic context.

So my message, Mr. Chairman—I will submit a written statement for the record—is that there is no substitute for border control. We need 5,000 more border agents quickly. Mr. Bilbray's and Mr. Lehman's bill builds this up over 5 years, about 1,000 a year. The same thing with the Republican immigration plan; we have an additional 6,000 agents in that bill.

The Border Patrol capacity is 600 people per year. We need to surge that capacity. That means we need to increase the school where you could take people who were being discharged at a high rate. We have a military police MOS, for example, in the U.S. Army; give them a short course, and get them into the green uniform of the Border Patrol as quickly as possible.

Thank you for letting me testify, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, Duncan. It is a pleasure working with you. I remember our first meeting I think was in 1981 or something in your hometown, and we have worked together since then. We appreciate it very much.

[The prepared statement of Mr. Hunter follows:]

PREPARED STATEMENT OF HON. DUNCAN HUNTER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, I want to thank you for the opportunity to testify on an issue that is often neglected in the illegal immigration debate.

As you are aware, a rapidly growing number of criminal aliens are entering our judicial system each year. In some states, the percentage of aliens incarcerated is almost triple their population percentage. While the costs are borne largely by state and local governments, this trend signals fundamental flaws in federal statute.

Mr. Chairman, I represent most of the California-Mexico border, one of the busiest land crossings in the world. It is estimated that while the Border Patrol in San Diego apprehends close to half a million people trying to enter illegally each year, well over a million others cross successfully. In addition to these apprehensions, the Border Patrol has also seized record numbers of narcotics, mainly marijuana and cocaine. These seizures are a prime indicator of the increase in criminal alien behavior in California.

In September of 1993, the California Legislature commissioned a study on the effect of illegal immigration in San Diego County. Conducted by the consulting firm of Rea and Parker, Inc., this study established a demographic and economic profile of the undocumented immigrant population, focusing in part on costs incurred to the criminal justice system. From an estimated undocumented immigrant population of 220,000 or 7.9% of the county's total population, the study claims that approximately 22% of total felony arrestees are undocumented immigrants. This figure is commensurate with the national average and underscores that alien crime is much higher per capita than citizen or permanent resident crime.

Further scrutiny of the San Diego County study shows a rapid increase in drug related offenses for criminal aliens between 1987 and 1992. For the total population, these offenses grew at a markedly slower rate during the same period. Over half of the felony crimes committed by undocumented immigrants in San Diego during 1992 were drug related, representing over 18% of the total felony drug offenses in the county.

These trends are largely the result of flawed immigration policies and poor enforcement of those statutes which are effective. To deal with criminal aliens, we must adopt a three-pronged approach:

Fortify our border. The Border Patrol is our first defense against illegal entry, and has traditionally been underfunded and understaffed for the task at hand.

Remove the financial incentives or "pull" factors. In spite of general prohibitions on the receipt of federal benefits, undocumented immigrants have easy access to Aid to Families with Dependent Children, housing assistance, Supplemental Security Income and Medicaid.

Increase penalties for criminal activity. Current law makes the deportation of criminal aliens difficult and time-consuming. Moreover, the penalties assessed for failing to depart are weak and undermine the authority necessary for exclusion or deportation.

Although legislation has been introduced to consider these problems separately, there are few bills which address the importance of a comprehensive immigration policy. This year, the subcommittee has an opportunity to adopt such an approach, taking care of the criminal alien problem while addressing the other social and economic dilemmas arising from illegal immigration. One such bill, H.R. 3320, the Immigration Stabilization Act of 1993, was introduced by Representative Bilbray and myself, along with Representatives Lehman, Goodlatte, and Traficant. Another measure, H.R. 3860, the Illegal Immigration Control Act of 1994, was introduced two weeks ago by the Republican Task Force on Illegal Immigration. Both of these comprehensive bills reform the treatment of criminal aliens and provide for enhanced deportation proceedings.

In specific, there is a need to expand the list of "aggravated felonies" under the Immigration and Nationality Act which requires the exclusion and deportation of criminal aliens who have been convicted of such crimes. The current law categorizes these felonies as murder, drug trafficking, firearms or explosives trafficking, money laundering, and felonies for which the sentence is over five years. H.R. 3860 and H.R. 3320 would expand the list to include: firearms violations, failure to appear for a felony charge, unlawful conduct relating to the RICO statute, alien smuggling, sale of fraudulent documents, child pornography, treason, and tax evasion in excess of $200,000. The increase in criminal alien activity in these areas warrant their inclusion as an aggravated felony and would help reduce the admittance of recidivist aliens.

Another area of concern is the establishment of a database within the INS to monitor undocumented immigrants on criminal probation or parole. Both measures

would include this, however, under H.R. 3320, state and local officials are required to share information with the INS regarding criminal aliens. H.R. 3860 provides for the creation of a criminal alien tracking center, and the enhancement of the Prisoner Transfer Treaty with countries like Mexico. These reforms, coupled with increased penalties for failing to depart or for committing a second felony following deportation, can help end the revolving door policy for criminal aliens.

Mr. Chairman, the very nature of incarcerating the citizens of another country is in question as we struggle to detain more and more undocumented immigrants for their crimes. We have the duty to enforce our laws, but at what price? Does the fact that 24% percent of federal inmates are illegal aliens signal a successful judicial process or a failed immigration policy? As many of my colleagues and millions of Americans are starting to recognize, the latter is true and requires immediate attention by Congress. The issues of crime, health care, welfare and immigration all share common bonds, demanding the adoption of a comprehensive immigration reform package. I am hopeful that this hearing will raise the awareness of the problems at hand and prompt the committee to report a bill like H.R. 3860 or H.R. 3320 to the floor for consideration.

Mr. MAZZOLI. Congressman Lehman.

STATEMENT OF HON. RICHARD H. LEHMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. LEHMAN. Thank you very much, Mr. Chairman. I appreciate this opportunity to testify today, and I am a coauthor of the bill Mr. Bilbray has described, along with Mr. Duncan. It is a bipartisan approach to addressing this problem.

Immigration is rapidly becoming one of the most critical issues on the national agenda and one which our constituents believe requires our urgent attention. We should legislate in this area this year. Our current immigration policies have placed an incredible financial burden on our criminal justice system, our schools, our social programs.

The Immigration Stabilization Act addresses the growing concern on the part of the American people that our immigration laws lack a national purpose or a valid sense of direction. This comprehensive bill which addresses both legal and illegal immigration includes important changes to the laws pertaining to criminal aliens.

With more than 450,000 criminal aliens currently imprisoned at all levels, on probation or on parole in the United States, there is clearly a need to streamline the deportation process. Our Federal and State prisons alone house over 53,000 aliens. Keep in mind that it costs approximately $19,000 per year to house a criminal. Aliens now account for over 25 percent of Federal prison inmates and represent the fastest growing segment of that population.

The number of illegal immigrants jailed nationwide has jumped an astonishing 600 percent in the past decade. The number of deportable felons has doubled in the past 6 years. The California Department of Corrections says that about 15 percent of State prison populations are deportable. Los Angeles County states that they spend $75 million a year on deportable criminal aliens on incarceration and prosecution.

In 1988, there were 5,500 illegal immigrants in California's prisons. By the end of this year there will be more than 18,000 illegal immigrants in our State prisons there, a threefold increase and five times more than any other State. California taxpayers have spent over a billion dollars in the last 5 years to keep these convicted felons in prison, and the cost of incarcerating these offenders in fiscal year 1994/95 is projected to exceed $375 million. Clearly, we have

to address this. It is breaking our State, and I imagine the same is true in other places as well.

Our bill would require courts to begin deportation proceedings at the time aliens are sentenced for their crimes rather than waiting until they are released from prison. The legislation also requires State and local law enforcement agencies to notify the Immigration and Naturalization Service when they arrest any felon.

In addition to that, our legislation, as described by Mr. Bilbray, authorizes deportation of certain criminal aliens before imprisonment. It changes the grounds for deportation of an alien, expands them to include burglary, child pornography, prostitution, perjury, espionage, alien smuggling, and tax evasion. Mr. Chairman, I fear that without effectively addressing the financial consequences of our immigration policy, racism and bigotry toward immigrants is going to escalate.

Our country is a land of immigrants and must never forget the important role they played in our society, but if we are to continue to embrace those people who are truly seeking a safe haven, we must reform the present corrupt system before it is too late. Therefore, I urge the committee to approve the Immigration Stabilization Act during this coming Congress.

Thank you.

Mr. MAZZOLI. Thank you very much, Rick, and thank all of you for the excellent testimony.

Duncan, you were the one who perhaps crystallized the issue about prevention, and whether we are talking about criminal aliens or whether we are talking about whether citizenship ought to be given to people because they happen to be born in the United States, what we are talking about ultimately is a problem of not keeping people out in the first place who have no reason to come in, and so the other things we are dealing with, criminals in jails, the cost to Nevada, the cost to California, the cost to Illinois, all of these vexing questions really could be prevented if we were able to keep them out, and so let me go back to what you were saying about the addition of 5,000 Border Patrol people.

Your estimate of so many per hundred yards or per mile, is based on the efforts at San Diego, is that correct? If you are familiar at all with El Paso and what is being done there, see how this fits in and whether we can perhaps settle on a number finally, after all these years, that might be a number which would prevent the illegal entry of people.

Mr. HUNTER. Yes, Mr. Chairman, and we went into this in some detail in the press conference with Mr. McCollum and Mr. Canady, and a number of Republicans attended with the Republican bill.

This number per mile is based on my working and our staff working with Border Patrol agents. Most of the California-Mexican border, as you know, is in my district, and I am there on a daily basis, and we have analyzed, worked with them at the grassroots level.

This isn't an official Border Patrol approximation. They have to toe the party line, and if they are given 600 new agents in a year, they are happy to get that, and their official statement is that that is great, but that is based on working at the grassroots level as to

what it actually takes to deter—and you hit the key—deter somebody from coming across illegally.

We built with the National Guard roads along the fence that we have constructed in the smugglers' corridor, the 10-foot-high steel fence between the coastal hills and the ocean, and literally, when somebody comes over that fence, climbs that fence, and hits the ground, you have a small window in which to apprehend them.

If you have a four-wheel-drive vehicle with two border patrolmen every several hundred yards, you have enough reaction time to be able to move quickly laterally along that fence, and grab those folks. They get past that window and start making their way up to where they are going to be picked up at the highway.

In the El Paso experiment, they actually had fewer officers per mile than what I have described. Their officers were further apart than several hundred yards, and yet they were able to effectively shut down that border.

So this is based on a couple of things, and we are going to have to do some things with the Border Patrol that some people may resist. The Border Patrol, because it has been underfunded, has been akin to a military operation that hasn't been able to hold the perimeter, and it has fallen back into a series of holding positions.

If you go to the California-Mexican border during any time of the day or night, there are less than 50 agents actually on the border, even though we have about a thousand-man contingent in the Border Patrol. If you go up Highway 5 up to San Clemente, about 80 miles north of the border, you will find almost 100 agents stationed there at a highway checkpoint. If you go to Highway 15 near Temecula, you will find about 75 agents.

If you do as I did last summer and go up to see the in-laws in Idaho, you will find a Border Patrol headquarters in southern Idaho, and they are working there with the INS. Now their answer to us is, "We need to have these places that are inland because we catch a lot of illegal aliens." My answer is, "You could attach the entire Border Patrol as an appendage to the L.A. Police Force, and you could show great numbers of illegal aliens caught, but you wouldn't be enforcing the border."

So the numbers are used. That is a commonsense formula that has been derived by watching what the Border Patrol does and how many people it takes and how many their density has to be to actually catch people. It is also based on a forward deployment strategy. With 10,000 agents, you would have to reduce or eliminate these interior holding points or checkpoints that have really taken a lot of personnel. You have to go into a forward deployment strategy.

Mr. MAZZOLI. Let me ask one question, whoever would volunteer to answer it. It has to do the with the issuance of deportation orders in the Federal court system rather than waiting until a person has served a sentence, about to be released, the INS is notified, they come and claim the individual, he becomes a detainee, and then begins this process.

Everyone knows how overburdened the Federal courts are, the questions of resources in money and material. Are you all satisfied that that still should be something that this committee investigate or get into?

Mr. BILBRAY. I think one of the problems we have in our Federal court system, as you well know, is that we have a lot of districts that need more judges. My own in particular has grown to 1.2 million people, and the Las Vegas Valley still has two Federal judges.

The fact is, what I am proposing is to give you more money, and in that money we could maybe have special masters or magistrates that do nothing but handle immigration cases. Like we have bankruptcy judges, why can't we consider having the Federal magistrate do the deportations? Deportations could be done early. The person would continue to serve their sentence; when they were up for probation, at that point they are taken and deported out of the country, they don't come back on the streets, and I think that, again, what I am giving you is the money to do what you want to do.

Mr. MAZZOLI. Using that border crossing fee.

Henry.

Mr. HYDE. Mr. Chairman, I just want to comment on my good friend Mr. Bilbray's remark that they need more judges. I could well understand during the Reagan and Bush years why there was a reluctance on the part of the Democratic Congress to create more judgeships or to fill those that were vacant, but now that we have Mr. Clinton in the White House, I can't understand why we don't have all the judges we need. So I hope that does happen, because that is very important.

If I may digress just for a second, I am sorry Mr. Canady left because he and Mr. McCollum are two dear friends of mine, and they are both strong proponents of term limitations, and I just want to say to you, Mr. Chairman, that you are a living example of why term limitations are an improvident idea. You are leaving voluntarily, as is Mr. Sangmeister, whom I have known for many years in the Illinois Legislature as well as here, and both of you are leaving voluntarily. I think it is a great loss to the country as well as to the Congress and especially to the people of your districts, because your brains, your integrity—both of you—are, unfortunately, not common, they are uncommon, and we are very lucky—the country was lucky to have people like you, and I am glad if you have to leave you are leaving on your terms and not being turned out by some formula that would say, because you know your job very well, you are no longer qualified. I think it is a loss to the country that both of you are leaving, but thank God it is on your terms.

Mr. MAZZOLI. Well bless you, Henry, I appreciate that. I share your views about term limits. I am not so sure I might be arrogant enough to share your views about George and me, but I somewhat do.

[Laughter.]

Mr. HYDE. I mean honesty compels that, Mr. Chairman.

Mr. MAZZOLI. Thank you. I appreciate it very much. I will miss you, and I hope we have a chance to come back from time to time.

Rick.

Mr. LEHMAN. Yes, I would just briefly comment. I agree, of course, we need more judges or magistrates here, however we can handle this, but I also think we have got to streamline the process by which we deport people. The numbers here are growing so dramatically. I guess we can grow more judges out there, but unless

we get into the process here and make it easier to deport these people, it won't do any good.

Also, just as a related issue here, when we deport people at the present time we just take them to the border, and that makes no sense at all. They take them to the border, and they come right back across. I think if it requires some agreement with Mexico or whatever, it ought to be done, to deport people further down into Mexico so it is harder to get back.

Mr. MAZZOLI. The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much, Mr. Chairman. I certainly am not going to engage in a term limit debate when we are talking about you. We are really happy to have served with you.

Let me say first of all that I want to compliment Mr. Bilbray and Mr. Hyde and Mr. Gilman in terms of the legislation that they proffer today.

I think, Henry, your bill, and the one that Ben and you put in, is in many ways incorporated in Mr. Bilbray's, just as is a bill I put in. You have basically taken what I would think to be the best of several bills and put them together and modified them and added some of your own, and so I think at least in title IV, which is the one that we are focusing on today, you are to be complimented on that, and I appreciate it.

I also want to ask the two Californians a question, if I could.

There was a visit I had this past weekend out to your great State, and I sat and talked with one of the key immigration officials in Los Angeles. He indicated to me that they were now doing an expedited deportation process in that Greater Los Angeles area that more or less is on a trial basis, but he seemed to think it was very effective and they were getting people before they got back into the system out of the jails. That is, we are talking now about criminal aliens.

Are either of you two, Rick or Duncan, familiar with this process? Do you know what its pluses are, minuses are?

Mr. LEHMAN. If they are doing that, I am happy. I am not familiar with it.

But the larger problem here is, if you are going to have any meaningful impact, you are going to have to get them on the border. By the time they get into California, I always say we only catch the ones who work, because if they come and get a job, we get the employer, but if they just get out there and end up on the welfare system or whatever, there is no way to get them; we get very few illegals.

Mr. MCCOLLUM. Well I certainly agree with you, we need to catch them at the border first. I don't have any argument with that at all. I was, again, talking about the criminal alien portion of the Bilbray bill which you two cosponsored, and I didn't know whether you had any knowledge of this particular development.

Mr. HUNTER. Let me say I am aware of a couple of experiments or pilot projects that we have done in which the criminal aliens were flown, I believe it was from California—this was last year—to Mexico City, and within a few days we had captured 10 percent of them coming back across the Mexican border into California.

I am not aware as to whether or not this deportation amounts to taking folks down to San Ysidro, walking them across or depor-

tation. In either case, our conclusion has been—and I think this is INS's conclusion—is that it is simply a matter of time. The deep deported criminal aliens know where their trade is, and that is in the United States committing felonies, and they are up within a short period of time and back across the border.

If they are walked across at San Ysidro, they literally can be back within 30 or 40 minutes in the United States.

Mr. MCCOLLUM. Right. I am aware, having been down there. I just was curious if you knew.

Mr. Chairman, I don't want to belabor it. I have no other questions.

Mr. MAZZOLI. Thank you.

If I could piggyback for a minute—we are still on the gentleman from Florida's time—have you analyzed that 10 percent, Duncan, to see how many then really served any time, getting back to what Henry and Chuck had talked about earlier, the fact that in some cases they may be so swiftly deported that they don't really suffer anything for the crime that they committed, and so they may be more prone to come back? I don't know whether that is a factor.

Mr. HUNTER. Yes. The briefing I got, Mr. Chairman, was from INS with respect to some 300 criminal aliens who had done time and were taken back, and then they checked to see how many were apprehended again on the border, and it was 10 percent within a few weeks, indicating a lot of them had come through.

Mr. MAZZOLI. Yes.

The gentleman from Illinois.

Mr. SANGMEISTER. I had some questions for some of the witnesses that have already left, so it is down to the gentlemen that are here.

Mr. Hunter, I do have one question only of you. Having served a stint of doing a little guard duty myself once upon a time, I am kind of interested in your figures. When you are talking about 5,000 people, are we talking about 8-hour shifts that is going to cover? That is not 5,000 people for 24 hours a day, I take it. That is the only thing I want to get clarified.

Mr. HUNTER. No. That is based on—across the Southern border, you have 12 smugglers' corridors where almost all the smuggling takes place, and that is where you have a city on each side so you have that interaction and you have that logistical base for smugglers, you have the highways, you have the crowd they can get lost in. Southwest, it goes from San Diego, it goes cities, deserts, cities, deserts, and actually people try to come across in the desert area in the Southwest, and it is very difficult for them. There are no highways close to the border, the sensor devices and other high-tech equipment that the Border Patrol has work well, they stick out like a sore thumb.

So what we did was, we took the 12 smugglers' corridors—that is, each place where you have a large urban population, starting with the 15-mile smugglers' corridor on the coast, San Diego-Tijuana, going all the way across the Southwest to Brownsville, TX, Matamoros, Mexico. If you add up the total mileage, some of those places have a 5-mile-wide corridor between the communities, some as much as 15 or 20 miles. It is 165 miles. That is where you have

to have border patrolmen manning the border perimeter to deter people from coming in illegally.

Now if you take two border patrolmen in a four-wheel-drive vehicle every 200 yards or so, which is reasonable with respect to being able to catch people before they get away from the border, that amounts to about one person every 100 yards, 1,700 yards in a mile, and you have three shifts a day, obviously. You also have Saturdays, Sundays, you have holidays, and weekends, so we built a little play into that. But that is roughly 8,250 border patrolmen just for line duty if you count the three shifts.

Now you also have to have reaction capabilities because one thing the smugglers do, what they did and have done in Tijuana and other areas, they will watch the Border Patrol, and they will do a banzai attack, what they call the banzai's at one spot such as the Tijuana River Channel where 300 or 400 people will try to break across at one shot. You need to have a reaction force of border patrolmen who can watch the border, use some of our high-tech capability, and when people are massing to make a banzai attack, you can rush 100 agents or so to that position.

If you take 1,000 people—and we did an analysis—we figured having 1,000 border patrolmen, and of course that is not per shift but that is 1,000 border patrolmen to have a little flexibility, a little reaction force for each one of these Border Patrol sectors, then that kicks you up to 9,000, and if you take 1,000 people to serve the rest of the border areas, which is really stretching them fairly thin, and for headquarters personnel, that takes you up to 10,000 people.

So what we did was, we did an analysis that basically produced what we consider to be the minimum number of Border Patrol people necessary to control the Southwest border.

Now what might happen after we control the border? Let's say we make it impossible or very, very difficult to come across at Tijuana-San Diego. The Tijuana smuggling business is a big industry in Tijuana. If you come up from Mazatlan and you say, "I want to get across into the United States," you can go to this coyote or that coyote and he will say, "You are going to go out with the third platoon, fourth battalion, and you will go out tonight. If you don't get across tonight, we will get you across tomorrow morning."

If you dissolve the industry, if we had those people on line in perimeter and closed down the border, then somebody comes up from Mazatlan and says, "How do you get across the border?" They say, "Well, this Joe used to be a coyote, but he is driving a cab now, he is not here any more." At once the industry and the logistical base is dissolved. You might be able to control that line of the border, that smuggling corridor with less personnel than two border patrolmen every 200 yards.

But I am presuming that when we enforce the border at one spot, the border smugglers, because it is such a lucrative business, will go to another spot and try to get through, and that is what this estimate was based on, 10,000 border personnel, we have 4,500 right now, but it also requires, remember, a change in policy where border patrolmen are deployed on the border, which may be difficult for some of them.

Mr. SANGMEISTER. I don't know what the distance is from San Diego all the way over to, is it Brownsville or Matamoros? But outside of the 165-mile area that you call the corridors to protect, the other areas are just not feasible for crossing?

Mr. HUNTER. It is very difficult to cross in large numbers. Let me give you an example. My district includes—you go east from my district. It starts at San Diego. You go over into Imperial County, which is 120 degrees in the summertime. It is basically a giant desert. You have a long way to go to be able to get to any roads.

In fact, we find illegal aliens who have tried to trudge across the sand carrying as much water as they could on their backs, and we find them each year expired because literally in some of those places you can't carry enough water to get across.

So certainly you will have some very persistent people who would be able to put a backpack on and come in through the mountain areas, but you also have border patrolmen who are good trackers, you have your sensors that give you a lot of leverage out there, and literally somebody crossing the desert in my district sticks out like a sore thumb, you can see them from aerial observation.

You can't get the big numbers. The smugglers are moving vast numbers across now, I mean literally in the thousands every night in the San Diego-Tijuana region. You can't do that in these outback areas. There is no logistical base, Border Patrol resources are leveraged, there is no Grand Central Station, no crowd to get lost in, and there are no highway arteries near the border.

That is what part of that 1,000-man force is for, is to have some semblance of control in the other parts of the border but to control the smugglers' corridors.

Mr. MAZZOLI. The gentleman's time has expired.

The gentleman from California.

Mr. BECERRA. Thank you, Mr. Chairman.

I really don't have many questions except one. I want to make sure we are clear on what we mean by a criminal alien. I think it is often confusing for folks. Mr. Hunter, you are the only person here, so I will ask you.

I know that the Bureau of Prisons and the INS have for many years been trying to track as many people as they can and be able to determine their actual status, if they are here legally or not. Are you aware of any figures that have come out or any documentation to show how many of the aliens that we have in our prisons are here without documentation or in violation of immigration law or just happen to be foreign born?

Mr. HUNTER. The analysis that I have seen is that 22 percent of the inmates of Federal prisons are illegal aliens—that is, people who are here without documentation. That would exclude by definition legal permanent residents. That means they are themselves illegal aliens.

Mr. BECERRA. And what is the source of that information?

Mr. HUNTER. I believe we got ours from the Bureau of Prisons when we put our bill together. Let me see. I have got 22 percent from the source that we put our bill together with, an analysis.

In San Diego, in the county jails, it happens also to be, from our request to San Diego County statistics, 22 percent, and I believe that it was stated that in Texas in the Federal prisons it is 40 per-

cent. But as I recall, that came from the Bureau of Prisons. We will be happy to check.

Mr. MAZZOLI. Would the gentleman yield?

Mr. BECERRA. Yes, Mr. Chairman.

Mr. MAZZOLI. The gentleman is asking some very interesting questions, and we will have a representative from the Bureau of Prisons later this morning. I read the testimony ahead of time, and a lot of different terminology has been used by the writers on this subject and to some extent been used in statements from the experts, which are confusing to me to decide whether you are foreign born, whether you happen to be here illegally because you have no documentation, whether you are here as a noncitizen but still as a permanent resident or a person who is here on other visa documents.

The Bureau of Prisons calls some 26 percent non-U.S. citizen prisoners. But that itself is a little bit hard to understand, exactly what it means.

So, Duncan, you and I had the same general numbers because that is what we were given, but we are going to try to hack that down.

Mr. HUNTER. I think that would be very useful, Mr. Chairman.

Mr. BECERRA. And I mention it only because I have a letter from the Department of Justice, INS. It states here, "As you know, from data previously submitted, we are currently unable to accurately determine the number of prison inmates in the United States who are illegal aliens. Our current data only reflects the number of foreign born individuals incarcerated in Federal, State, and local prisons."

I don't dispute the numbers. I think it is important to talk about the number of folks who are in our prisons and jails who are here with alien status or noncitizen status, but I hate to see us automatically assume that every individual who is incarcerated and does not have citizenship status is someone who crossed our borders without documentation or overstayed a visa and now is an undocumented individual.

Mr. HUNTER. OK. Let me just say that our question to my county in San Diego for the purpose of this hearing was the number of illegal aliens. That was the term that we used. But because I think you have asked a very important question, we will double check on that, and, Mr. Chairman, I look forward to your analysis too.

Mr. BECERRA. Thank you.

And if I could ask Mr. Duncan for the record if he could submit the source, the citation of the 22 percent or so for the record.

Mr. HUNTER. Certainly, absolutely. We will be happy to.

Mr. BECERRA. Thank you very much.

Mr. MAZZOLI. Thank you very much, and thank you, Duncan, we appreciate it.

Mr. MAZZOLI. We will call our next panel forward, Congressman Tom Lewis of Florida. Congresswoman Snowe, and Congressman Condit of California, and Congressman Beilenson.

While everybody is arranging themselves, Tom, let me start with you. In fact, I might say that all the statements that you would submit will be made a part of the record; and, Tom, you are recognized to discuss your bill.

STATEMENT OF HON. TOM LEWIS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. LEWIS. Thank you very much, Mr. Chairman, and I appreciate the fact that you invited me here today, and I appreciate the committee's interest in H.R. 723, the Criminal Alien Deportation and Exclusion Amendments of 1993.

As the committee well knows, prison capacities and judicial limits or rulings limit the number of criminals our prisons can hold. The question is no longer, do we have to release criminals early? It has become: Which criminals do we release early?

In Florida, on average, violent criminals serve only a third of their sentences. A third of those released early end up back in jail after committing another crime. We must find ways to stop returning criminals to our streets.

Over 50,000 prisoners in State and Federal facilities are not citizens of the United States. Under current law, the Immigration and Naturalization Service must have deportation proceedings on criminal aliens only after they have finished their sentences except for those who have committed aggravated felonies.

Overcrowding in Federal detention centers forces the INS to release criminal aliens with instructions to return so they can be deported. Not surprisingly, most never do. In researching this issue, I have found that incarceration costs the taxpayer between $15,000 and $30,000 per inmate. This means that last year, while we released many violent criminals, our country spent between $800 million and $1½ billion keeping these criminal aliens in our overcrowded prisons. We clothed them, housed them, and fed them, we put them through the drug treatment and job training programs to make them better citizens, then we deported them.

My legislation, H.R. 723, would accelerate the deportation of criminal aliens by allowing the INS to begin an alien's deportation hearing concurrently with the alien's period of incarceration. If the immigration judge issues an order of deportation, the criminal alien would be immediately deported from our country before the completion of his sentence as long as two conditions have been met—and I think these are important—as long as two conditions have been met:

First the local, State or Federal court who originally sentenced the alien must approve the request to release the alien to the custody of the INS. If the sentencing authority with jurisdiction chooses not to release him for any reason, the alien remains in prison. This maintains sentencing control at the local level and protects against the release of the worst criminals.

Second, to ensure an alien's due process, H.R. 723 prohibits deportation until all direct appeals of the criminal conviction have been resolved. If any appeal is upheld, the deportation order is automatically revoked.

The bill adds the remainder of the alien's sentence onto the period prescribed by the current law during which an alien is excludable following deportation. Any previously deported alien caught back in the United States during this extended period is then subject to immediate incarceration in Federal prison.

Mr. Chairman, H.R. 723 keeps criminal aliens behind bars until their deportation. It could save a billion dollars annually and gives

local jurisdictions the ability to hold dangerous criminals instead of deportable criminal aliens.

I am pleased that 70 of my colleagues, including many members of these subcommittees have come together in bipartisan support of this legislation. We are already releasing criminals. To me, it makes more sense to release someone we deport from our country instead of someone we return to our streets. H.R. 723 gives us the opportunity to make this choice.

I thank the subcommittee for their interest and for the opportunity to come before you today, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, thank you very much, Tom. Peter.

STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

Mr. DEUTSCH. Thank you, Mr. Chairman, and I too want to thank the members of this subcommittee for granting me the opportunity to appear before you today, and particularly the chairman, Chairman Mazzoli.

It is with growing concern that I will address the issue of Hamas activity in the United States. Hamas, also known as the Islamic opposition movement, is an Islamic fundamental terror organization that developed as an offshoot of the Muslim Brotherhood.

In its initial incarnation, Hamas focused its efforts on converting people into observant Muslims. It successfully worked through community organizations, schools, universities, and mosques. It then began to use this base of support as a springboard for recruitment and information and dissemination for its terror operations.

Beginning with the 1992 State Department report "Patterns of Global Terrorism," the United States officially recognized Hamas as a terrorist organization. In addition, Iran, which is cited by the same report as the world's principal sponsor of extremist Palestinian Islamic groups, providing them with funds, weapons and training, is known to provide Hamas with anywhere between $15 and $30 million per year. This is a large portion of the Hamas budget, the balance of which is raised abroad.

At the outbreak of the Intifadah, Hamas began to actively engage in and promote violence. The desired end of such violence was the death of Jews and the destruction of Israel. Hamas is committed to seeing the demise of the State of Israel and the creation of an Islam caliphate over the entire region which was once Palestine.

A Hamas leaflet distributed in 1990 calls for the murder of Jews—and I quote—"Every Jew is a settler, and it is the obligation to kill him and take his property."

Hamas views armed struggle and murder in the form of a holy war or jihad as the only legitimate means for obtaining the desired goals that they have in that region of the world. The language in the preamble to the Hamas covenant explicitly states Israel exists and continues to exist only until Islam obliterates it and has obliterated its predecessors.

The Hamas ideology intertwines pan-Arab Islamic religious teachings, Palestinian nationalistic aspiration, and anti-Western rhetoric. It does not recognize the PLO as an organization to lead the Palestinian people but also the reality within this period of

time, murder and violence of Hamas are the weapons in derailing the peace process.

I have a more extensive statement, but let me just try to synopsize some of it.

In light of Hamas's sworn commitment and actual commitment to violence, including instances that at least at this point, although there are points of it being tied in this country, including the bombing at the World Trade Center as well as the targeted shootings at the CIA compound in Langley, VA, it has come as a shock that Hamas freely operates in the United States, both fundraising and dispatching orders and officials.

The spokesman for the Hamas terrorist organization and leader of its delegation to Iran, Musa Abu Marzuk, was a long time resident of Arlington, VA, just miles from the U.S. Capitol where American lawmakers conduct their daily business. Abu Marzuk would offer comment on Hamas terrorist activities. In the late fall of 1992 Marzuk fled the United States—only furthering concerns about his deep involvement in terrorist violence and operations of Hamas.

On January 25 of last year, two Chicago residents were arrested on the West Bank when they were discovered to be high ranking Hamas activists. There is a long public disclosure in terms of cash transactions that they brought with them and their role both in this country as well as their role on the West Bank in the State of Israel. The most recent and most frightening are the newest charges that have been leveled against Mohammed Salah. On October 23, 1993, the Israeli military court in Ramallah indicted Mr. Salah, an American citizen, as a world commander of the Hamas military wing. In addition, the indictment alleges that he established a terrorist cell in the United States called Palestine, helped develop poisons, bombs, and telephone jammers, and, finally, ran training sessions in the United States for Hamas activists.

The thought that Hamas operates its command center out of the United States is gaining credence with the recent upswing in terrorist violence. An ongoing FBI investigation triggered by the World Trade Tower bombing and the CIA shootings link those seemingly isolated incidents to a sophisticated and highly organized terrorist network in the United States.

While the type of terrorist violence that is reported daily in the Middle East will hopefully never become a reality in the United States, it is disturbing to realize that terrorist organizations are breaching our borders.

Hamas has found a friendly U.S. community in which to operate and fundraise, promoting its acts of violence. Many of these operatives travel back and forth between the United States and the Middle East conducting their business of terrorism. Our national security demands that lawmakers take immediate action against these fundamentalist terrorist organizations.

Based on self-proclaimed goals of Hamas and a cursory review of its record, one can only define its membership as terrorist. By Federal immigration law, any individual who fits the legal definition of a terrorist is excludable from the United States. Therefore, H.R. 1279 simply gives the legal classification of terrorist to any Hamas member and thus makes them ineligible to enter the United States.

If enacted, H.R. 1279 would prevent the entrance of those individuals who sought to obliterate the State of Israel by violent means. It would cut off an alleged American command center from its henchmen in the Middle East and help avert terrorism's tragedies here in the United States.

Mr. MAZZOLI. Thank you very much, Peter. We appreciate that testimony.

[The prepared statement of Mr. Deutsch follows:]

PREPARED STATEMENT OF HON. PETER DEUTSCH, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I would like to thank all of the members of this distinguished subcommittee for granting me the opportunity to appear before you today. It is with growing concern that I will address the issue of Hamas activity in the United States.

Hamas, also known as the Islamic Opposition Movement, is an Islamic fundamentalist terror organization that developed as an offshoot of the Muslim brotherhood. In its initial incarnation, Hamas focused its efforts on converting people into observant Muslims. It successfully worked through community organizations, schools, universities and mosques. It then began to use this base of support as a springboard for recruitment and information dissemination for its terror operations.

Beginning with the 1992 State Department report "Patterns of Global Terrorism," the United States officially recognized Hamas as a terrorist organization. In addition, Iran who is cited by the same report as "the world's principal sponsor of extremist Palestinian and Islamic groups, providing them with funds, weapons, and training," is known to provide Hamas with anywhere between $15-$30 million dollars per year. This is a large portion of the Hamas budget the balance of which is raised abroad.

At the outbreak of the intifadah Hamas began to actively engage in and promote violence. The desired end of such violence was the death of Jews and the destruction of Israel. Hamas is committed to seeing the demise of the state of Israel and the establishment of an Islamic Caliphate, or dominion, over the entire region which was once Palestine. A Hamas leaflet, distributed in October 1990, calls for the murder of Jews: "every Jew is a settler and it is the obligation to kill him and take his property."

Hamas views armed struggle and murder in the form of a Holy war, or jihad, as the only legitimate means for obtaining the Caliphate, and any settlement with Israel is perceived as a betrayal of the tenets of Islam. Language in the preamble of the Hamas covenant explicitly states, "Israel exists and continues to exist only until Islam obliterates it, as it has obliterated its predecessors."

The Hamas ideology intertwines, pan-Arabic Islamic religious teachings, Palestinian nationalistic aspirations and anti-Western rhetoric. It does not recognize the Palestine Liberation Organization as a legitimate leader of the Palestinian people, and entirely rejects any idea of self-government and the peace process.

Hamas' stranglehold on the West Bank and Gaza Strip continues to be felt through repeated attacks on Israeli soldiers and Palestinian collaborators. Murder and violence are Hamas' weapons aimed at derailing the peace process. And, as the peace process continues to move forward many believe that its acts of protest violence will become increasingly spectacular claiming more lives and causing vast destruction.

The new alliances in the Middle East include cooperative efforts aimed at combatting terrorism. Indeed, the greater the cooperation and more effective the methods, it is likely that terrorists will look for their targets outside of the Middle East. Many experts believe that this will bring an increased rush of terrorist activity to the United States and Europe. In recent months this possibility was made reality with the bombing of the World Trade Center and the targeted shootings at the CIA compound in Langley, Virginia.

In light of Hamas' sworn commitment to violence, it came as a shock that it freely operates in the United States, both fund raising and dispatching orders and officials. The spokesman for the Hamas terrorist organization and leader of its delegation to Iran, Musa Abu Marzuk, was a long time resident of Arlington, Virginia. Just miles from the U.S. Capitol, where American lawmakers conduct their daily business, Abu Marzuk would offer comment on Hamas terrorist activities. In late fall of 1992, Marzuk fled the United States over furthering concerns about his deep involvement in terrorist violence and the operations of Hamas.

On January 25th of last year, two Chicago residents were arrested in the West Bank when they were discovered to be high-ranking Hamas activists. At the time of their arrest, Mohammed Salah and Mohammed Jarad had in their possession $100,000 dollars in cash, lists of Hamas activists, and plans for terror attacks for distribution to Hamas activists on the ground. Under interrogation the men named the United Association for Studies and Research (USAR), based in Springfield, Virginia and its head, Ahmed Bin Yousef, as the "political command" of Hamas in America. Not surprisingly, Musa Abu Marzuk sat on the board of the USAR.

The men also admitted that they had been dispatched by Hamas officials to rebuild the terror organization's infrastructure that had been badly damaged by the deportation of 400 Hamas activists from Israel. Upon arrival, the Chicagoans began the task of reorganizing the armed gangs used to attack Israelis and Palestinians under orders from officials in the United States and London. Their orders came through Sheik Jamal Sa'id, another senior Hamas operative who works out of Chicago.

Prior to Salah's January arrival to the West Bank town of Ramallah, $300,000 dollars was deposited in his account earmarked for Hamas activities. When Salah arrived in the West Bank he was given $230,000 in cash by a middle man for an equivalent deposit in the individual's account abroad. The convoluted trail of funds all lead back to Hamas and the money it raises in order to conduct its terrorist violence.

Most recent, and most frightening, are the newest charges that have been leveled against Mohammed Salah. On October 23, 1993, The Chicago Tribune reported that the Israeli military court in Ramallah indicted Mr. Salah as the "world commander of Hamas' military wing." In addition, Salah's indictment alleges that he established a terrorist cell in the United States called "Palestine," helped develop poisons, bombs, and telephone jammers, and finally, ran training sessions in the United States for Hamas activists.

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While the type of terrorist violence that is reported daily in the Middle East will hopefully never become a reality in the United States, it is disturbing to realize that terrorist organizations are breaching our borders. Hamas has found a friendly U.S. community in which to operate and fundraise promoting its acts of violence. Many of these operatives travel back and forth between the United States and the Middle East conducting their business of terrorism.

Our national security demands that lawmakers take immediate action against these fundamentalist terrorist organizations. Based on the self-proclaimed goals of Hamas and a cursory perusal of its record, one can only define its membership as terrorist. By federal immigration law, any individual who fits the legal definition of a terrorist is excludable from the United States. Therefore, HR 1279, simply gives the legal classification of terrorist to any Hamas members, and thus, makes them ineligible to enter the United States.

If enacted, HR 1279 would prevent the entrance of those individuals who have sought to "obliterate" the state of Israel by violent means. It would cut off the alleged American command center from its henchmen in the Middle East, and help avert terrorism's tragedies here in the United States.

Mr. MAZZOLI. The gentlewoman from Maine.

STATEMENT OF HON. OLYMPIA J. SNOWE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MAINE

Ms. SNOWE. Thank you, Mr. Chairman, and I just want to express my appreciation to you and the committee for holding this hearing today on a variety of legislation. So I am pleased to be able to discuss some of the bills that I have introduced regarding immigration.

I am a ranking Republican on the International Operations Subcommittee, and our subcommittee has jurisdiction over consular operations as well as the visa procedures.

My legislation, as it was drafted originally, addressed a number of deficiencies in these procedures and especially what became evi-

dent after the bombing of the World Trade Center, and I was greatly assisted in this effort by Representative McCollum, the ranking member of this subcommittee as well as Mr. Gilman who is the ranking member of the full Foreign Affairs Committee.

I would like to clarify the status of my two bills. First of all, the major bill that I introduced originally, H.R. 2041, addressed a variety of weaknesses in the State Department's visa issuing process and lookout list procedures. This legislation was referred both jointly to the Judiciary Committee as well as the Foreign Affairs Committee.

The provisions that were in the jurisdiction of the Foreign Affairs Committee, we included those provisions in the State Department authorization which the conference is scheduled to convene next month. So I reintroduced the legislation with the remainder of the provisions that are within the jurisdiction of your subcommittees, and that bill is now H.R. 2730, and that is what I will speak to this morning.

Traditionally, Americans have regarded international terrorism incidents to be on the territory in Europe, Middle East, or Latin America. Americans abroad, without any doubt, have been the targets of terrorist incidents, and of course our U.S. diplomatic facilities abroad have as well.

We found it differently with the bombing of the World Trade Center that the United States is no longer immune from acts of international terrorism. As we recall, that incident led to the death of six individuals, 1,000 were injured, and it resulted in $600 million in damages.

On the heels of that bombing, we followed up with an incident in St. Louis where a number of people who are members of the Abu Nidal organization were arrested and who were apparently planning an attack on the Israeli Embassy here in Washington, DC, and if that wasn't enough, more attention was galvanized back to New York City where a number of terrorists were arrested who were planning reportedly a wide-ranging assassinations and bombing campaign in New York City.

Of course, those two incidents, focused on the radical Egyptian cleric Omar Abdel Rahman, drew the attention of the American people. As we learned, Abdel Rahman has a long history of involvement with the fundamental terrorist organization known as the Islamic Group that in 1993 alone has been responsible for killing 137 Egyptians and wounding more than 100 others and had been waging a campaign of violence against Egypt's Government officials and the tourist industry as well as the economic infrastructure.

After the second wave of arrests in New York which came exactly 1 week after the Sheik Rahman was quoted in the press calling for the overthrow of the Egyptian President Hosni Mubarak, in that press statement, the sheik ominously warned that the United States should be held accountable for its continued support of the Egyptian Government. That is all the background as we know it.

I became familiar with a loophole in the 1990 immigration reform bill during my investigation into a series of bureaucratic missteps and blunders which led to the sheik's entry into the United States and his subsequent adjustment of status to permanent resident. My staff, in fact, received a briefing from a high ranking

State Department official in discussing what went wrong in the Rahman case, and during that briefing the official mentioned the fact that all these errors occurred prior to 1991 when the 1990 act became effective. He warned that if the sheik had tried to come into the United States just a year later and there had been no bureaucratic missteps, he still would have been able to enter the United States, even knowing his background and what he had done in the previous decade.

Before 1991, as you know, the executive branch had broad authority under the McCarran-Walter Act to deny entry to any individual who had a wide range of ideological associations.

I do not object to the general purpose of the 1990 rewrite of the McCarran-Walter, but in refocusing exclusionary authority exclusively on individual actions rather than personal beliefs, the bill really does have an effect of denying the authority of the U.S. Government to exclude aliens on the basis of membership in any terrorist organization. In my view, this kind of membership certainly crosses the line from personal beliefs to individual actions and should alone be grounds for exclusion.

I would like to reemphasize that my legislation would strengthen the executive branch's authority to determine whether or not these individuals as members of terrorist organizations can be allowed into the United States. What it would do is give that authority to the Attorney General in consultation with the Secretary of State to determine which groups would be classified as terrorist organizations, so therefore anybody who was a member would be denied entry into the United States.

Two further events last fall that emphasized the need for passage of this legislation, one was a hearing that was held before the Foreign Affairs Committee with the State Department's Inspector General Sherman Funk, and one of the questioners was Mr. Schumer, a member of this committee, and he asked Mr. Funk, and I quote, "If somebody comes up to the embassy and says, 'I'm a member of the Abu Nidal organization,' we check if they are on some kind of list, and if not, we let them in." Mr. Funk responded, and again I quote—"A cable I received yesterday morning used almost that same language. Mere membership in a terrorist organization is not, per se, reason for being excluded."

This hearing continued with strong disagreements between the head of the Department of Visa office and the Assistant Secretary for Consular Affairs. The head of the Visa Office argued in the strongest possible terms that the meaning of the 1990 law is clear and that members of terrorist organizations must not be excluded from entering the United States unless we know that at some point they had been personally involved or about to commit a terrorist act.

The Assistant Secretary for Consular Affairs—and I know will be on a later panel—argued that there was enough flexibility in the law to deny entry of any member who is a member of an organization.

A New York Times editorial last fall, in fact, lambasted the Bush administration for seeking deportation of two Palestinians who are associated with the George Habash Popular Front for the Liberation of Palestine. The editorial went on to make a strong case that

the deportation could not be carried out because that was eliminated in the 1990 changes, and it called on the Clinton administration to drop the case.

I guess my point is, if there is any question now that a current law ties the hands of the Attorney General to keep out of the United States members of organizations such as the PFLP, we certainly should be changing that law. I think the question really does come down to, Mr. Chairman and members of the committee, are we intending to protect the safety and the lives of Americans, or are we seeking to somehow give some fundamental right to aliens who are members of terrorist groups to enter the United States and to travel unfettered within our borders?

So I would hope you would give serious consideration to this legislation and any legislation on immigration reform that might ultimately be enacted by this committee.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, Ms. Snowe. We appreciate the testimony.

Mr. Condit

STATEMENT OF HON. GARY A. CONDIT, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. CONDIT. Thank you, Mr. Chairman.

First, I would like to commend you and the committee for holding the hearing. It is a very important subject matter, and I would like to pay tribute to you for the strong leadership you have shown in this area. You have done a great service to the country, and I want you to know that I appreciate it.

Mr. MAZZOLI. That could be reciprocated because you have had some very important hearings in your committee that have fleshed out this whole subject, and we appreciate that.

Mr. CONDIT. Thank you, Mr. Chairman.

I am here today to testify on behalf of a bill that I have introduced, H.R. 3872, the Criminal Alien Federal Responsibility Act of 1994. H.R. 3872 is a companion bill to S. 1849 introduced by Senator Bob Graham.

Our immigration policy needs reform. We have as many as 3.4 million undocumented residents in our country. The Federal Government must bear the consequences of this needed reform, and if it costs money, we need to find a way to pay for it.

Our cities, counties, and States are currently faced with financial burdens of providing services to undocumented residents. There is no doubt about it, undocumented residents do contribute significantly in the form of tax revenue. However, most of the moneys are paid to the Federal Government. My bill attempts to correct this wrong in the area of criminal justice. Simply put, H.R. 3872 would require the Federal Government to incarcerate or to reimburse State and local governments for the cost of incarcerating criminal aliens.

In testimony before my subcommittee at a hearing on August 31, INS testified that the Department of Justice has no authority to detain an alien that is sentenced to a State crime and that legislation would be needed to give the Department the authority. H.R. 3872 would give the Department of Justice this authority. This bill

would strengthen section 501 of the Immigration Reform and Control Act of 1986.

Under law, the Federal Government does not have to reimburse States unless Congress appropriates money in advance. My bill would require the Federal Government to incarcerate criminals, undocumented residents, or to reimburse both local and State governments for the costs of incarceration.

Limitations of INS data must not be used as an excuse by the Federal Government to ignore the substantial costs incurred by State and local governments. The Governor of New York estimates that New York pays approximately $63 million annually for the cost of incarcerating criminal undocumented residents. The State of Texas estimates the cost incurred by the State and local governments for 1993 is $52 million. The State of Florida estimates its cost to the State as $58.6 million annually. The State of California estimates the cost of incarcerating undocumented criminal aliens in the year 1994/95 will be $393 million.

The financial cost to counties and States are not limited to the costs of incarceration. This also includes prosecution and parole, just to name a few.

In Florida, it is estimated that 6 to 7 percent of the prison population is comprised of undocumented criminals. In the State of California, undocumented immigrant inmates comprised about 12 percent of the State's total prison population based on the INS detainment orders. San Diego County estimates that over 15 percent of the total expenditure of criminal justice are used for the costs associated with undocumented immigration.

Because the State and county jails incarcerate illegal criminal immigrants, it adds pressure to the already overcrowded system. State and local budget shortfalls also force cuts in criminal justice programs even where populations are increasing. In other words, the Federal Government fails to take responsibility for criminal aliens and is hurting local and State efforts to keep violent criminals behind bars and our policemen on the street.

The legislation that I have introduced has the support of the Governors of Florida, Texas, Illinois, Arizona, New Jersey, California, New York, the National Conference of State Legislators, the National Association of Counties, and the Association of State Correctional Administrators.

I would like to thank the chairman for allowing me this opportunity to testify and ask for consideration of this bill at the appropriate time, Mr. Chairman,.

Mr. MAZZOLI. Thank you very much, Gary.

Let me start out with a couple of questions maybe to Olympia and Peter on this question of changing the 1990 law.

Olympia, you were saying that activities more recently since 1990 have sort of crossed the line so you have gone from the mental process or the ideological process into the actual terrorist activities to the point that mere membership—which was the big argument that we had in 1990—that mere membership should not disqualify someone from obtaining a visa, should now be put aside in favor of designating certain activities or certain organizations whose members would be prohibited. So maybe you can kind of talk me a little bit through that.

Now Peter's goes more specifically into Hamas, naming Hamas rather than a generic description.

But take me through that again, because we really had the same argument in 1990, and I would like to hear your thinking on that.

Ms. SNOWE. That is right, and I know Peter's bill does delineate Hamas in naming a specific organization. We have done that before of course with the PLO, and the real issue is whether or not we are going to place the burden on our Government to determine whether or not somebody is about to commit an act of terrorism or has been personally involved in terrorism, and that is the burden.

If you look at Sheik Rahman's situation and what had occurred in the previous decade, it is astonishing to me he was ever allowed into the United States, but that was a series of other problems we have had and hopefully we can rectify.

But even under the changes of 1990, knowing what we knew about him before, he could have still been allowed into the United States, even with that previous knowledge.

The way I have drafted my legislation was to be more flexible in allowing the Attorney General, in consultation with the Secretary of State, to determine, you know, what organizations are terrorist organizations so that they can deny entry into the United States by those members because of the problems we have had previously where there were some difficulties because they didn't allow certain individuals, and it became more on an ideological battle.

In Peter's case—and I am a supporter of his legislation because I believe in what he is doing and in this instance specifically delineating an organization—I don't think they are mutually exclusive.

Mr. MAZZOLI. Before turning to Peter, I would say you anticipated the argument that is made against us, because the State Department will testify that they believe they have the power to exclude people who are members of organizations where membership itself necessitates participation, past participation or future participation in the terrorist activity. So they feel that even under the 1990 language that they can exclude people who may not have actually taken part in something but by membership alone.

In any event, Peter——

Mr. DEUTSCH. I don't have the fortune of having been through the debate in 1990, so I guess I sort of come at it fresh.

Mr. MAZZOLI. Or misfortune—whichever.

Mr. DEUTSCH. Or misfortune. I come at it fresh, and it is kind of hard to believe some of the historical things that are going on right now, that Hamas has, you know, fundraising operations in this country, that they exist at the same time almost on a daily, if not weekly basis, they are killing innocents. I mean that is the essence of the organization. Just this past week a pregnant mother was killed, and Hamas took credit for the terrorist activity.

Whether you are part of the organization and you are fundraising for the Hamas YMCA in Gaza City, you know, there is clearly a funding mechanism that goes to that organization itself, and I guess from the perspective I have, there are certain groups that are just so evil and so vicious and so anti and alien to what we accept as normal speech in this country that they, by their definition and by their actions, by that membership, have crossed the line where

I say, and hopefully a majority of the members will say, that that is a group that we want to protect ourselves from.

Mr. MAZZOLI. We are in a very interesting time in world history because just the other day Gerry Adams was here in the country, and all of us were down at the White House in September when Yasser Arafat and his designated ministers were there on the White House property taking part in that great ceremony.

So we have a clear indication that there does need to be flexibility enough to talk to people under different given circumstances because peace may ensue from that, and at the same time we don't want to jeopardize our freedom.

My time has expired.

The gentleman from Florida.

Mr. MCCOLLUM. Thank you very much.

First of all, I would like to pursue a little bit more of this. I think that every one of the bills before us today in your panel is very, very critical and for different reasons of course, but with regard to what you, Peter and Olympia, are trying to do, I will be very interested in hearing what the State Department says.

But my judgment on it at this point in time, having been through those debates last time and having now seen the World Trade Center situation and so forth, is that it is very critical legislation, both of your pieces, that Hamas clearly is an organization which can be identified much like the PLO and should be. I think the PLO maybe ought to be modified to add "member;" it doesn't have that word, just "officer;" and so forth right now.

With regard to Olympia's bill, Olympia, you have hit the nail on the head because somebody can be a member of an organization and not be active and not be identified with that organization which has some track record that says that every member has to be active at some point and get into this country and be activated. It is a wonderful stealth opportunity. We leave a crack open to let people do this, and they are pretty smart, they figure that out, and it is just too risky from a national security standpoint not to have what you are proposing in law, it seems to me.

So I commend both of you.

I would also like to ask Tom Lewis something about his legislation.

It seems to me, Tom, that yours has one key provision in it. I like all of it, but I particularly like the fact that you have got a few exclusion grounds for those who have been convicted and have been deported in the past because that allows us, it seems to me, if I am not mistaken, an easier path to get them back out of the country again if they come in so we don't have to go through a deportation process, we can go through an exclusion process. Is that not what you were intending to do?

Mr. LEWIS. Correct. That is the extent of it.

Mr. MCCOLLUM. I just think what you have got, again, needs to be folded into the other deportation and criminal alien reforms that we do. It is very complementary, and, as you know, I have been a supporter of your legislation all along.

Mr. LEWIS. Yes, I appreciate that.

Mr. MCCOLLUM. Gary, I think your legislation also is very precise in what it does. It is targeted, it is very simple, and I don't

have much I can ask about it because it goes right to the heart of a problem that my State has. That is why Bob Graham has been a supporter of it, and I personally think the Federal Government ought to take charge of any of the alien population that is in our State prisons today, and you have provided a vehicle to do that.

I don't have any more questions, but I just want to say that each one of these particular bills is very targeted, Mr. Chairman, very carefully written, and while I might have more difficulty looking at the more comprehensive stuff you and I see up here, these are so precise that I have a hard time finding a flaw with any one of them.

Thank you.

Mr. MAZZOLI. I might say, Gary, if your bill were to pass, I think it would so completely focus attention on the ultimate question, which is keeping the wrong people out in the first place rather than trying to apprehend them inside and trying to deal with them then would take the front burner instead of being on the back burner. So it may have certain intentions, but it may have different effects even from those intentions just by the very nature of it.

The gentleman from Illinois.

Mr. SANGMEISTER. Just a couple.

Olympia, your H.R. 2730 is really a substitute for H.R. 2041.

Ms. SNOWE. That is correct, because all the other provisions are in the State Department bill.

Mr. SANGMEISTER. OK.

Ms. SNOWE. So the remainder of the provisions in H.R. 1730 are those issues within your jurisdiction.

Mr. SANGMEISTER. Then again, getting back to Peter, how does Immigration determine who is a member of the Hamas?

Mr. DEUTSCH. Olympia mentioned the sort of scenario that sounds kind of crazy but asking someone in terms of that is one thing, but, you know, through other Government sources, through State Department sources, and through FBI sources domestically and intelligence sources overseas, we have lists of people who have been active in different terrorist organizations or even membership of those organizations extending beyond actual active membership or active specific roles.

Again, presently, if there is a specific action tied to an incident, if we get to that level of detail, someone would be excluded.

So my understanding, again, from declassified briefings that I have gotten from the FBI as well as the CIA, there are broader lists, broader membership things that are being excluded at this point in time.

Mr. SANGMEISTER. The way your legislation is drafted, it talks about an alien who is a member, officer, official, representative, or spokesman of Hamas, which I think you have to admit is fairly broad. Don't you think that Olympia's approach which leaves it to be determined by the Attorney General in consultation with the Secretary of State is sufficient?

Mr. DEUTSCH. You know, obviously the committee has the ability—hopefully this legislation will move either separately or as part of the immigration package that the committee is gong to work on.

I think as Congressman McCollum pointed out, there are ways to tighten it, to limit it a little bit in terms of officers in terms of

someone responsible. But I guess I keep tying it back in that money is a fungible object. If someone is part of the organization and they are contributing to the organization and an organization whose sole purpose or essence of the organization at this point in time is to kill innocents, which is the raison d'etre of Hamas at this point in time, from my perspective, I believe anyone tied to that organization that is tied to killing innocents, there is a good reason to believe to exclude them from this country to protect our citizens here.

Mr. SANGMEISTER. I don't question that at all, and I don't know that much about the Hamas, but from what I do understand, I agree with you from that standpoint.

The point is, how are you going to prove who is and who isn't? And I just think that your definition in your legislation is a little bit broad, and I think her approach is a little better.

Mr. DEUTSCH. I appreciate that.

Mr. SANGMEISTER. And I agree with the other pieces of legislation and have no further questions, Mr. Chairman.

Mr. MAZZOLI. Thank you very much.

Well, gentlemen and lady, we appreciate your being here, and we will move along with considering the legislation, and we thank you for your help.

Ms. SNOWE. Mr. Chairman, may I include for the record a statement from Representative Gilman who is unable to be here?

Mr. MAZZOLI. Definitely. The gentleman's statement will be made a part of the record.

[The prepared statement of Mr. Gilman follows:]

PREPARED STATEMENT OF HON. BENJAMIN A. GILMAN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW YORK

Mr. Chairman, and Members of the Committee. Thank you for this opportunity to comment in writing on H.R. 2730. This important bill will restore sanity to our immigration laws with regard to an alien's membership in overseas terrorist groups, and establish our clear ability to deny entry into the U.S. of terrorists, or those who support or advocate international terrorism based upon such membership. I was pleased to join Ms. Snowe, along with Mr. McCollum as an original co-sponsor of H.R. 2730.

The increased concern about international terrorism has come home to America. Last year from the billowing dark smoke of the World Trade Center building in New York, we realized that six innocent lives had been lost, including that of a constituent of mine, to an act of international terrorism. In addition this cowardly terrorist attack, resulted in over a thousand injuries, along with property damage, and business disruptions totalling more than $600 million dollars.

America we learned on February 26th of last year, was no longer immune from international terrorism. We ought to learn some other lessons as well from that terrifying smoke from the Trade Center bombing in lower Manhattan last February.

The first and foremost lesson, is that those few foreign nationals, who mean this nation and its people and property harm through the use of terrorism, do not have a right, and should not have a right, to legally enter this nation.

Today our laws are ambiguous on this subject. It is unclear, because of some recent Congressional changes in the law, whether or not those who are merely members of a foreign terrorist group, and who have not been charged, convicted, or there is no strong evidence of actual terrorist conduct or intent, whether such individuals can legally be denied entry into the U.S.

Last summer a staff delegation of the Foreign Affairs Committee visited several overseas State Department visa issuing posts. There they observed first hand the front line U.S. consular officers, who can issue or deny a U.S. entry visa to an alien, daily face this question of terrorism as a basis for denial of a U.S. visa. Committee staff observed U.S. consular officers struggle with this issue of mere terrorist group membership, or ambiguous evidence (e.g. newspaper accounts alone) of links to ter-

rorism, as a basis for denial of U.S. entry visas. In my opinion, which I believe the American people share, there should be no struggle or doubt over such a decision whether to deny entry in such cases. Individuals who are members of terrorist groups, as defined by the Attorney General of the U.S. as H.R. 2730 requires, clearly should not be allowed to legally enter the U.S.

H.R. 2730 sets up the appropriate mechanism for the Attorney General of the United States, in consultation with the Secretary of State, and our intelligence apparatus, to make a careful and informed judgement on those foreign based groups that are indeed truly terrorist organizations. Based upon such a careful determination by the Attorney General, along with the Secretary of State, terrorist group membership alone shall thereafter legally be the basis for denial of entry into the U.S. of any member. H.R. 2730 makes that position clear, and ends the current confusion in our immigration law.

No one should be able to quarrel with an informed legal determination on foreign terrorist groups as made by the Attorney General, under such circumstances. Any doubts should first be resolved in the favor of the United States, and our own national interest, safety, and security.

H.R. 2730 resolves the issue in favor of America's own safety, and should be enacted as soon as possible. The American people will expect nothing less from their elected officials. They will rightfully hold us accountable, especially if we fail to act to close this gaping hole in our defenses against international terrorists. The Trade Center bombing was a wake-up call. Let us hear the alarm bells this time, before it is once again to late.

Mr. MCCOLLUM. And, Mr. Chairman, before we proceed, may I enter my statement into the record at this point in time with unanimous consent?

Mr. MAZZOLI. Yes. As a matter of fact, I would invite the gentleman to talk about his bill, because the other members of our panel who are sponsors of legislation noticed today did have an opportunity to speak to their bill. So if the gentleman wishes to take a few minutes to do so.

Mr. MCCOLLUM. Well, Mr. Chairman, I don't want to belabor the committee. We have a number of good witnesses out there.

But I would like to say that the legislation I have in today is very similar in certain respects to title IV of Mr. Bilbray's legislation which he talked about. It is an effort to try to accomplish under the color of law changes in the various procedures that we have now to deport criminal aliens and to speed up that process, to set up a process like he described of judicial opportunity for judges when they first start the process at the sentencing stage to go ahead with the deportation and get that order under way, and a number of other tightening mechanisms which I again know the gentleman understands and I don't wish to take up the full time of the subcommittee discussing it; I don't think it is necessary.

But I certainly think we need to do these things. Mine is a little different than Mr. Bilbray's but not a whole lot.

Mr. MAZZOLI. Good. The gentleman's statement will be made a part of the record.

[The prepared statement of Mr. McCollum follows:]

PREPARED STATEMENT OF HON. BILL MCCOLLUM, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA

I want to thank Chairman Mazzoli for holding this hearing and congratulate him on persevering in rescheduling it after a couple of unavoidable delays. The issue of criminal aliens is an important one with ramifications for public safety, enforcement of immigration laws, and public expenditure for arrests, prosecution, incarceration, and deportation. The widespread interest in this issue is attested to by the large number of bills to be considered by this Subcommittee today and the inclusion of various criminal alien provisions in the House Republican crime bill and the Senate-passed crime bill.

I have been active on this issue for several years and would like to express my appreciation to the Department of Justice—under the Bush Administration and now under the Clinton Administration—for its efforts to address the problem of criminal aliens and their deportation. Under both administrations, steps have been taken to increase resources, improve the Institutional Hearing Program (IHP), and generally make the deportation process more efficient. All of the Justice Department officials testifying here today have been working for many years to more effectively identify and deport criminal aliens, and we can anticipate that progress on this front will continue.

The incarceration and deportation of criminal aliens have become priorities because of the large number of such aliens who currently are imprisoned in the United States. About one-quarter of all federal prisoners are foreign born (most are aliens who are in the United States legally or illegally; a few may be naturalized citizens and therefore would not be affected by the legislation scheduled for the Subcommittee's hearing). About 14 percent of the prisoners in California state prisons are deportable aliens. Florida has about 3,000 aliens in its prisons, at a cost of $40 million per year. Other states, such as New York, Texas, and Illinois, also have large numbers of deportable criminal aliens in their jails and prisons.

The costs associated with detaining, prosecuting, incarcerating, and deporting criminal aliens are significant. States and localities are looking not only for more efficient deportation of criminal aliens but also for relief from the costs they incur in dealing with this population. Section 501(c) of the Immigration Reform and Control Act of 1986 authorized reimbursement of state costs for the imprisonment of illegal aliens convicted of felonies, "subject to the amounts provided in advance in appropriation Acts." No such funding has ever been made available.

State and local officials also want to make sure that deportable criminal aliens are in fact deported and removed from their communities, and they want stricter enforcement and enhancement of penalties for illegally reentering the U.S. after being deported. Deportable criminal aliens who are released from prison may or may not be turned over to INS, which may or may not have the capacity to detain them pending deportation proceedings. If INS does not detain these aliens upon their release from prison, the government loses control over them, making it difficult to locate and deport them.

Last November, Commander Alan L. Chancellor of the Los Angeles County Sheriff's Department was prepared to testify about a study by Los Angeles County which found that 50 percent of an identified group of deportable criminal aliens were returned to their countries, either through voluntary departure or formal deportation. This leaves a disturbingly high number of criminal aliens of whom INS did not take custody; many of these aliens were repeat offenders committing drug offenses and crimes of violence. The prepared testimony of the New York Commissioner of Correctional Services reveals a strong sense of frustration with INS and its apparent inability to deport criminal aliens.

There is a diversity of opinion as to whether criminal aliens should be deported prior to completion of their sentence. Current law requires that prison sentences be served prior to deportation. States such as California that are very concerned about the high incidence of reentry of deported criminal aliens and recidivism by these aliens, support completion of sentences prior to deportation. Other states, such as New York and Florida, tend to be more supportive of allowing, but not mandating, deportation prior to completion of an alien's sentence.

Even when criminal aliens are turned over to INS and detained, the administrative process for deportation is time-consuming. Criminal aliens can delay the process by raising defenses to deportation, regardless of whether they are eligible for them. This process and repeated appeals can consume several years, further exacerbating the problem of limited detention capacity.

Many of the bills to be considered in the hearing address the problems discussed above, with the goal of increasing the number of deportable criminal aliens who actually are deported, improving the efficiency of the deportation process, reducing or eliminating delaying tactics, and preventing reentry of deported criminal aliens.

While I welcome the Administration's budget request to add resources for the INS's criminal investigators and to expand the institutional hearing program, more can and should be done, and legislative action is required. With that objective in mind, I have sponsored or cosponsored several of the bills on which we will hear testimony today.

Last year, I introduced H.R. 1459, a bill to expedite the deportation of criminal aliens who have been convicted of aggravated felonies. Under the amendments made by this bill, the only aggravated felon aliens who could avoid deportation would be those who have been permanent resident aliens for at least seven years and who were sentenced to less than five years imprisonment.

"Aggravated felony" is defined in the Immigration and Nationality Act as felonies involving murder, drug trafficking, trafficking in firearms or destructive devices, money laundering, or any crime of violence for which the term of imprisonment imposed is at least 5 years. My bill will expand this definition to include three additional classes of alien felons:

(1) those who have committed serious immigration-related crimes, such as alien smuggling and trafficking in fraudulent documents,

(2) those who have participated in serious criminal activities and enterprises, but who have not themselves committed murder, trafficked in drugs, trafficked in firearms, or committed a crime of violence, and

(3) those who have committed serious "white collar" crimes.

Criminal aliens who are not permanent resident aliens and who have been convicted in either state or federal court of an aggravated felony would be deportable upon their release without further administrative processing. Federal court review of such cases would be limited to the question of whether the individual is in fact an alien and has been convicted of an aggravated felony.

This will streamline the process, eliminating administrative hearings and frequently used delaying tactics, including petitions for relief from deportation and time-consuming administrative hearings and appeals.

My bill also provides for judicial deportation of any alien, including permanent resident aliens, who is convicted in a federal trial court of an aggravated felony. In such a case, the U.S. Attorney could request a federal judge to issue an order of deportation during the sentencing phase of the trial. In cases where judicial deportation is sought, the current administrative procedure for determining deportability would be avoided. Aliens found deportable under this process would continue to have the right to appeal to the appropriate federal circuit court of appeals.

H.R. 1459 also increases penalties for failing to depart and for reentering after a final order of deportation has been issued. Because the government will be able to execute a final order of deportation while it still has control over the alien, failure of criminal aliens to depart should be less of a problem under the new deportation procedures. However, illegal re-entry will continue to be a major problem.

Finally, my proposed bill expands forfeiture for smuggling and harboring illegal aliens. INS currently has the authority to seize and subject to forfeiture conveyances used in or facilitating the smuggling or harboring of illegal aliens. This bill would allow the seizure and forfeiture of all property used in or acquired with the proceeds from such activities.

Many of the provisions of H.R. 1459 have been incorporated into other bills, including H.R. 2872, the House Republican crime bill; H.R. 3320, Mr. Bilbray's Immigration Stabilization Act of 1993; H.R. 3860, Mr. Smith's Illegal Immigration Control Act of 1994; and the Senate-passed crime bill. They are intended to complement, not replace, current procedures, including the institutional hearing program. I believe they represent solid improvements to the deportation system.

Several of the bills we are considering today include additional proposals that are important. H.R. 3860, the Illegal Immigration Control Act of 1994, would establish and authorize funding for a Criminal Alien Tracking Center to assist law enforcement agencies in identifying and locating aliens who may be subject to deportation by reason of their conviction of aggravated felonies. H.R. 1496 would require aliens who have been convicted of a felony and sentenced to probation or who have been released on parole to register with the Attorney General. Because the number of deportable criminal aliens exceeds INS' ability to detain and deport them, this legislation is needed to track criminal aliens who have not yet been deported.

Congresswoman Snowe and Congressman Gilman have introduced legislation to address concerns about terrorists entering the United States. I strongly support Olympia Snowe's efforts to make membership in a terrorist organization a ground for exclusion. Revision of the exclusion grounds in the Immigration Act of 1990 eliminated membership in this exclusion ground. As a result, there has been some confusion as to whether someone like Sheik Abdel Rahman, who clearly advocates terrorism (and with deadly results) but who apparently has not physically participated in a terrorist activity, could be excluded under current law. This provision would clarify situations such as this. I also strongly support the strong penalties in Ben Gilman's bill for persons who commit passport or visa fraud in furtherance of drug trafficking or terrorism.

By moving forward with this legislation, we can help reduce he cost of incarcerating criminal aliens, reduce prison overcrowding, and protect the general public from the danger of repeated offenses by aliens who commit serious crimes by expediting the deportation of criminal aliens. I look forward to hearing the witness's testimony today and hope that the Subcommittee will move forward with effective legislation in this area.

Mr. MAZZOLI. We will now call forward panel three: Mary A. Ryan, the Assistant Secretary for Consular Affairs at the Department of State; Ms. Kathleen M. Hawk, Director, Federal Bureau of Prisons; Ms. Chris Sale, the Deputy Commissioner of the Immigration and Naturalization Service, accompanied by G.H. Kleinknecht, the Associate Commissioner for Enforcement, and also Mr. Paul Virtue who is the Acting General Counsel; Mr. Gerald Hurwitz, the Counsel to the Director of the Executive Office for Immigration Review at the Department of Justice.

Ms. Ryan, welcome, and we will certainly receive your statement gladly.

STATEMENT OF MARY A. RYAN, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. RYAN. Thank you, Mr. Chairman. Mr. Chairman, members of the committee, thank you for inviting me today to appear before your committee.

Three of the bills on the agenda today, H.R. 1067, H.R. 2041, and H.R. 2993, deal with information and lookout systems related to visa and passport issuances. Information is a basic necessity for the many decisions consular officers must make every working day as they adjudicate visa and passport applications. The more adequate and complete our information is, the sounder our decisions will be. Improving our acquisition of and access to relevant information occupies a good deal of our attention.

One of the bills, H.R. 1067, deals with the requirement of FBI criminal records checks for immigrant visa applicants who have lived in the United States prior to their applications. This requirement was waived a little over 2 years ago because the very low rate of visa denials based on the FBI checks was judged not to be sufficiently cost-effective.

However, we are really not satisfied that our informational needs are being adequately met under that decision and have reopened discussions with the Department of Justice to find the most feasible way to resume criminal records checks as quickly as possible.

These checks were performed pursuant to section 222 of the Immigration and Nationality Act and can be resumed under that same statute. Additional legislative authority is not needed. We believe the provisions of H.R. 1067 regarding the source of the checks and the conditions of prior U.S. residence that would trigger the demand for them are too limiting to allow the flexibility we need for seeking the most effective way to obtain such information.

The Department of State has been in the forefront of supporting and encouraging more complete data interchange among agencies with border security responsibilities. A central complication in the issue of access by the Department of State visa authorities to certain relevant data held by U.S. law enforcement agencies is the fact that the Department is not considered a law enforcement agency or a criminal justice agency.

I can say with complete assurance that our consular officers certainly have no wish to carry weapons or badges and do not see themselves as law enforcement officers in that sense. However, they are responsible for performing duties related to matters such

as fraud investigation and adjudication of criminal ineligibility that do require them to have access to criminal justice information.

The Department of State therefore supports section 3 of H.R. 2041 which would designate the Department of State as a law enforcement agency for the limited informational purposes stated in the bill.

Section 2 of H.R. 2041 requires the State Department to implement and upgrade all overseas lookout operations to automated systems not later than 6 months after enactment. I note that the Department of State's authorization act will contain system upgrade requirements but with a time limit of 18 or 24 months depending on the period agreed on in the conference.

We have been engaged in upgrading our lookout systems for some time and have installed automated systems at well over half of all visa issuing offices accounting for approximately 90 percent of all visa applications processed each year. The 97 posts still using manual lookout systems are generally small and often remote. Our plans call for completing the upgrade at all posts in fiscal years 1994 and 1995 subject to the availability of funds. It will be difficult to keep to that ambitious schedule. Frankly, I think it is impossible to complete the upgrade in the 6 months proposed by H.R. 2041.

Section 5 of H.R. 2041 establishing new lookout procedures and providing penalties to be imposed if consular officers fail properly to use the visa lookout system has a close counterpart in the provisions of the Department's authorization bills.

While we have reservations about the officer resources required to comply with this new procedure as well as reservations about the complete reliability of the current lookout system, the authorization bill provisions would be more possible to work with than section 5 of H.R. 2041. However, I would like to say that we would be very happy to work with the staff on this provision as contained in H.R. 2041 in order to see if we can't develop language that would meet everybody's needs for accountability.

Three of the bills before us deal with the issue of membership in a terrorist organization as a ground for exclusion. One of them confines itself to the Palestinian organization, Hamas. The other two are more general in character.

Section 212(a)(3)(B) of the Immigration and Nationality Act provides for the exclusion of aliens who have engaged in terrorist acts in the past or intend to do so in the United States. It took effect on June 1, 1991, as a revision of the former section 212(a)(28)(F) of the act which provided that mere membership in a terrorist organization constituted a ground of exclusion from the United States.

The proponents of the revision were determined to eliminate from our immigration law excludability because of membership, affiliation, statements, or beliefs. At that time, however, they properly recognized the need to continue to provide for the exclusion of those who had engaged in terrorism or intended to do so in this country if admitted. Long negotiations between the key proponents of the revision and representatives of the administration resulted in the provision we now have.

As part of the effort to avoid exclusions because of memberships, affiliations, beliefs, or statements, the proponents of change included definitions both of "terrorist act" and of "engaging in." These definitions show a clear intent to apply the exclusion only to the actual perpetration of terrorist acts or to actions taken in furtherance of the perpetration of such acts. This revised exclusion is little more than 2 years old. The existing statute allows us, we believe, to exclude because of membership where the organization concerned is one in which membership necessitates participation.

A clear example of this sort of organization is the now defunct Action Directe, a French organization. We believe that there are others like this, and we are alert to that possibility as we adjudicate individual visa applications. If the information available about an organization shows that membership and participation go hand in hand, we believe that we can properly exclude an alien only on evidence of membership and without evidence of actual action.

For these reasons, we question whether it is desirable at this point to amend the statute. We regularly work with the new law, and we keep under active consideration the question whether it can be improved. I can assure you that we will bring specific suggestions for change to you in the event our experience with the statute indicates a need for legislative amendments to 212(a)(3)(B).

With regard to H.R. 1279, we would not object to the bill if its effect were limited to officers, officials, representatives, and spokespersons of Hamas and did not entail excludability solely on the basis of membership.

In the context of our common concern about the legal entry of terrorists into the United States, I would like to express the Department's firm belief in the need for legislative action in two related areas that were addressed in the Senate crime bill. We strongly support efforts to increase the penalties for passport and visa fraud and to allow the relocation to the United States in a limited number of cases of persons who helped counter terrorism and who are eligible for rewards under the Department's Counterterrorism Rewards Information Program and who in fact fear for their safety.

Thank you for your attention. I would be happy to take any questions that you might have.

[The prepared statement of Ms. Ryan follows:]

PREPARED STATEMENT OF MARY A. RYAN, ASSISTANT SECRETARY FOR CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Chairman Mazzoli, Members: Thank you for inviting me to testify before your committees.

We have an unusually long list of bills to discuss today. I would like to group my comments on the bills relating to responsibilities of the Department of State by subject matter rather than treat each one individually.

VISA INFORMATION AND LOOKOUT SYSTEMS

Three of the bills on the agenda—H.R 1067, 2041, and 2993—deal with information and lookout systems related to visa and passport issuances. H.R 1067 would legislate the requirement for a report by the FBI regarding the criminal record of an alien applying for an immigrant visa, who has lived in the United States for more than 6 months during the five-year period before the date of application.

Until fiscal year 1991 we required FBI criminal record checks of immigrant visa applicants who had resided in the United States for more than six months prior to application, without regard to the time period in which such residence occurred. We

did so pursuant to Section 222 of the Immigration and Nationality Act (INA) which provides that each applicant must submit "a copy of a certification by the appropriate police authorities stating what their records show concerning the immigrant." The record checks were used by consular officers in administering Section 212(a)(2) of the INA which prohibits the issuance of visas to aliens on the basis of certain criminal convictions. The requirement of police records may be waived if they are considered unobtainable, as they now are in over fifty countries of the world.

In 1990 the FBI decided to exercise its discretion to charge the Department of State for these checks because they were not considered to be "for a criminal justice purpose." State argued unsuccessfully that the checks did serve an important criminal justice purpose, i.e. enforcing the criminal ineligibility provisions of the INA, and that they also served the independent interests of federal, state and local law enforcement agencies in ensuring that aliens with prior criminal records are identified before they are allowed to become permanent resident aliens.

Based on an FBI analysis showing that historically less than one percent of all name checks requested resulted in the denial of visas, the Department of State decided in fiscal year 1991 that the relatively expensive process was not sufficiently cost effective and waived the requirement that the records be obtained.

The Department of State is concerned about the need to identify persons who are ineligible to receive visas because of prior criminal activities, and to stop them before they are admitted to the United States for residence. We are not satisfied that our needs are being met adequately under the decision made in 1991, and have reopened discussions with the Department of Justice to find the most feasible way to resume criminal record checks as quickly as possible. In that respect we agree with the intent of H.R. 1067. However, we believe the current language of the bill is too limiting regarding how State and Justice can best address this problem.

We both desire and intend to resume the requirement of U.S. criminal record checks. It is possible that as we improve the exchange of lookout data among the U.S. agencies responsible for border security, we will develop other means of obtaining records checks that would be as effective as FBI reports, and simpler or more economical to use. The National Crime Information Center (NCIC) data base, for example, might be an adequate source of criminal record information if access restrictions can be overcome.

It would be preferable not to specify by statute, as H.R. 1067 would do, the precise conditions of prior U.S. residence that would trigger the need for a records check. The conditions already are set forth in regulations implementing the current statute and can be changed by regulation if review by interested agencies indicates that change is advisable. I note, for instance, that the House Committee on Foreign Affairs Report accompanying H.R. 2333 urges the State Department in coordination with other responsible agencies to consider whether a period of residence less than six months would be more appropriate. We believe furthermore that U.S. residence that occurred before the last five years immediately preceding visa application should also be taken into consideration in determining the need for a records check.

The Department of State has been in the forefront of supporting and encouraging more complete data interchange among agencies with border security responsibilities. A central complication in the issue of access by Department of State visa authorities to FBI criminal records, to NCIC, and to other data held by U.S. law enforcement agencies, is the fact that the State Department is not considered to be a criminal justice agency.

The Department of State supports section 3 of H.R. 2041 which would designate the Department of State as a law enforcement agency for the limited, informational purposes stated in the bill. I can say with complete assurance that our consular officers have no wish to carry badges and firearms, and do not see themselves as law enforcement officers in that sense. Yet they are responsible for performing duties related to matters such as fraud investigation and adjudication of criminal ineligibility that do require them to have access to criminal justice information. It seems shortsighted to deny consular officers the tools that would enable them to be more effective both in their own duties and in their cooperation with other U.S. agencies, because of a technical definition.

Section 212(a)(6) of the INA provides that aliens who have been previously deported from the United States, under certain conditions, are ineligible to receive visas. Visa officers need ready access to information about deported aliens in order properly to administer that section. We do not have a readily accessible source of such information at present. However, this deficiency would not be corrected merely by including deportation information in the NCIC system as proposed in H.R. 2993.

As I noted earlier, visa officers are not eligible for access to NCIC because they are not considered formally to have a criminal justice function. Even if that situation were corrected, for instance through passage of section 3 of H.R. 2041, we

would not expect to have NCIC terminals at all visa issuing offices because of workload, security and technical reasons. For our purposes, information about deportations should be available in a data base from which it could be transferred to the Consular Lookout and Support System, CLASS, the standard system accessible by all visa issuing officers. We have established a pilot program within the Interagency Border Inspection System (IBIS) to implement a two-way exchange of data between the visa lookout system, CLASS, and IBIS. I understand that the first category of data to be entered into the improved interagency data base by INS will be deportation records. We are working to resolve some of the technical details necessary to permit us then to download that information to CLASS. U.S. Customs is the funding agency for this pilot program. At the same time, we are working with INS to see if we can find a way to transfer the deportation data directly to CLASS more quickly.

I would like to take this opportunity, as my colleagues from the Department of State have done many times before in testimony before the Congress, to urge continued support and funding for the IBIS program. Full development of IBIS' potential will solve many of the informational problems that are of concern to both the Congress and the Executive Branch.

H.R. 2041, in section 2, requires the State Department to implement an upgrade of all overseas visa lookout operations to automated systems not later than six months after enactment. The State Department Authorization Act for fiscal years 1994-1995 will include a mandate to accomplish this upgrade within 18 or 24 months, depending on the period agreed upon in conference.

We have been engaged in upgrading our lookout systems for many years, as rapidly as funding and technological considerations permit. We have installed computer-accessible, automated systems at more than half of all visa issuing offices, accounting for over 90 percent of all visa applications processed each year. There still are 97 posts, most of them small and remote, using manual lookout systems. Our plans call for completing the upgrade to automated lookout systems at all posts within the period specified in the Authorization Act, subject to the availability of funds. Procurement schedules and technological considerations will make it difficult to keep to this timetable. It would be virtually impossible to complete the upgrade in the six months proposed by H.R. 2041.

We continually strive also to minimize the chance of human error in operating our systems. In the past few months we have established mechanisms at all of our overseas posts to ensure that sections or agencies with information bearing on the possible visa ineligibility of aliens on terrorism grounds, get that information to their consular sections. We have set up a special message channel for posts to transmit such information to the Department so that it can be reviewed for proper inclusion in the visa lookout system. Our consular sections have again been reminded carefully to observe the standing procedures and controls for use of the lookout system.

Section 5(a) of H.R. 2041 would require that visa officers certify in writing, for each visa issued, that a check of the automated visa lookout system, or any other system or list which maintains information about the excludability of aliens under the INA, has been made and no basis for exclusion has been found. Sanctions are provided for failure to follow this procedure. Paragraph (b) of section 5 directs the Secretary to convene an Accountability Review Board under the authority of Title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986 "in any case where a serious loss of life or property in the United States involves the issuance of a visa to an alien listed on the Automated Visa Lookout system, or any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act . . ."

It is fair to impose penalties for failure to perform a duty so long as the tools are available to make proper performance possible. H.R. 2041 as written does not meet that standard of fairness. Computer accessible automated lookout systems will not be installed at all posts for many months. Given our available staffing and the time required to use the manual, microfiche version of the system, it is not possible at posts equipped only with the microfiche lookout system for the consular officer personally to do all of the name checks or to verify that each check has been performed by the non-officer personnel assigned to that task. In fact, we do not have the officer resources to do so even with computer-accessed versions of the lookout system at many posts. The Machine Readable Visa issuance system, which physically prevents issuance of a visa until the approving officer acknowledges the name check—and thus automates the lookout check verification process—will not be available at all posts until at least three years from now.

The language of Section 5(b) provides potentially severe penalties for a visa issuing officer even if the ineligible alien's name did not appear in the visa lookout sys-

tem checked by the officer, but was included in another lookout system to which the officer had no access. I hope that the committee can address this problem.

Section 5 has its counterpart in the more practically implementable provisions of the State Department Authorization bill, H.R. 2333, which would require the new procedures and impose the penalties provision only after expiration of the time period allowed for equipping all posts with automated lookout systems, and which omits the language referring to "any other system or list which maintains information about the excludability of aliens under the Immigration and Nationality Act" in the requirement to convene an Accountability Review Board. Although our reservations about the officer resources needed to certify completion of each individual name check under any system less comprehensive than the Machine Readable Visa system apply here as well, the language of H.R. 2333 is preferable to section 5 of H.R. 2041.

VISA INELIGIBILITY BECAUSE OF MEMBERSHIP IN CERTAIN ORGANIZATIONS

Three of the bills before us deal with the issue of membership in a terrorist organization as a ground of exclusion. One of them, H.R. 1279, confines itself to the Palestinian organization, Hamas; the other two, H.R. 2041 and H.R. 2730, are general in character.

Prior to the revision of the grounds of exclusion by the Immigration Act of 1990, mere membership in a terrorist organization did constitute a ground of exclusion under section 212(a)(28)(F) of the Act. That section rendered excludable aliens who "advocate or teach or who are members of or affiliated with an organization that advocates or teaches (i) the overthrow by force, violence or other unconstitutional means of the Government of the United States or of all forms of law; or (ii) the duty, necessity, or propriety of the unlawful assaulting or killing of any officer or officers (either specific individuals or of officers generally) of the Government of the United States or of any other organized government, because of his or their official character; or (iii) the unlawful damage, injury, or destruction of property; or (iv) sabotage;".

Beginning in 1977, with the enactment of the "McGovern Amendment," the Congress began a move away from exclusion by reason of mere membership or affiliation. In the early 1980s there arose much public and Congressional concern over, and criticism of, what were referred to as "ideological exclusions." After a number of years of intense scrutiny of the subject and anguished controversy, the Congress, working with the Executive Branch, revised the "ideological exclusion" grounds.

The proponents of the revision were determined to eliminate from our immigration law excludability because of membership, affiliation, statements, or beliefs. At the same time, however, they properly recognized the need to continue to provide for the exclusion of those who had engaged in terrorism or intended to do so in this country, if admitted. Long negotiations between the key proponents of the revision and representatives of the Administration resulted in the provision we now have—section 212(a)(3)(B).

Section 212(a)(3)(B) provides for the exclusion of aliens who have engaged in terrorist acts in the past or intend to do so in the United States. As part of the effort to avoid exclusions because of memberships, affiliations, beliefs, or statements, the proponents of change included definitions both of "terrorist act" and of "engaging in." These definitions may or may not be perfect, but they show a clear intent to apply the exclusion only to the actual perpetration of terrorist acts or to actions taken in furtherance of the perpetration of such acts.

This revised exclusion took effect on June 1, 1991, and is, thus, less than three years old. The existing statute casts a very broad net over activities. It also allows us, we believe, to exclude because of membership where the organization concerned is one in which membership necessitates participation.

For example, it is known that certain small, tightly-knit clandestine organizations are of that kind. They do not even try to recruit members on a mass basis. Joining the organization carries with it a commitment to active participation in its terrorist acts. A clear example of this sort of organization was *Action Directe,* a French organization. It is out of existence now, but we believe that there may be others of similar nature and we are alert to that possibility as we adjudicate individual visa applications. If the information available about an organization shows that membership and participation go hand in hand, we believe we can properly exclude an alien only on evidence of membership and without direct evidence of action—action can in such cases be inferred from membership.

For the reasons set forth above we do not favor amending this statute as proposed. We regularly work with the new law and I can assure you that we will bring

specific suggestions to you in the event our experience with the statute indicates a need for legislative amendments to 212(a)(3)(B).

H.R. 1279 provides that, "An alien who is a member, officer, official, representative or spokesperson of Hamas . . . is considered, . . . [for purposes of the terrorist exclusion] to be engaged in terrorist activity." It tracks the wording of the existing provision concerning the PLO, except that it also encompasses members. Consistent with the structure of the terrorist provision and the way in which the PLO provision is applied, the effect of this provision would be to make all aliens who are current members, officers/officials, representatives, and spokespersons of Hamas excludable.

Hamas, the Palestinian Islamic Resistance Movement, devotes extensive human and financial resources to its widespread social welfare programs. Hamas provides Palestinians in the occupied territories with economic assistance, health care, and education. Given this structure, we do not believe that every Hamas member can be reasonably presumed personally to have participated in or assisted in the commission of terrorist activities. Thus we oppose this provision as long as the word "member" is included. We do not otherwise object to the provision, however.

In the context of our common concern about the illegal entry of terrorists into the United States, I would like to express the Department's firm belief in the need for legislative action in two related areas that were addressed in the Senate crime bill. We strongly support efforts to increase the penalties for passport and visa fraud, and to allow the relocation to the U.S., in a limited number of cases, of persons who help counter terrorism, are eligible for rewards under the Department's counter terrorism rewards information program, and who fear for their safety.

CRIMINAL ALIEN DEPORTATION

Finally, I would like to make a few observations about H.R. 1459, the "Criminal Aliens Deportation Act," and H.R. 3320. Many of the issues addressed by these bills fall particularly within the jurisdiction of the Immigration and Naturalization Service and the Department of Justice. On behalf of the Department of State, however, I would note that the bills should be reviewed in light of their implications for adherence to our obligations under the U.N. Refugee Convention and Protocol.

H.R. 1459 and H.R. 3320 would expand the definition of aggravated felonies and then provide for the expedited exclusion of non-permanent resident aliens who have been convicted of such felonies. Such aliens would be ineligible for discretionary relief from the Attorney General and for withholding of deportation under Section 243(h) which implements our refugee treaty obligations. We must be careful that crimes defined as "aggravated felonies" constitute "particularly serious crimes" within the meaning of the Refugee Convention. These bills instead would establish commission of an aggravated felony as a separate ground for denial of withholding of deportation. They also extend the definition of aggravated felony to some property offenses that, while serious, may not provide an adequate or appropriate basis for denial of withholding of deportation to an alien who would face a real risk of persecution in the country of return. The expanded list of aggravated felonies should be carefully reviewed with this potential problem in mind, and altered appropriately.

Thank you. I would be happy to address any questions you might have.

Mr. SANGMEISTER [presiding]. We will postpone questions until we have heard from the entire panel.

Next will be the director of the Federal Bureau of Prisons, Kathleen Hawk.

Kathleen, how do you view all this from an immigration standpoint?

STATEMENT OF KATHLEEN M. HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS

Ms. HAWK. Mr. Chairman and members of the subcommittee, I certainly appreciate the opportunity to appear before you today.

We have a somewhat different perspective regarding immigration issues. Since 1980, the overall inmate population in the Bureau of Prisons has increased by more than 200 percent from 27,800 to over 90,000 today, and, as dramatic as these numbers are, even

more dramatic is the growth of non-U.S. citizen offenders in Bureau facilities.

As of January 1994, there were 22,326 inmates in the Bureau of Prisons' custody who were non-U.S. citizens. The primary factor driving this growth is an increase in the number of non-U.S. citizen drug offenders who are being apprehended, tried, and convicted. Over 75 percent of the sentenced non-U.S. citizens in our custody are confined for drug violations, compared to an overall figure of 61 percent for all Federal inmates.

Due to the large percentage of Federal non-U.S. citizens receiving drug-related offenses, the average sentence length of these prisoners is just over 9 years. They must serve at least 85 percent of their sentences before release, or an average of 7.7 years.

Of the non-U.S. citizen offenders in Bureau custody, more than 85 percent are from Mexico, Central America, South America, and the Caribbean islands.

While many non-U.S. citizen offenders are cooperative while in custody, as a group they represent a number of unique concerns, particularly in the area of language and literacy barriers, which affect most areas of institution operations and programming. The non-U.S. citizen group does contain some very dangerous and notorious drug kingpins, as well as a number of Mariel Cubans, who, since 1987, have initiated several serious disturbances in our facilities, including hostages and extensive property damage.

In general, however, the majority of non-U.S. citizen offenders are not a difficult population to deal with in terms of their day-to-day conduct. The challenges with this population are their increasing numbers and the tremendous added demands that such numbers place on an already overburdened prison system for bed space, programs, and services.

Section 4 of H.R. 2438, introduced by Congressman Schumer, section 1 of H.R. 2306, introduced by Congressman Condit, and section 408 of H.R. 3320, introduced by Congressman Bilbray, would amend the Immigration and Nationality Act to provide for Federal confinement of illegal aliens who have been sentenced for State offenses or are being held in State or local correctional facilities.

The Department of Justice understands the importance of providing support to the States in meeting the challenges that the alien offender population presents. However, the Bureau of Prisons has serious concerns about proposals that would lead to the incarceration in Federal prisons of aliens convicted of State offenses without appropriate funding. Such proposals would add a severe burden to the Federal prison system that is already operating its institutions with populations far above capacity and is faced with future budget constraints as the Congress and the President continue to pursue the reduction of budget deficits.

An INS survey of State correctional systems conducted in late 1993 indicated that there are approximately 57,000 foreign-born offenders in State custody. While a number of the foreign-born inmates are naturalized U.S. citizens and others are lawful permanent residents, it is estimated that as many as 60 percent or approximately 34,000 of these are illegal aliens. A considerable amount of additional funding would be necessary to construct sufficient new bed space for the Federal incarceration of tens of thou-

sands of additional aliens. Further, due to the leadtime required for prison construction, it could be several years from the time of appropriation to activation.

In addition to costs, there are administrative drawbacks in the management of facilities with significant numbers of inmates from various State jurisdictions. Prison administrators would have to deal on a daily basis with major differences among States in areas such as sentencing equity and computation, different State-mandated program requirements, different laws regulating prison labor, inmate pay, and inmate benefits, and the variations in fundamental correctional policies.

I would like to conclude with a brief discussion of relevant Senate legislation. There are several provisions in the Senate crime bill that would affect immigration policy and procedures regarding the incarceration and deportation of criminal aliens. There are two especially notable provisions relating to the issue we are discussing today.

First, section 5136 states that, subject to the availability of appropriations, at the request of a State or locality, the Attorney General may either take custody of a criminal alien who is incarcerated in a State or local facility to provide for the imprisonment of the alien in a Federal facility, or compensate the State or locality for its cost of incarcerating the alien.

Second, the Senate version of the crime bill also includes a provision for the establishment of the trust fund to pay for the activity in this bill.

If the Congress eventually passes an omnibus crime bill which includes the above two provisions, the administration will consider the potential for compensating States and localities for their criminal alien incarceration costs as part of the President's fiscal year 1996 budget.

I thank you very much for the opportunity to testify, and I will also be very happy to entertain your questions.

Mr. MAZZOLI [presiding]. Thank you very much, Ms. Hawk.

[The prepared statement of Ms. Hawk follows:]

PREPARED STATEMENT OF KATHLEEN M. HAWK, DIRECTOR, FEDERAL BUREAU OF PRISONS

Mr. Chairman and members of the Subcommittee, I appreciate the opportunity to appear before you today.

My testimony will focus on several areas related to non-U.S. citizens within the Federal criminal justice system. First, I will describe this population and its growth over the past several years. Second, I will describe interagency coordination and collaboration to adequately manage this group. Third, I will describe the Bureau's role in supporting deportation procedures within the Federal criminal justice system. Finally, I will provide comments on the proposed legislation involving Federal incarceration of non-U.S. citizen offenders convicted of violating State laws.

I. POPULATION ISSUES

Since FY 1980, the overall inmate population in the Bureau of Prisons has increased by more than 200 percent—from 27,825 to over 90,000 today. As dramatic as these numbers are, even more dramatic is the growth of non-U.S. citizen (citizenship status is provided in the Presentence Investigation Report) offenders in Bureau facilities. In terms of sentenced non-U.S. citizen offenders, we have gone from fewer than 1,000 in FY 1980 to 17,600 at the end of FY 1993, at which time we also housed an additional 5,026 unsentenced non-U.S. citizen detainees for the United States Marshals Service and the Immigration and Naturalization Service (INS). As of January 29, 1994, our inmate data base reflects that there were 22,326 inmates

in BOP custody who were non-U.S. citizens (24.8 percent of the population). Also, the BOP released 10,075 non-U.S. citizens in FY 1993 upon completion of their sentences. These releasees were primarily convicted of immigration violations such as illegal entry, and comprised 30 percent of all releases.

The primary factor driving this growth is an increase in the number of non-U.S. citizen drug offenders who are being apprehended, tried, and convicted. Many of these offenders come from countries where the manufacture, importation, and distribution of illegal drugs frequently occur. Typically, these offenders become involved in the drug trade because it offers more opportunities for economic gain than the legitimate job market in their home countries. The U.S. Government has greatly increased its drug interdiction efforts, resulting in a greater number of non-U.S. citizen offenders coming into our system.

The average sentence length of Federal non-U.S. citizen prisoners is just over 9 years. Since most of these individuals are subject to the provisions of the Sentencing Reform Act of 1984, they must serve at least 85 percent of their sentences before release, or an average of 7.7 years.

Also, our role in pre-trial detention has grown in recent years. The number of INS and U.S. Marshal detainees (both citizen and non-U.S. citizen inmates) we are housing continues to grow; we now house 9,474 detainees—10.5 percent of our population. This is due, in part, to the belief of the courts that non-U.S. citizens are unlikely to live up to their bail obligations, resulting in their placement in our custody pending trial and sentencing.

I want to provide a brief profile of these individuals.

Of the 22,326 non-U.S. citizen offenders in Bureau custody (as of January 29, 1994), more than 85 percent are from Mexico, Central America, South America, and the Caribbean Islands. Mexico alone accounts for 7,977, followed by Colombia with 3,853 and Cuba with 2,773. Other countries represented by sizable numbers of individuals in Federal prisons are the Dominican Republic (1,411), Jamaica (1,107), and Nigeria (882).

Over two-thirds of the sentenced non-U.S. citizen offenders are Hispanic, 78.4 percent are white, and more than 93 percent are male.

Over 75 percent of the sentenced non-U.S. citizens in our custody are confined for drug violations—compared to an overall figure of 61 percent for all Federal inmates. Of those non-U.S. citizens convicted of drug law violations, 2,451 offenders, or 18 percent, are serving sentences for drug importation; 10,864, or 81 percent, are serving sentences for drug trafficking; and 128, or 1 percent, are serving sentences for other types of drug crimes. When considering non-U.S. citizen drug offenders, 308, or 30 percent, of the 1,036 female drug offenders are serving sentences for importation, whereas 2,143, or only 17 percent, of the male drug offenders are serving sentences related to importation.

This is just a brief overview; I have attached to my prepared testimony several charts, which provide additional descriptive statistics for sentenced and unsentenced non-U.S. citizen prisoners in our custody.

We operate several institutions in which more than half of the population consists of non-U.S. citizen inmates and a number of other institutions where well over 20 percent of the institution population are non-U.S. citizen offenders. Over 12 percent of our non-U.S. citizen inmates are confined in contract facilities. The vast majority of prisoners in these contract facilities are non-U.S. citizens. For example, at the end of January 1994:

694 Federal inmates were housed in the Big Spring, Texas, Detention Center; all are non-U.S. citizens.

528 Federal inmates were housed in the Reeves County, Texas, Law Enforcement Center; all but one were non-U.S. citizens.

557 Federal inmates were housed in the Eden Detention Center in Eden, Texas; all but one were non-U.S. citizens.

406 Federal inmates were housed in the Great Plains Correction Center in Hinton, Oklahoma; all are non-U.S. citizens.

While many non-U.S. citizen offenders are cooperative while in custody, as a group they present a number of unique concerns, particularly in the area of language and literacy barriers, which affect most areas of institution operations and programming. Since deportable non-U.S. citizens are escape risks, it is not possible to move them to minimum-security-level institutions. This has the effect of considerably reducing the Bureau's normal flexibility in managing its population levels in those facilities.

The non-U.S. citizen group does contain a few very dangerous and notorious drug kingpin types, as well as a number of Mariel Cubans (about whom I will speak in a moment). In general, however, non-U.S. citizen offenders do not generally display significant behavior problems or misconduct.

The challenges with this population are their increasing numbers and the tremendous added demands such numbers place on an already overburdened prison system for bed space, programs, and services.

One component of our alien population has presented significant management challenges: the Mariel Cuban detainees. The Bureau has been housing Mariel Cubans since the Mariel Cuban Boatlift in 1980.

Originally, these individuals were dispersed throughout the Federal prison system. In March 1981, we decided to consolidate this population at the U.S. Penitentiary (USP) in Atlanta, Georgia. Later, when USP Atlanta became overcrowded, Cubans who were considered likely to become eligible for release were moved to the Federal Correctional Institution (FCI) in Oakdale, Louisiana.

In November 1987, following an unanticipated announcement that the 1984 migration agreement with Cuba was reinstated, major disturbances occurred at both Atlanta and Oakdale; 138 of our staff were held hostage, and the Government incurred in excess of $100 million in costs associated with control of the incidents and repairing severe damage to both facilities. After these disturbances were resolved, approximately 1,550 Cuban detainees were dispersed to various facilities in the BOP.

Despite this dispersal, the Mariel Cubans continue to be a difficult group to manage. In August 1991, Cuban detainees housed at the Federal Correctional Institution in Talladega, Alabama—awaiting unwanted repatriation to Cuba—seized control of a secure unit and took 11 BOP and INS staff hostage. After 10 tense days of negotiations, FBI and BOP tactical teams forced their way into the unit and rescued the hostages. While this unit continues to house detainees awaiting repatriation to Cuba, the unit has functioned without subsequent incidents due to increased security measures introduced after the 1991 disturbance.

For the last several years, the United States and Cuban Governments have had periodic discussions about the ongoing implementation of the 1984 bilateral migration agreement. Last summer it looked hopeful that the Cuban government would accept for repatriation additional Mariel Cuban detainees that were not part of the 1984 agreement. Now it appears this will not happen.

Those Mariel Cuban detainees who have release decisions from INS will continue to be released. The INS will also continue to evaluate each Mariel Cuban detainee for release. (I will describe the institutional hearing programs later in this testimony.) As release decisions are granted, we will continue to process those Mariel Cubans for release through normal channels. The remainder will continue to be housed in the general populations of BOP facilities. Those who require greater security (approximately 30% of the 1,100 detainees) have been or will be placed in the Cuban Administrative Housing Units.

II. INTERAGENCY COORDINATION ON ALIEN ISSUES

The Bureau has long been a participant in interagency efforts to cope with the issue of aliens within the Federal criminal justice system. The increasing number of foreign nationals in BOP custody—and the difficulty of managing some of these offenders—is placing a serious strain on our limited resources.

Planning

The heads of various DOJ components—including the Bureau of Prisons, INS, the U.S. Marshals Service, EOIR, the Community Relations Service, and the Executive Office of the United States Attorneys, as well as DOJ budget staff—meet regularly to discuss and coordinate detention issues of interagency concern and plan for detention resources required in future years. Key discussions have focused on pretrial detention, Mariel Cuban detainees, and criminal alien Institutional Hearing Programs.

New Detention Capacity

In 1993, the Bureau of Prisons, in conjunction with the INS, awarded a contract to United Correctional Corporation and Concept, Inc.—a joint venture—for a 1,000-bed, privately owned and operated detention center. Five hundred beds will be for sentenced aliens in BOP custody, and 500 beds will be for INS detainees. This facility, to be located in Eloy, Arizona, will provide additional capability to hold deportation proceedings for our increasing criminal alien population. The EOIR has agreed to provide a sufficient number of immigration judges and court personnel, and the contractor will provide courtroom facilities for the hearings. We expect the institution to become operational in May 1994.

Prisoner Transfer

Efforts to manage the alien offender population in the U.S. are not limited to the U.S. alone; we currently have treaty transfer agreements with 34 other nations, and strive to repatriate criminal aliens whenever possible. Under the Treaty Transfer Program, which began in 1977, we have thus far returned 1,385 Federal non-U.S. citizen inmates to their native countries (and have received 1,472 U.S. citizens in return through the exchange). This program is strictly voluntary for the offender; at present, there is no statutory authority to repatriate a foreign national for service of a criminal sentence against his or her will to expedite the deportation process for these cases.

III. DEPORTATION PROCEDURES

A. Determining Whether an Incoming Inmate is an Alien

When a newly sentenced inmate enters BOP custody at any institution, staff review the case for citizenship and country-of-birth information. Upon confirmation of the inmate's foreign birth, and provided that the inmate is not a confirmed naturalized citizen, Bureau staff complete a document entitled, "Report of Alien Person Institutionalized" (INS-G-340) and send it to INS. In response to this notification, INS may place an immigration detainer on the inmate. If the INS has recorded a detainer, BOP policy states that a written notice will be provided to the INS 60 days prior to the inmate's release, which advises INS when the inmate will be available to be taken into its custody.

B. Institutional Hearing Programs

The BOP has been cooperating with the EOIR and the INS to establish Institution Hearing Programs (IHPs) at various BOP facilities. These programs are designed to facilitate the completion of deportation proceedings prior to the inmate's release date, to allow for expeditious deportation at the end of his or her sentence. If it is determined that the inmate is not to be deported, there is then sufficient time for meaningful release planning. Since the IHP's inception in 1988, EOIR has completed more than 6,300 immigration hearings for inmates in BOP custody.

The largest IHP operates at FCI Oakdale. This program was established to provide deportation proceedings for male, non-Cuban, non-Mexican inmates prior to the completion of their sentences. Six hundred beds have been set aside at FCI Oakdale for inmates to participate in IHP's.

The BOP ordinarily transfers inmates to FCI Oakdale approximately 6 months before the end of their sentences to be available to INS and EOIR for deportation proceedings. INS and EOIR have resources at Oakdale for this program, and courtrooms for immigration judges are located within the secure perimeter of the institution.

A similar IHP exists for female inmates at the Federal Medical Center (FMC), Lexington, Kentucky, and an additional IHP for females has just been initiated at FCI Dublin, California.

An IHP is also in place at FCI La Tuna, Texas, as the inmate population at that institution is largely Mexican. Another IHP was established at USP Leavenworth, Kansas, primarily for the purpose of providing exclusion hearings for Mariel Cuban detainees. Lastly, an IHP was started in FY 92 at the Big Spring Correctional Center (a contract facility run by the City of Big Spring, Texas), as that institution houses almost exclusively non-U.S. citizen offenders. We continue to work with EOIR and INS to enhance the IHP to expedite the completion of alien deportation proceedings.

The BOP also operates a second facility in Oakdale, Louisiana—the Federal Detention Center (FDC)—which provides 525 beds for detainees of the INS. This facility predominantly houses criminal aliens who have violated State or local laws and, after the completion of their sentence, have been transferred to the FDC by INS pending resolution of their status under the Immigration and Nationality Act.

IV. COMMENTS ON LEGISLATIVE INITIATIVES INVOLVING CRIMINAL ALIENS

Section 4 of H.R. 2438, introduced by Congressman Schumer, section 1 of H.R. 2306, introduced by Congressman Condit, and section 408 of H.R. 3320, introduced by Congressman Bilbray, would amend the Immigration and Nationality Act to provide for Federal confinement of illegal aliens who have been sentenced for State offenses or are being held in State or local correctional facilities. The Department of Justice has some serious concerns about those proposals which present challenges as Congress and the Administration considers this important issue. Such proposals are costly and without appropriate funding they would add a severe burden to a

Federal prison system that is already operating its institutions with populations far above capacity and is faced with future budget constraints as the Congress and the President continue to pursue the reduction of budget deficits.

I would like to provide the Committee with a sense of what these proposals mean in budget terms. An INS survey of State correctional systems conducted in late 1993 indicates that there are approximately 57,000 foreign-born offenders in State custody; a number are naturalized U.S. citizens and others are permanent resident aliens. Five States—California, Texas, New York, Florida, and Illinois—have the largest foreign born population, totaling 41,900 of the 57,000. Data from the states of New York, Pennsylvania, and California indicate that 40 percent of the total number of foreign born inmates in those systems are known to be illegal aliens or Mariel Cubans, and that another 20 percent are likely to have the potential for classification by INS as illegal aliens. A considerable amount of additional funding would be necessary for the Federal incarceration of tens of thousands of additional aliens. If the BOP were to house even 20,000 of these State non-citizen inmates, the resulting costs would be significant. Using our average per-bed construction cost of $46,000, the cost to construct this additional capacity would be approximately $920 million. Further, due to lead time required for capital projects, it would be several years from the time of appropriation to activation. If these 20,000 inmates served an average of 5 years in Federal custody—less than the current average of 7.5 years—the cumulative operating costs over this time span would be approximately $1.8 billion.

In addition to costs, there are administrative drawbacks in the management of facilities with significant numbers of inmates from various jurisdictions. Prison administrators would have to deal on a daily basis with major differences among States in areas such as sentencing equity and computation; different State-mandated program requirements; different laws regulating prison labor, inmate pay, and inmate benefits; and the variations in fundamental correctional policies.

As well-intentioned as the current legislative proposals are, as I have pointed out, the realities mean that no beds in newly-constructed prisons would become available for the incarceration of State criminal aliens for about 4 years. A National Institute of Corrections survey of State corrections departments conducted earlier this month found that almost 15,000 beds were not being used due to lack of funding. Many of these empty beds were within some of our Nation's largest State correctional systems. That same study also identified the number of beds planned but not funded, which totaled more than 76,000.

These are beds in the planning stage, which States believe would be well-suited to their needs, but for which they had not yet identified the source of operational funding. Rather than transferring State criminal aliens to Federal facilities, grants could be used to provide operational funding to State to open these beds as soon as they become available. In either scenario—beds now empty or beds "in the pipeline"—providing funds directly to States could make prison beds available almost immediately—long before the new Federal prisons that we would need to house State alien felons could be constructed.

As you know, there are several provisions in the Senate Crime Bill (the Violent Control and Law Enforcement Act of 1993) that would affect immigration policy and procedures regarding the incarceration and deportation of criminal aliens. There are two especially notable provisions relating to the issue we are discussing today. First, Section 5136 states that, subject to the availability of appropriations, at the request of a State or locality, the Attorney General may: (1) take custody of a criminal alien who is incarcerated in a State or local facility to provide for the imprisonment of the alien in a Federal facility, or (2) compensate the State or locality for its costs of incarcerating the alien. Second, the Senate version of the Crime Bill also includes a provision for the establishment of a Trust Fund to pay for the activity in this bill.

If the Congress eventually passes an Omnibus Crime bill which includes the above two provisions, the Administration will consider the potential for compensating States and localities for their criminal alien incarceration costs as part of the President's Fiscal Year 1996 Budget.

Thank you for the opportunity to testify. I will be happy to answer any questions you may have.

Mr. MAZZOLI. I would ask our witnesses to maybe suspend for a couple of minutes because we have been joined by one of the other Members, a distinguished Member who is a sponsor of a bill that was noticed today, and so we will hear from Congressman Beilenson.

You may discuss your bill in any way you wish.

The gentleman's prepared statement will be made a part of the record, and he may proceed in any way he wishes.

STATEMENT OF HON. ANTHONY C. BEILENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. BEILENSON. Thank you, Mr. Chairman and friends.

I am apparently Mr. Schumer for a moment.

Forgive my getting here late. I had a couple of appointments down at the White House earlier relevant to the earthquake and was only just now able to get here. Thank you very much.

Thank you, Mr. Chairman and Mr. McCollum and others, for inviting me to testify on H. Con. Res. 46, the sense of the Congress resolution that I introduced calling on the Attorney General to allocate adequate resources to identify and deport criminal aliens expeditiously. The resolution calls attention to the burden that criminal aliens place on State and local criminal justice systems.

Los Angeles County, part of which I represent, is one of the nation's largest concentrations of both legal and illegal immigrants. The jails in our county house a correspondingly large number of aliens who have engaged in criminal activity.

The impact of convicted criminal aliens on Los Angeles County was documented in two studies conducted in 1990 and 1992 by the Countywide Criminal Justice Coordination Committee in conjunction with the county sheriff and the Immigration and Naturalization Service. Those reports estimated that 19 percent of the inmates in Los Angeles County jails were foreign born and 11 percent were deportable aliens. They found that over 23,000 deportable aliens go through the Los Angeles County justice system each year.

The cost of incarcerating deportable aliens in Los Angeles County according to those studies is $34 million per year. If the cost of prosecutors, public defenders, and probation officers is added in, the overall cost of deportable criminal aliens to the county's criminal justice system rises to $75 million.

Furthermore, as the 1992 report stated, significant numbers of deportable aliens who are removed from the county do, in fact, return to Los Angeles County and sustain new contacts—as they put it—with the criminal justice system.

The study found that 40 percent of the 1,875 deportable aliens who were released from the county jail in May 1990 were rearrested an average of two times the following 12 months. Only 339 of the 1,875, fewer than one-fifth of those deportable aliens, has had no previous or subsequent arrests. The other 1,536 had been arrested an average of 7 times for a combined total of 10,989 arrests since they arrived in the United States.

While States and local governments have no jurisdiction over the immigration law and no authority to deport aliens who are convicted of crimes and no authority to ensure that those deported are not permitted to reenter the country, they do, of course, have the responsibility of incarcerating aliens who commit crimes and of processing their cases through their judicial systems. As the Los Angeles County studies show, this responsibility can be enormously costly.

The Federal Government, Mr. Chairman, if I may say so, should be working in two ways to help alleviate the burden posed by illegal aliens who commit crimes. First, we should be providing financial help to States and local governments that have large criminal alien populations, and I talked in my testimony here about our Governors having requested additional moneys, and I know that the Governor of Florida is, I think, suing the Federal Government to get some money. I suspect that additional demands of this kind are likely to be forthcoming from States and localities which have large numbers of criminal aliens as States try to cope with the strain that the Federal Government's failed immigration policy places on their budgets, and I believe that those demands are fully justified.

As you may know, sir, Mr. Becerra and I—your friend down here—have been working with other members of the California delegation to draft legislation that would require the Federal Government to either take custody of undocumented aliens convicted in State courts or compensate States for the cost of incarcerating them in State-run facilities. We expect to introduce our bill in about a week or so, and I hope that, assuming that it is referred to the gentleman's subcommittee, that you will give consideration to it.

Second, the Federal Government, through the INS, needs to do a much better job of identifying deportable aliens and beginning proceedings against them while these aliens are still in custody. Although the majority of these criminal aliens are eligible for immediate deportation upon release from prison, the INS rarely takes action against them. This has to change. Bluntly put, an alien who has been convicted of a criminal act in this country and has served his or her term in jail or prison should not be allowed to remain here.

It is an outrage that these prisoners can be allowed to return to the streets rather than to be deported immediately simply because a deportation hearing could not be scheduled before their release date. If we need more hearing officers, then the INS should hire them. If the INS needs to be notified of impending releases earlier, then State and Federal authorities ought to work together to fix the system. These are problems that do not require a change in the law, they require only more will and perhaps more resources to enforce the law as we already have.

Mr. Chairman, a large portion of the costs associated with criminal aliens that State and local governments have to bear are because of our Federal Government's failure to enforce our immigration laws. States and localities are looking to us to prevent illegal immigrants from entering the United States and to ensure that those who commit crimes are sent back to their homelands as quickly as possible. We in Congress need to send a strong message to make it clear that we expect the Justice Department to put more of its resources into addressing this very serious problem.

I apologize to the ladies and gentlemen on the panel for my having barged in here. I thank my friend the chairman and Mr. McCollum for having allowed me to speak my brief piece, and I hope you will not only report this bill but a couple of others of mine that are in your subcommittee, Mr. Chairman.

[The prepared statement of Mr. Beilenson follows:]

PREPARED STATEMENT OF HON. ANTHONY C. BEILENSON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. Chairman, thank you for inviting me to testify on H. Con. Res. 47, the sense-of-the-Congress resolution I introduced calling on the Attorney General to allocate adequate resources to identify and deport criminal aliens expeditiously. The resolution calls attention to the burden that criminal aliens place on state and local government criminal justice systems.

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The cost of incarcerating deportable aliens in Los Angeles County, according to those studies, is $34 million per year. If the cost of prosecutors, public defenders, and probation officers is added in, the overall cost of deportable criminal aliens to the county's criminal justice system rises to $75 million per year.

Furthermore, as the 1992 report stated, "significant numbers of deportable aliens who are removed from the country do, in fact, return to Los Angeles County and sustain new contacts with the criminal justice system." The study found that 40% of the 1,875 deportable aliens who were released from the county jail in May 1990 were re-arrested an average of two times in the following twelve months. Only 339 of the 1,875—less than one fifth—of those deportable aliens had no previous or subsequent arrests. The other 1,536 had been arrested an average of seven times, for a combined total of 10,989 arrests, since they arrived in the United States.

While states and local governments have no jurisdiction over immigration law, no authority to deport aliens who are convicted of crimes, and no authority to ensure that those deported are not permitted to re-enter the country, they do, of course, have the responsibility of incarcerating aliens who commit crimes and of processing their cases through their judicial systems. As the Los Angeles County studies show, this responsibility can be enormously costly.

The federal government should be working in two ways to help alleviate the burden posed by illegal aliens who commit crimes. First, we should be providing financial help to states and local governments that have large criminal alien populations. California Governor Pete Wilson has requested $250 million from the federal government to pay for illegal immigrants who are confined in California prisons. The governors of several states are trying to get help on this front by suing the federal government to take custody of thousands of illegal aliens housed in their prisons. I expect that more demands of this kind are likely to be forthcoming from states and localities which have large numbers of criminal aliens as states try to cope with the strain that the federal government's failed immigration policy places on their budgets. And I believe that those demands are fully justified.

Congressman Becerra and I have been working with other members of the California delegation to draft legislation that would require the federal government to either take custody of undocumented aliens convicted in state courts, or compensate states for the cost of incarcerating them in state-run facilities. Our legislation should be ready to introduce in the next week or so, and I hope that, assuming it is referred to this subcommittee, you will give serious consideration to it.

Secondly, the federal government, through the INS, needs to do a much better job of identifying deportable aliens and beginning proceedings against them while these aliens are still in custody. Although the majority of these criminal aliens are eligible for immediate deportation upon release from prison, the INS rarely takes action against them. This has to change—bluntly put, an alien who has been convicted of a criminal act in this country and has served his or her term in jail or prison should not be allowed to remain here. It is an outrage that these prisoners can be allowed to return to the streets rather than be deported immediately simply because a deportation hearing could not be scheduled before their release date. If we need more hearing officers, then the INS should hire them. If the INS needs to be notified of impending releases earlier, then state and federal authorities ought to work together to fix the system. These are problems that do not require a change in the

law; they require only more will and, perhaps, more resources to enforce the laws we already have.

Mr. Chairman, a large portion of the costs associated with criminal aliens that state and local governments have to bear are because of the federal government's failure to enforce our immigration laws. States and localities are looking to us to prevent illegal immigrants from entering the U.S., and to ensure that those who commit crimes are sent back to their homelands as quickly as possible. We in Congress need to send a strong message to make it clear that we expect the Justice Department to put more of its resources into addressing this very serious problem.

Mr. MAZZOLI. For sure. I guess we could reciprocate by asking you in the Rules Committee to report a few of the things that we might have done.

Mr. BEILENSON. Well, it is done.

Mr. MAZZOLI. It is a done deal.

What the gentleman says is very important and has been echoed by a number of people earlier. We had two different Member panels.

Mr. BEILENSON. I am sure, and I am apologetic for having come in so late.

Mr. MAZZOLI. I think it makes it that much more important to consider that when we get around to legislation, the fact that there are several Members from different perspectives and not all from the border States who feel the same way. So we thank the gentleman.

Do you have any questions?

Mr. MCCOLLUM. I don't, except that, Mr. Beilenson, you certainly have contributed in the past to this subject, and I appreciate very much that you are doing it again this year.

Mr. BEILENSON. Thank you, sir.

Thank you, Mr. Chairman.

Mr. MAZZOLI. Thank you very much, Tony. You are a good man.

Ms. Sale.

STATEMENT OF CHRIS SALE, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE, ACCOMPANIED BY G.H. KLEINKNECHT, ASSOCIATE COMMISSIONER FOR ENFORCEMENT, AND PAUL VIRTUE, DEPUTY GENERAL COUNSEL, U.S. DEPARTMENT OF JUSTICE

Ms. SALE. With special thanks to Mr. Beilenson who, in fact, made remarks that I think are quite appropriate to what we have to say on behalf of INS, Mr. Mazzoli and members of the committee, thank you for having me here.

We have got fairly extensive testimony that I propose we submit for the record, and I will try to summarize my remarks.

Mr. MAZZOLI. Very good. All the statements will be made a part of the record. Thank you.

Ms. SALE. Thank you, sir.

The Immigration and Naturalization Service is committed to the fair and equitable removal from the United States of criminal aliens. We assert that commitment with full recognition of our commitment to legal immigration into the United States and the fact that in order to protect that we need to confront illegal immigration in all phases.

The President's budget initiative that is proposed for our 1995 package is one that I think attempts to do that, recognizing some of the issues Mr. Beilenson raised both in terms of deterrence at the border, removal of criminal aliens in particular, but all aliens, and, finally, an expeditious resolution of backlog in the asylum system, some of whom need a fair adjudication and some of whom need to be removed. So it is a comprehensive package, and I would urge the committee, even though it is not an appropriating committee, to review those programs and support them where they can.

With specific regard to the legislative initiatives being proposed today, we support the goals of all of those initiatives. The agenda before the committee is complex and very difficult. There are many excellent proposals embodied in the numerous bills before us. However, it is essential that the components of a criminal alien initiative be harmonized so that we have a comprehensive and consistent removal strategy.

We share the concerns recently voiced relating to prison overcrowding and the need to protect the citizenry of the United States from any persons who would commit crimes perpetrated against them. We are, of course, particularly concerned with aliens unlawfully in the United States who are perpetrating crimes against persons legally in the United States.

We look forward to working with the committee to develop legislation that strikes a balance between efficiency and fairness. Expeditious removal of criminal aliens continues to be a priority for the INS. We are addressing that concern on the Federal, State, and local level.

Following enactment of the Immigration Reform and Control Act of 1986, the INS, in cooperation with the Executive Office of Immigration Review and the Bureau of Prisons, has instituted what we call an Institutional Hearing Program in six Federal facilities. The goal of this program is precisely to funnel all excludable or deportable aliens in the Federal prison system through one of these six sites so that they can receive an immigration hearing prior to the end of their criminal sentences. Ideally, these aliens would be ready for removal from the United States as soon as their prison term expires.

INS is also developing similar systems in most of the other 50 States and in one local jurisdiction. We are particularly proud of the efforts that we have enjoined with the State of California actually where their concern for the problem is as acute as ours.

The President's 1995 budget initiative would provide for the full funding in five States that comprise 80 percent, to the best of our knowledge, of the foreign born criminal State prison population. Those would be California, New York, Illinois, Florida, and Texas.

We believe the Institutional Hearing Program represents the most efficient use of INS resources. Sentenced aliens are funneled into a single prison intake center where we can work most efficiently with them. By staffing these centers, the INS is able to process all aliens coming into the penal system in just a few locations rather than trying to deal with a panoply of locations that are now incarcerating criminals.

The deportation prehearing process, including appeals, can then take place while the alien is serving his or her prison sentence. The

INS can also secure travel documents and quickly remove the aliens upon release, thereby eliminating costly administrative detention in INS custody following the completion of the alien's sentence. These gains can be accomplished while still preserving full due process through evidentiary hearing before an immigration judge.

The INS and the Executive Office for Immigration Review are also exploring the use of video hearings. Our pilot test of that system has shown early results, and we note that one bill would codify authority to conduct such hearings. We would appreciate it if that bill also recognized the need to receive the alien's consent in that regard.

Several of the legislative proposals on the agenda today complement the institutional hearing process. Others appear to replace or diminish it, and we would urge those concerns to be considered.

The INS prefers to maintain the institutional hearing process as the centerpiece of our criminal alien removal strategy. Proposals to streamline discretionary relief including section 212(c) relief as proposed in bills numbers H.R. 723, H.R. 1459, and H.R. 3320, would nicely complement the hearing process.

Similarly, increased penalties for aliens who unlawfully enter the United States in bill numbers H.R. 1459 and H.R. 3320 or who commit visa and passport fraud, bills numbers H.R. 3302 and H.R. 3320, proposals limiting collateral attacks on deportation orders in criminal cases, as in bills number H.R. 1459; and, finally, expanding INS's authority to seize and forfeit property for immigration-related crimes, as proposed in H.R. 1459 and H.R. 3302, would all enhance our criminal alien removal strategy and provide a measure of deterrence which we think is necessary to combat immigration-related crime.

Others of the proposals raise concern. For example, the concept of judicial deportation articulated in H.R. 1459, H.R. 2438, and H.R. 3320, does not address whether an alien may apply for relief from deportation before the sentencing court. Such requests would negatively impact an already burdened Federal court docket. Judicial deportation would require INS to devote resources in each Federal court to adequately support the proposal. These courts are often a great distance from our offices and would spread our resources very thin. The resources necessary to properly implement this proposal would inevitably come at the expense of the institutional hearing process.

Additionally, we believe the concept of summary deportation for nonlawful permanent resident aggravated felons also needs further studying since the apparent streamlining of that may only result in a shift of the workload from the immigration courts to the INS but wouldn't remove the workload from what we can understand of the intent of the proposal.

I thank you again for the opportunity to appear and would be happy to answer any questions.

Mr. MAZZOLI. Thank you very much, Ms. Sale. We appreciate it.

[The prepared statement of Ms. Sale follows:]

PREPARED STATEMENT OF CHRIS SALE, DEPUTY COMMISSIONER, IMMIGRATION AND NATURALIZATION SERVICE, U.S. DEPARTMENT OF JUSTICE

INTRODUCTION

On behalf of the Immigration and Naturalization Service (INS), I am pleased to testify before you on the problems associated with criminal aliens. The INS is committed to improving our ability to minimize the criminal alien problem.

The INS appreciates the Subcommittee's attention to this important issue. We generally support the goals and principles at the foundation of the proposed legislation to be discussed today. The INS believes that our mutual pursuit of these goals will lead to meaningful legislative solutions to the criminal alien problem.

We look forward to working with you on these bills to determine the best vehicles for reaching our goals.

THE PROPOSED LEGISLATION

H.R. 723 , (Lewis, Florida)

Redefinition of Conviction for Purposes of Deportation

Section 2 (a) of H.R. 723 amends section 241 (a) (2) of the Immigration and Naturalization Act (hereinafter "Act") to define the term "convicted" for deportation purposes as: "a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere, whether or not the alien appeals therefrom."

The amendment would eliminate the requirement, established by case law, of a "final" conviction prior to instituting deportation proceedings. A conviction is final upon a plea of guilty.

This new definition could speed up the INS's ability to institute deportation proceedings. Unfortunately, it also creates a risk that scarce adjudicatory resources will be wasted on aliens who ultimately succeed on appeal. Until resources can match demands of the system as it currently operates, the INS suggests that the amendment would not be productive, therefore, we cannot support it.

Prohibition of Reentry

Section 2 (b) (2) of H.R. 723 adds another ground of excludability to section 212 (a) (2) of the Act barring a convicted alien from reentering the United States during the minimum period of confinement to which the alien was sentenced.

This proposal is unnecessary because a deported aggravated felon is already excludable from the United States for 20 years following deportation (see section 212 (a) (6) (B) of the Act).

In addition, absent the grant of an appropriate waiver and the consent of the Attorney General to reapply for admission, a lesser bar of five years applies to noncriminal individuals who are deported.

H.R. 1067, (Thomas, California)

Section 1 (a) of H.R. 1067 would require a check of the Federal Bureau of Investigation (FBI), database relative to past criminal activity for applicants for immigrant visas and adjustment of status, if they have previously resided in the United States for six months during the five years immediately before the application.

We support the goals of the bill and note that all applicants for adjustment of status already are required to submit a fingerprint chart and biographical data (Form G-325A), to be checked with the FBI. In addition, we note that in the future, the NCIC could provide an adequate source of criminal record information.

H.R. 1459, (McCollum, Florida)

Redefinition of Aggravated Felon

Section 2 of H.R. 1459 amends section 101 (a) (43) of the Act which defines the term "aggravated felony," by adding over a dozen serious crimes to the definition.

The Administration believes the list of offenses added to the definition is overly broad. We must be careful that crimes defined as "aggravated felonies" constitute "particularly serious crimes" within the meaning of the United Nations Convention related to the Status of Refugees. The Administration would like to work with Congress to limit the number of crimes added to the definition, eliminate the bars to relief (e.g., withholding of deportation) for the "less serious" aggravated felonies, or substitute a categorical definition of aggravated felony.

Summary Deportation

Section 3 (a) of H.R. 1459 would eliminate all discretionary relief from deportation, including withholding of deportation, to aggravated felons who are not lawful permanent residents.

The provision also authorizes the Attorney General to delegate to the Commissioner or to any INS district director the authority to order deportation and limits judicial review of that decision to habeas corpus review in the federal District Court upon a petition filed within 14 days after the administrative deportation order. In fact, under existing law, the district directors are authorized to adjudicate a variety of applications for immigration benefits. District directors also have statutory authority to order the summary exclusion of aliens in security-related cases under section 235(c) of the Act.

The Federal court's review would be restricted to the narrow questions of whether the alien is a permanent legal resident and whether the alien has been convicted of an aggravated felony.

The process appears designed to avoid calendaring cases on the crowded Immigration Court docket, and eliminates review by the Board of Immigration Appeals (BIA) and Circuit Court of Appeals (on a petition for review). While relieving the strain on the immigration court process, the process before the district director would necessarily require procedural due process safeguards, spelled out by regulation, which would have significant resource implications for district offices. As a result, the Administration is studying the feasibility of implementing such a provision as a technical suggestion.

To avoid unnecessary detention costs incurred in uncontested cases, INS suggests that the bill should be slightly modified to permit the aliens to waive the 14 day appeal period subsequent to the final order of deportation, by inserting the two words "unless waived," after the words "order was issued" in subparagraph (5).

Judicial Deportation

Section 4 (a) of H.R. 1459 authorizes district court judges, with the concurrence of the Commissioner, to enter an order of deportation (called "Judicial Deportation") at the time of sentencing of an alien convicted of an aggravated felony.

Although this procedure could be efficient, it also could exacerbate Federal court docket delays and would require a commitment of INS resources at an earlier stage of the criminal process. The Administration prefers improving the Institutional Hearing Program (IHP), as announced by the Attorney General on February 3rd. We are concerned that this provision could result in an increased burden on the Federal courts and prosecutors, a lack of uniformity in granting discretionary relief (currently the Board of Immigration Appeals (BIA) provides guidance through precedent decisions in this regard), and possible expansion of aliens' mandatory rights resulting from merging the deportation determination with the criminal process.

Amendment to Five Year Sentence

Section 5 of H.R. 1459 amends the aggravated felony bar to section 212 (c) relief from deportation by replacing the requirement that an alien actually serve five years in prison with the new requirement that the alien has been sentenced to a term of imprisonment of at least five years. The present provision has been ineffectual because many aliens are released before completing the five years required to implicate the bar.

This proposal appropriately would help reduce the backlogged immigration court docket by eliminating the need to conduct lengthy evidentiary hearings on requests for section 212 (c) relief from deportation brought by serious offenders who have received a sentence of five years or more for the aggravated felony offense.

Increased Penalties for Failing to Depart

Section 6 of H.R. 1459 increases penalties for aliens who willfully refuse to depart the United States pursuant to a deportation order and increases penalties for aliens who illegally reenter the United States thereafter.

In cases where the underlying offense was criminal in nature or constituted a security-related ground, the penalty would be ten years. In all other cases, the penalty would be 2 years.

Such an increase in penalties is necessary and helpful and would apply only in cases where the underlying offense was criminal in nature or constituted a security-related ground. These penalties are needed to deter the many aliens who abscond and then continually attempt illegal reentries into the United States.

The amendment would appropriately limit collateral attacks on prior deportation orders to questions of basic due process. It would deter frivolous challenges during

criminal prosecutions for illegal reentry into the United States. Deportation and exclusion adjudications provide ample due process protection. Collateral attack in a distant, unrelated criminal proceeding is unnecessary and inefficient.

Forfeiture Authority

Section 7 of H.R. 1459 expands INS forfeiture authority in combatting smuggling and harboring of illegal aliens.

This provision is useful and appropriate. It gives to the INS the authority to proceed against real property used in, and cash assets proceeds derived from, criminal alien trafficking. Presently, the INS may seize for forfeiture only vehicles and conveyances. The proposal, essentially the same as that proposed by the Administration, would subject "any property, real or personal" to forfeiture.

Electronic Hearings

Section 8 of the H.R. 1459 would codify the authority of the government to conduct efficient telephonic and video immigration hearings. It supports the current INS video-teleconference pilot project for inmates housed at FCI Lexington, Kentucky. The project will permit an immigration judge to hold hearings from the regular Chicago immigration court, without incurring unnecessary travel expenses and per diem associated with bringing court personnel to the facility. We have concerns about conducting telephonic hearings without the consent of the alien.

H.R. 1496—Parole Registration, (Smith, Texas)

This bill contains a simple amendment to section 263 (a) of the Act, authorizing the promulgation of a regulation which would require all aliens who are, or have been, on criminal probation or parole in the United States to be fingerprinted and to register with the INS.

The Administration supports the concept behind this bill and is reviewing it to determine the best way to accomplish its goals. While registration is already authorized by section 221 of the Act, this amendment would underscore the INS investigatory goal of identifying all deportable criminal aliens who have been or currently are in the criminal justice system.

H.R. 2306— Federal Detention of Aliens in State Prisons, (Condit, California)

This bill would add a new paragraph "(j)" to section 242 of the Act to require the Attorney General, upon the request of a state or county official, to take into Federal custody any "undocumented criminal alien" sentenced to a "determinate term of imprisonment," who either entered the United States without inspection or was the subject of exclusion or deportation proceedings at the time he or she was taken into state custody. This proposal also requires that closed military bases be made available, as determined by the Attorney General, for the incarceration of such state inmates, and "undocumented aliens convicted of Federal offenses." Section 4 of H.R. 2438 contains similar provisions.

The Administration is sympathetic to the plight of states struggling under the burden of incarcerating criminal aliens. We are committed to working closely with the states to help lighten these burdens. However, as discussed in more detail by Bureau of Prisons Director Kathleen Hawk in her testimony, if the Congress eventually passes an Omnibus Crime bill which includes the establishment of a Trust Fund to pay for activities such as compensating a state or locality for its costs of incarcerating aliens, the Administration will consider the potential for compensating states and localities for their criminal alien incarceration costs as part of the President's Fiscal Year 1996 Budget.

In addition, we have concerns with the provision authorizing the use of closed military bases for criminal alien incarceration. In most cases, without prohibitively expensive conversion, military bases are appropriate only for confining minimum- to low-security offenders who present minimal risk to institutional and community safety. In addition, we believe that the procedures under current law for base disposal are sound and that altering base disposal priorities as proposed by this provision would not be advisable.

H.R. 2438—Early Deportation, (Schumer, New York)

Deportation of State Inmates Prior to Completion of Prison Terms

Section 2 of H.R. 2438 would amend section 242 (h) of the Act to permit the Attorney General to deport aliens prior to completion of their prison term. In the case of Federal prisoners, the Attorney General must first determine that deportation is in the public interest. In the case of state inmates, state officials are given the au-

thority to make this determination and to submit a written request to the Attorney General for deportation.

We believe it is crucial that the Attorney General retain ultimate authority for determining which aliens can be deported. In addition, it would be vital to public safety to ensure that a final order of deportation and travel arrangements were secured before—not after—the criminal alien was actually released from state incarceration.

Section 3 of H.R. 2438

Section 3 of H.R. 2438 provides for judicial deportation in a different way than does section 4(a) of H.R. 1459. Section 3 requires a Federal court's sentencing order to declare that an alien convicted of an aggravated felony is deportable. Any presentence report would be required to state whether the defendant is an alien. The alien would be required to be deported consistent with section 242(h) of the Act.

By referring to the proposed section 242(h) procedures above, this proposal retains the Attorney General's discretion to execute the court-ordered deportation order before the completion of the alien's prison term if the Attorney General determines that the alien has been adequately punished and rehabilitated and that such deportation is appropriate. The proposal could eliminate unnecessary and costly administrative deportation proceedings following an aggravated felony conviction.

As noted in the discussion of H.R. 1459, we believe improving the Institutional Hearing Program will provide greater dividends than to devote resources to judicial deportation procedures.

As a technical suggestion, the INS recommends expanding section 3 to cover both deportable and excludable aliens, because excludable aliens can be, and have been, convicted of aggravated felonies, while enjoying parole status in the United States.

Section 4 of H.R. 2438

Section 4 of H.R. 2438, which authorizes Federal custody of certain state criminal alien inmates, is similar to H.R. 2306, which we have already discussed.

H. Con. Res. 47, (Bonior, Michigan)

This concurrent resolution assigns priority to the identification and deportation of criminal aliens in an expeditious manner.

This resolution restates the existing goals and priorities of the INS and the Department of Justice. The resolution unfortunately does not address the more difficult question of additional resources. We recognize that we can do much by streamlining our procedures, working smarter, and achieving appropriate legislative and regulatory changes. The President's 1995 Budget proposed an additional $27 million to accomplish this goal. We hope to deport 20,000 more aliens, once this improved program is fully operational.

TERRORISM BILLS

Three of the bills below deal with the issue of membership in a terrorist organization as a ground of exclusion. One of them (H.R. 1279), limits itself to the Palestinian organization, Hamas. The other two bills are more general in nature.

H.R. 2041—Upgrade of Visa Lookout Operations, (Snowe, Maine)

Section 2 of this bill requires an upgrade of all overseas visa lookout operations to computerized systems with multiple-name search capabilities. Aliens often have more than one name or combination of names. Computerization would permit better tracking and identification of visa applicants. However, we defer to the Department of State on this proposal which affects its internal operations.

H.R. 2041 would add a new ground of exclusion based upon membership in an organization that engages in terrorist activity. The Attorney General, the country's top law enforcement official, and the Secretary of State, who has expertise in foreign affairs, would be authorized to determine which organization commits terrorist activity for purposes of satisfying the definition of "terrorist organization."

Prior to the revision of the grounds of exclusion by the Immigration Act of 1990, mere membership in a terrorist organization did constitute a ground of exclusion under section 212(a)(28)(F) of the Act. However, since 1977, Congress has moved away from exclusion by reason of mere membership or affiliation as described more fully in the Department of State testimony. This movement culminated in section 212(a)(3)(B) of the Act, which provides for the exclusion of aliens who have engaged in terrorist acts in the past or intend to do so in the United States.

The revised exclusion took effect on June 1, 1991, and is, thus several years old. The existing statute is very broad in scope. It also allows us to exclude because of

membership where the organization concerned is one in which membership necessitates participation.

As a result, we would oppose section 4 of H.R. 2041 and H.R. 2730 which could exclude aliens who have not engaged in terrorist acts in the past and do not intend to do so in the United States. In addition, we would oppose H.R. 1279's blanket exclusion of all Hamas members.

H.R. 2730—Definition of Terrorist Activity, (Snowe, Maine) and H.R. 1279—Membership in Terrorist Organization (Deutsch, Florida)

See comments in paragraph above.

H.R. 2993—NCIC, (Sangmeister, Illinois)

The bill requires that information be entered into the National Crime Information Center (NCIC) computer system concerning any alien for whom a warrant of deportation has been issued or an alien with a criminal conviction who has failed to appear for his or her deportation hearing.

With some limitation and clarification, the bill could be beneficial to INS enforcement efforts. As a preliminary matter, it must be noted that the bill would not affect the authority of state and local agencies to make arrests on the basis of an administrative warrant. For example, an alien's failure to appear at a deportation hearing presently does not constitute a criminal violation under the Act and therefore cannot justify a criminal arrest by a police officer. Unlike the duties of an INS officer who is authorized to arrest illegal aliens for civil immigration violations, a police officer may incur possible tort liability for arresting such an alien if he or she has committed no criminal offense under Federal or state law.

In addition, we are concerned that the volume of non-criminal violations might overwhelm the NCIC database. While the number of aliens who fail to appear for immigration hearings is significant, we suggest that the NCIC be reserved for those aliens who fail to appear and are also amenable to arrest for criminal violations such as for willful failure to depart the United States pursuant to a final deportation order.

H.R. 3302, (Gilman, New York)

This bill increases criminal penalties under Title 18 U.S.C. for (1) issuing passports or visas without authority; (2) making false statements in passrt applications; (3) forging or using a false passport; (4) using another's or misusing a passport; (5) violating safe conduct; and (6) fraudulently using or misusing visas, permits, and other documents. The penalty is generally increased from a maximum of one, two, or five-year prison terms to a maximum of ten years. New section 1547 is added to Title 18 to increase the maximum prison sentence for any of the above violations, other than safe conduct, committed to facilitate a drug-trafficking crime (fifteen years) or an act of international terrorism (twenty years).

These penalties are appropriate in order to deter fraudulent entries as it relates to international drug-trafficking, and terrorism.

H.R.3320 (Title IV), (Bilbray, Nevada)

This bill contains many of the same provisions found in H.R. 1459, which we have discussed and highlighted above. We also make the following observations:

In the expanded definition of aggravated felony in section 401, subsection (b) thereof makes the definition apply retroactively to all convictions entered "before, on, or after the date of enactment," which is a great improvement over similar section 2 of H.R. 1459, in order to preserve existing aggravated felony convictions under present law. In addition to the expanded definition of aggravated felony contained in other proposed legislation, H.R. 3320 adds any felony committed by an alien after the alien received a waiver of deportation under section 212 or 241 of the Immigration and Nationality Act (INA). This expanded definition of aggravated felony, as discussed in more detail previously, is overly broad.

In addition, the two clauses contained in subparagraph "(R)" which refer to "any attempt or conspiracy" or "federal, state or foreign conviction," actually belong at the end of the section, rather than in subparagraph (R), which relates to only one of the crime categories under the definition of aggravated felony (failure to appear in court).

Regarding section 402 and summary deportation, we acknowledge the attractiveness of summary deportation for serious criminal offenders, while noting the serious resource implications for local INS districts. In order to avoid unnecessary detention costs in uncontested cases, we reiterate the importance of modifying

this provision to permit the alien to waive the 14-day appeal period, by inserting the words "unless waived." This section should also be corrected to cover conditional residents under both sections 216 (spousal) and 216A (entrepreneurial) of the Act, not just those under section 216.

In addition, the "technical and conforming changes" under subsection (c) should be deleted entirely because they appear to curtail the authority of the immigration court to continue conducting in-prison hearings for non-lawful permanent resident aliens (non-LPRs). We are in the process of expanding the present Institution Hearing Program (IHP), which is a vital program that should not be limited and should continue to have concurrent jurisdiction over the non-LPR cases which the INS has filed with the immigration court. This concurrent jurisdiction is essential to promote the expeditious removal of serious criminal offenders, without interrupting the existing process. It also will enhance Service discretion to initiate cases in the most efficient forum depending on resource allocation, particularly in the early stages of implementation of this proposal.

Therefore, the "technical and conforming changes" under subsection (c) should be stricken because they impose potentially harmful limitations on the IHP process. The door to the IHP program should remain completely open to all criminal alien inmates.

Section 410 would require state and local law enforcement officials to notify the local INS district director within 72 hours of an arrest of an "immigrant or nonimmigrant alien" for the commission of a felony, which we support. However, we recommend that the words "immigrant or nonimmigrant" be replaced by the term "alien" to make it consistent with other sections of the INA.

Section 411 would bar the approval of a relative visa petition if the petitioner or beneficiary has entered the United States unlawfully, committed certain acts of document fraud, or overstayed his or her nonimmigrant visa. However, it is unclear whether this bar applies to an alien who committed such an act but whose status has already been adjusted to lawful permanent residence (or who has naturalized), and who is now trying to petition for a relative. Thus, this provision needs clarification before we comment further.

Section 412 slightly broadens the grounds of excludability by adding the following ground: any violation of any immigration law or federal or state statute prohibiting fraud, including income tax evasion. However, it could be interpreted to apply to any criminal or civil violation (albeit the caption under subsection (a) reads "Exclusion of Criminal Alien"). Clearly, some clarification is needed here as well.

Subsection (b), captioned "Exclusion reform," also is a major change from existing law in that it appears to abolish section 212(c) relief altogether, and is inconsistent with section 404. To be sure, the outright elimination of such relief will have the effect of expanding both exclusion and deportation hearings. However, it is certain to produce harsh consequences for passive immigration violators in some cases, and may invite litigation. This proposal does eliminate the litigious issue of whether the alien has made a "brief, casual, and innocent departure" under existing case law, by providing that the exclusion grounds apply to lawful permanent residents who only "temporarily proceeded abroad voluntarily."

CONCLUSION

The INS is committed to enforcing immigration law to deter illegal alien entry and presence. We are grateful for the strong Congressional support we have received. The INS believes that a strong partnership between the Federal government, the states and local jurisdictions is essential for effective immigration law enforcement. This is particularly true when dealing with criminal aliens and the impact these individuals have on Federal and state correctional systems.

We intend to do all we can to meet this challenge, and we look forward to working with you to achieve our mutual goals.

Mr. MAZZOLI. Are your colleagues testifying, or are they here to answer questions?

Ms. SALE. They are here to assist me. May I introduce them?

Mr. MAZZOLI. Please.

Ms. SALE. Mr. Gill Kleinknecht, Associate Commissioner for Enforcement, and Mr. Paul Virtue, Deputy General Counsel for INS.

Mr. MAZZOLI. Very good.

Ms. SALE. Thank you, Mr. Chairman.

Mr. MAZZOLI. You gentlemen are certainly welcome.

Mr. Hurwitz.

STATEMENT OF GERALD S. HURWITZ, COUNSEL TO THE DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE

Mr. HURWITZ. Thank you, Mr. Chairman and members of the committee. I appreciate the opportunity to appear before you today to discuss the Executive Office for Immigration Review's role in the Institutional Hearing Program, or IHP, and also other immigration judge hearings for aliens convicted of crimes.

In the IHP, immigration judges travel to correctional facilities throughout the United States and hold deportation and exclusion hearings for those aliens incarcerated for criminal offenses. Our goal is to complete as many cases as possible while the alien is serving his or her sentence so that a final disposition of the case will result prior to or at the time of an alien's release from criminal incarceration. The hearings are adversarial proceedings with full due process protections including right to counsel at no expense to the Government. The hearings are conducted pursuant to the applicable statutory provisions of the Immigration and Nationality Act.

Following enactment of the Immigration Reform and Control Act in 1986, EOIR entered into a joint cooperative effort with the Immigration and Naturalization Service, the Federal Bureau of Prisons, and State correctional systems to provide civil immigration hearings to aliens serving criminal sentences prior to release from custody. The result of this cooperation was the development of the IHP which, through careful coordination, now is established in a number of Federal facilities. We have also developed the capability of holding hearings in every State, the District of Columbia, and Puerto Rico.

The IHP provides expeditious hearings for inmates in Federal custody by centralizing inmate populations at designated Bureau of Prison facilities. Currently alien inmates requiring an immigration hearing are being sent to six Federal facilities including Oakdale, LA; Big Springs, TX; Lexington, KY; Leavenworth, KS; La Tuna, TX; and Pleasanton, CA. These facilities are capable of providing hearings for both male and female inmates at all security levels. Hearings are scheduled at these Federal facilities based upon the pending caseload in each location.

In the State systems, expeditious hearings have been facilitated by the establishment of centralized and regional State institutional hearing locations. Under our current program, immigration judges preside at 78 correctional hearing locations nationwide. Among our most extensive State programs are New York, Texas, Florida, and California.

Since the inception of the IHP in 1986, the number of immigration hearings completed as a result of our program has steady increased. For fiscal year 1988 the number of completions was 1,457. In contrast, for fiscal year 1993, the number of completions was 8,764.

EOIR carefully track the current status of these cases as well as all of the cases in our system through our automated information system. This system is capable of providing reports which indicate

the location and volume of incoming cases. This allows the EOIR to carefully plan our judges' hearings at the prisons. With the assistance of our automated system, we can most effectively utilize our limited resources.

It is clear from the trend of statistics that the number of cases we are receiving and completing involving aliens convicted of crime is increasing dramatically, to date, EOIR has been successful in completing the cases that we have received in a relatively expeditious fashion. We constantly monitor the caseload through the use of our automated information system and adjust our scheduling as new filings dictate.

We are utilizing additional innovative approaches to more efficiently handle our caseload. For example, we are making some use of telephonic master calendar hearings, which are the initial hearings, to increase hearing time and save travel expense where possible. We have also permitted written stipulations of deportation in some cases whereby an alien, through counsel, waives an in-person hearing and accepts an order of deportation, again, increasing efficiency.

Finally, we have initiated a pilot program which has been mentioned previously for teleconferenced hearings between Chicago and Lexington, KY, and the first reports are that that program is quite successful, and we hope to expand it.

This Institutional Hearing Program is one of our agency's top priorities. We are committed to expend whatever resources are available within our current appropriated funding levels to keep up with the important and increasing caseload.

In addition to the institutional hearing program, EOIR conducts thousands of hearings each year for aliens with criminal convictions outside of the prisons. These cases are conducted at INS detention facilities in several locations for those who are in service custody and also at immigration courts in cities throughout the United States for those not in custody. To give you a sense of the scope of those hearings, in fiscal year 1993, immigration judges completed approximately 26,000 criminal-based cases. When I say criminal-based cases, I mean aliens charged with criminal convictions as a basis of deportability, and 26,000 criminal-based cases were completed outside the prisons resulting in approximately 19,000 orders of deportation.

As in all cases before immigration judges, these proceedings are adversarial and are conducted with complete due process protections pursuant to applicable law.

Thank you again for this opportunity to appear. I will be happy to answer any questions that you may have.

Mr. MAZZOLI. Thank you very much, Mr. Hurwitz.

[The prepared statement of Mr. Hurwitz follows:]

PREPARED STATEMENT OF GERALD S. HURWITZ, COUNSEL TO THE DIRECTOR, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW, U.S. DEPARTMENT OF JUSTICE

Mr. Chairman and Members of the Committee:

I appreciate the opportunity to appear before you today to discuss the Executive Office for Immigration Reviews (EOIR) Institutional Hearing Program (IHP) and other immigration judge hearings for aliens convicted of crimes. In the IHP, immigration judges travel to correctional facilities throughout the United Sates to hold deportation/exclusion hearings for those aliens incarcerated for criminal offenses. Our goal is to complete as many cases as possible while the alien is serving his or

her sentence so that a final disposition of the case will result prior to or at the time of an alien's release from criminal incarceration. The hearings are adversarial proceedings with full due process protections, including right to counsel at no expense to the Government. The hearings are conducted pursuant to the applicable statutory provisions of the Immgration and Nationality Act.

BACKGROUND

Following enactment of the Immigration Reform and Control Act (IRCA) in 1986, EOIR entered into a joint cooperative effort with the Immigration and Naturalization Service (INS), the Federal Bureau of Prisons (BOP), and state correctional systems to provide civil immigration hearings to aliens serving criminal sentences prior to release from custody. The result of this cooperation was the development of the IHP which, although careful coordination, now is established in a number of federal facilities. We have also developed the capability of holding hearings in every state, the District of Columbia, and Pueto Rico.

STRUCTURE OF THE PROGRAM

The IHP provides expeditious hearings for inmates in federal custody by centralizing inmate populations at designated BOP facilities. Currently, alien inmates reguiring an immigration hearing are being sent to six federal facilities: Oakdale, Louisiana; Big Spring, Texas; Lexington, Kentucky; Leavenworth, Kansas; La Tuna, Texas; and Pleasanton, California. These facilities are capable of providing hearings for both male and female inmates at all security levels. Hearings are scheduled at these federal facilities based upon the pending caseload at each location.

In the state systems, expeditious hearings have been facilitated by the establishment of centralized and regional state institutional hearing locations. Under our current program, immigration judges preside at 78 correctional hearing locations nationwide. Among our most extensive state programs are New York, Texas, Florida, and California.

New York is a good example of a productive state program. We started in 1986 with a single location, Fishkill. Over the years, due to an expanding caseload, we have incressed to seven locations, with a total of ten immigration judges holding hearings. We had dedicated up to 36 weeks per year for this purpose. This year EOIR will increase the judge time necessary within existing authorzed personnel levels, to expeditiously handle the increasing caseload, and in conjunction with INS and the state of New York, further centralize the hearing sites to maximize efficiency. Over the course of the New York program, EOIR has enjoyed cooperation from the New York State correctional officials, which is the key to the program's success.

RESOURCES EXPENDED

Jurisdiction vests with the immigration judge at the time that a charging document is filed by INS. Once jurisdiction vests, an IHP case is assigned to an immigration judge on a priority basis. Currently, EOIR employs 93 immigration judges nationwide. In addition to criminal alien cases, it should be noted that these judges are assigned to conduct deportation, exclusion, and other related hearings for aliens throughout the United States. The IHP cases constitute an increasing but relatively small percentage of the total matters that immigration judges hear.

Since the inception of the IHP in 1986, the number of immigration hearings completed as a result of our program has steadily increased. In FY 1988, the number was 1,457. In FY 1989, the number was 3,127. In FY 1990, the number of completions was 3,358. In FY 1991, the number was 5,165. In FY 1992, the number was 6,783, and in FY 1993, the number was 8,764. As of February 1994, we have 2,086 pending cases nationwide. These cases consist, for the most part, of recent filings.

EOIR can carefully track the current status of these cases, as well as all of the cases in our system, through our automated information system. This system is capable of providing reports which indicate the location and volume of incoming cases. This allows EOIR to carefully plan our judges' hearings at the prisons. With the assistance of our automated system, we can most effectively utilize our limited resources.

To give you an insight into the amount of resources which are used for these hearings, in FY 1993, 52 immigration judges traveled to correctional institutions to hear deportation and exclusion cases there. More than 1,000 immigration judge days were devoted to these hearings. These figures do not include INS resources expended.

Although we attempt to schedule our hearings as efficiently a possible, ideally with full days or a full week of cases calendared, there are some hearing locations that have only one or two cases at a time. Although it is not particularly cost effective from our standpoint to send a judge to hear one or two cases, we do provide these services because of our commitment to the intent of the statute and to maintain a nationwide program to complete as many cases as possible before the inmate's sentence is completed.

FUTURE TRENDS

It is clear from the trend of statistics that the number of cases we are receiving and completing involving aliens convicted of crime is increasing dramatically. To date, EOIR has been successful in completing the cases that we receive in an expeditious fashion. We constantly monitor the caseload through the use of our automated information system and adjust our scheduling as new filings dictate.

We are utilizing additional innovative approaches to more efficiently handle our caseload. For example, we are making some use of telephonic Master Calendar hearings to increase hearing time and save travel expenses where possible. We have also permitted written stipulations of deportation in some cases, whereby an alien, through counsel, waives an in-person hearing and accepts an order of deportation, again, increasing efficiency.

This institutional hearing program is one of the agency's top priorities. We are committed to expend whatever resources are available within our current appropriated funding levels to keep up with this important increasing caseload.

HEARINGS FOR ALIENS WITH CRIMINAL CONVICTIONS OUTSIDE THE PRISON SETTING

In addition to the IHP, EOIR conducts thousands of hearings each year for aliens with criminal convictions. These cases are conducted at INS detention facilities in several locations for those who are in Service custody, and also at immigration courts in cities throughout the United States for those not in custody.

To give you a sense of the scope of these hearings, in Fiscal Year 1993, immigration judges completed approximately 26,000 criminal based cases outside the IHP resulting in approximately 19,000 orders of deportation. As in all cases before immigration judges, these proceedings are adversarial and are conducted with complete due process protections pursuant to applicable law.

Thank you again for this opportunity to appear. I will be happy to answer any questions that you may have.

Mr. MAZZOLI. Let me start out, if I could, with Ms. Hawk just to try to get some figures down on paper.

You were here, I think, in the room when the questions were asked of—I am not sure exactly who did, I think Mr. Becerra. Of these noncitizen defendants, noncitizen sentenced aliens, how many of them are what we would call undocumented, and how many of them are, in fact, permanent resident aliens? How many of them may have other kinds of status? Can you break that down for us?

Ms. HAWK. In our system, we don't exactly break them down much more finely than whether they are citizens and legally in this country or whether they are noncitizens and subject to deportation. We refer to INS the roughly 22,300 who are not demonstrated to be legally in this country and INS then makes the further determinations of whether they are then deportable or——

Mr. MAZZOLI. If I may back you up, you said who are not legally in this country, because a permanent resident alien is legally in the country, they could commit a felony, and in some cases maybe that would warrant their deportation because they are not a citizen. But, again, you take the whole lump, whether they are here, whether they are undocumented or documented aliens, and you send that on to INS?

Ms. HAWK. I am sorry. The conjunction should have been "or" in that sentence and not an "and." You are absolutely right.

Mr. MAZZOLI. OK.

Ms. HAWK. They either came in illegally or their legal status is in jeopardy because of the fact that they have been convicted of an offense. Those are the cases that we refer to INS, and then the determination is made by INS staff as to exactly what category they fall into.

Mr. MAZZOLI. So is that that 60-day notice that you talk about?

Ms. HAWK. We refer the cases to INS at the beginning of their incarceration. Then INS responds back to us with information about their immigration status. I really would like to defer to Chris on the details.

Mr. MAZZOLI. I think there is a 60-day notice in your statement. You said you give a 60-day notice before a person is released from the Bureau of Prisons facility to the INS so that the INS can take whatever action it deems necessary by way of this institutional hearing process or whatever else it wishes to do, and I assume that if at the end of the 60-day period INS has done nothing or you are not told to the contrary, that person is released having served his or her time.

Ms. HAWK. We notify INS very early in the inmate's sentence that we have individuals whose status is jeopardized—I'll put it in the general term. With the relationship that we have with INS, we usually have an answer back through the IHP or through our regular communications with INS. Therefore, we don't end up having inmates at the end of their time, falling beyond that 60-day window, that we have to release because we haven't heard back from INS. I think the communication links that exist between the Federal prison system and INS are clean enough that we don't release deportable aliens to the community.

Mr. MAZZOLI. So is this to say then that the Members who feel that maybe these people are getting out in the streets because the INS has not acted because there has been perhaps a lack of communication or a lack of some organized effort to take these cases and hear them for deportation, that those concerns are perhaps unfounded?

Ms. HAWK. In the Federal prison system. I cannot speak for my colleagues at the State and local prison levels and jail level, but at the Federal level that is an unfounded concern.

Mr. MAZZOLI. Well, before we turn to Ms. Sale, because there are just a lot of questions here and I want to yield to my colleagues as well, the reason I ask you, I think that we need to have some additional numbers and a breakdown better than just simply noncitizens or those whose categories are jeopardized because of their felonious actions, because you can see the way the debate goes.

I mean, to a certain extent, part of this debate is how many people are coming into the country illegally, secreting themselves in, then abusing the system, and then being permitted to go back and do the same thing again and again.

So I think it is important not just to settle on noncitizen sentenced aliens but, in fact, to try to break that down to those who are truly undocumented aliens, and those who are called legal aliens.

Is there not some way to figure that out in part of the dossier that you keep on these people?

Ms. HAWK. There again, the information that we as prison administrators have available to us is never sufficient enough to place them in categories. We are able to make an initial determination of whether they are citizens, noncitizens, and some of the basic categories. We then contact INS, and it really requires the investigative process, the hearing process, and involvement from INS staff to really make those further determinations.

Mr. MAZZOLI. I am anxious to get information from Ms. Sale. I guess I can't follow it. It just seems to me if you can determine at the beginning of the Bureau of Prisons process that this person is not a citizen, then it doesn't seem to be so terribly difficult to decide what the noncitizenship is premised on, no documentation whatsoever, a person who has sneaked in the country, a person came in from an airport, or a person who has been here for 10 years as a nonresident alien but decides to stick someone up.

Ms. HAWK. There again, I am not suggesting that the information is not available, I am simply saying we do not, ourselves, have access to it. We engage INS, and with the information they have either available to them or they can retrieve, they are able then to place these inmates into better categories.

Mr. MAZZOLI. Well, my time has expired, but let me just continue with Ms. Sale just on this one point, and then I would yield to Bill.

The question has been asked, and you have observed not just today but several times of what is exactly this universe of people we talk about, where are they from, are they here illegally, are they here legally, and this affects a lot of things. I mean if we are going to put a burden—if we are talking about the State of Florida, the State of California, who want to be reimbursed for all the cost of incarceration, it is a very different ball game if these people are permanent residents who may have lived in the San Fernando Valley for 15 years but decide one day to hold up a convenience store, and a person who sneaked across the border a year ago or 5 months ago and decided to stick up that same convenience store, and so I think there is a very important element here that we need to decide how to proceed and who should pay for which bills.

Therefore, let me ask you, can you determine or can you tell us today, of the some 22,000 or 23,000 people in Bureau of Prison facilities who are noncitizens, how many of them are illegally here, how many of them could be what we would call loosely permanent residents?

Ms. SALE. Thank you, Mr. Mazzoli. Let me put some sort of structure on this if I may, with your permission.

We speak very carefully about foreign-born inmates with regard to State and local facilities because that is basically what any detention center in the criminal justice system makes a determination about, including the Federal Bureau of Prisons. They refer to us or report through criminal justice data banks to the Department of Justice, in fact, what their population is vis-a-vis U.S. citizen or foreign born.

Foreign born, as you understand, may include naturalized citizens, certainly includes legal permanent residents, and it includes

people who are in violation of their immigration status or simply entered without permission.

Of that latter category, they may or may not be susceptible to deportation proceedings depending on a fairly complicated set of reviews which the INS at this point in time is really best able to ascertain.

So even with regard to the Federal prison system, technically, what the personnel in the Federal Bureau of Prisons do for us is say, "Here are the people that are foreign born." Now INS determines who is a noncitizen.

With regard to the Federal prison system, because we have a far longer established relationship and a much better ability to integrate our activities, we can speak to noncitizens because we have already done that review. So the 22,000 that Ms. Hawk describes are, in fact, susceptible to deportation proceedings because INS has already conducted that review.

The problem is that we have not had the resources or in some instances even the data and the access to get into the State facilities, much less county and local facilities, to make that same determination.

It is a difficult and lengthy process to put someone through a deportation proceeding, including all of the due process avenues that are available. The first piece of that is doing a historical analysis on the person's instant case to make a determination if they are foreign born, then are they susceptible to deportation proceedings, the principal issue being not a legal permanent resident obviously, but there are also other criteria having to do with avenues for 212(c) relief and things of that nature that we need to take into account and their own immigration history with regard to parentage and things of that nature.

Mr. MAZZOLI. Let me see if I am up with you to this point. The Bureau of Prisons sends over to you a glop of people by names who are foreign born.

Ms. SALE. That is correct.

Mr. MAZZOLI. So you then process that information that comes over from Ms. Hawk's agency of foreign-born people to determine whether they are naturalized citizens who happen to have been born in Yugoslavia or some place.

Ms. SALE. Do a records check; that is correct.

Mr. MAZZOLI. Or whether they are resident aliens who have been in this country for a while though they are not citizens, or are they illegally here, no papers, no documents, snuck in, overstayed—so you make that determination.

Ms. SALE. Yes, sir.

Mr. MAZZOLI. And then I assume that you communicate that back to Ms. Hawk because 60 days before the release of those who are subject to deportation, and not all these people would necessarily be perhaps—and I would need to know this, too—are all felonies—let me say it this way: Would a naturalized citizen suffer the loss of citizenship or have that citizenship jeopardized by the commission of a violent felony?

Ms. SALE. No.

Mr. MAZZOLI. All right.

Would a resident alien have his or her residency in jeopardy, or are they possibly in threat of deportation if they commit a violent felony?

Ms. SALE. Subject to a process that is articulated in the law, they are susceptible to a rescission of their legal permanent residency. We have got to go through an elaborate process to get to that point and in that context make a deportation determination.

Mr. MAZZOLI. OK.

Ms. SALE. That is a far more difficult issue than people who aren't legal permanent residents.

Mr. MAZZOLI. Obviously, people who have come in on a legal visa and overstayed or those people who never had a visa in the first place are, upon commission and conviction of a felony, subject to deportation?

Ms. SALE. Yes, but in order to make that determination there are requirements both based on constitutional requirements, and in the law, for due process for an evidentiary hearing, for right to counsel, for an appeal to the Board of Immigration Appeals once they have gone through the judge process, and finally for consideration in some instances for relief from deportation, depending on their instant case, and so it is a fairly extensive process.

These decisions do not get made, frankly, in 60 days. The trigger that Ms. Hawks spoke to is one that notifies us in those instant cases, should—should we have lost someone in the mill, we can catch them.

Mr. MAZZOLI. I think it is very important to note that those are the questions that were brought up by the panel. I realize none of that can be done in 60 days, but at the end of 60 days they are out of her place. So the question is, do you take custody of them at that time? Do you parole them to the streets? Or do you do something with them? So that is what the Members have been concerned about. Is there a gap of any measurable amount for any measurable number of people who are somehow released from her establishment before they wind up as a detainee? You have 5,000 people who are not convicted aliens but detainees, people that you are holding for the INS while they are presumably, I guess, going through the process of deportation.

But one way or the other, is there a number of people who somehow get out of this process sometime after they complete serving the time in the Bureau of Prison facility?

Ms. SALE. The statute defines with regard to aggravated felons as defined by the statute that we must detain, and we do take custody. INS has on average 3,000 people in its own detention, all of whom are criminal aliens who are either coming out of the Federal prison system because we didn't finish the deportation process timely or coming out of State.

Mr. MAZZOLI. Well, I am taking too much time. Let me yield to my colleague from Florida.

I will yield you 10 minutes, Bill, because I have used at least that. But we may have to come back. Fleshing out this point is a very important part of what our colleagues are worried about.

The fact is, if we are going to first of all establish which prisoners the State should be possibly reimbursed for and we have got to figure out which of them is here without any color of right at

all, and then, secondly, we have got to worry about, is there a kind of vent here there which a lot of these people, having served their full time in the Bureau of Prison facility, are then allowed to get out into the streets while awaiting deportation, and that sort of thing.

The gentleman from Florida.

Mr. MCCOLLUM. Thank you, Mr. Chairman.

I would just like to follow up while that strain of thought is going through us here about State prisoners. We talked about the Federal prison system. Most of these aliens, I suspect, are in State prisons that have completed their sentences and are subject to deportation. Are we detaining them if they have committed aggravated felonies?

Ms. SALE. State will—if they know and we know that a person is foreign born and susceptible to deportation and meets the criteria for an aggravated felony—will refer those cases to us. We make case-by-case determinations, and we will detain people subject to finalizing their deportation hearing.

Clearly, we do not have the resources to detain everyone who is conceivably in State or local detention for any number of crimes. But we do now routinely take people from—referred from New York, referred from California, referred from wherever.

Our principal objective obviously is to finish the deportation process while they are serving their criminal sentence so that we don't have to pay for further detaining them and they can get on with their lives somewhere else.

Mr. MCCOLLUM. You have raised two questions by your answer. One of them is, "if we know." Do we have a large information gap? Is it your opinion that there are quite a number of people falling through the screen or just simply the States not recognizing these people qualify for deportation?

Ms. SALE. Part of the difficulty is that States will routinely identify people as foreign born. That does not, as Mr. Mazzoli was earlier demonstrating through his questioning—does not necessarily mean that they are illegal or that they are susceptible to deportation proceedings. That determination needs to be made through INS's investigative review.

Mr. MCCOLLUM. But do you kick off a review like that on everybody who is in a State prison that has been identified as foreign born?

Ms. SALE. We do the best we can. We do not, I am sure, reach every last one of them.

Mr. MCCOLLUM. Could you tell me, or is there a data base that you can go back and get it from, what percentage of those who are imprisoned aliens, whether they are State or federally imprisoned, who are subject to deportation are actually deported at the time they are released from prison as opposed to, you know, still being processed in some form of detention or release as a percentage of the whole?

In other words, what percentage are we getting and walking them out the door of the prison and shipping them off to wherever they go to out of the country and who are subject to deportation, and what percentage are still hanging around through detention or not for however long?

Ms. SALE. I would venture to say that virtually all of the ones in the Federal prison system we are getting out through that process. It is the longest standing relationship; it is one that we have established. We have actually staff at the Federal facility. The judges are at the Federal facility. They work under the supervision of an INS fields office, but they are colocated and working immediately and directly with the local warden so that we can get that job done timely.

Mr. MCCOLLUM. So you say virtually all of them are being deported at the time they finish their imprisonment.

Ms. SALE. The biggest caveat is getting travel documents, and there are a small number of countries and consequently individuals who may have deportation orders but for whom we are hard pressed to receive travel documents, which means that the country they belong to doesn't want to let them back either, and so we do have some——

Mr. SCHUMER. Would the gentleman yield?

Mr. MCCOLLUM. Yes, I will be glad to yield.

Mr. SCHUMER. Which countries are those?

Ms. SALE. Jamaica, Nigeria; we have had a problem with Vietnam which we may be able to overcome more recently. It varies over time. We do engage with the Department of State on an international diplomatic basis to try to solve those problems.

Mr. MCCOLLUM. But that is a small percentage of the federally incarcerated prisoners. Now what about the State incarcerated ones?

Ms. SALE. There is a large gap in the State incarcerated system, particularly with people who don't serve a long sentence. You are aware that people may be charged with a sentence that says, "You will serve 5 years," but then in fact the term that they serve is far shorter.

We have not been able to reach people that are in those prisons longer than a year and are not, I don't think, reaching people, absent California and New York where we are probably better than at 50 percent, reaching people that are staying longer than that.

Mr. MCCOLLUM. Do you have a data base from which you could get us the data on the States, either State by State or otherwise, to give us some reflection as to how many are getting out—what your success ratio is of deporting them when they walk out the prison door of State prisons versus——

Ms. SALE. I think we could make an estimate. I would not put my name on such data, frankly, because the problem begins with identifying the people, with then making determinations as to their deportability subject to our having full information on the status under which they are in jail.

[The information follows:]

There is no current existing single database from which INS can determine the ultimate disposition of criminal aliens released from each State's corrections authority. To determine a "success ratio", INS would need to compare information provided by each state on the number of deportable aliens released to INS custody with data on the number of aliens ultimately removed who had served their sentences in that particular state. In many instances, when the inmate is turned over to INS custody, a determination has not yet been made on deportability.

Some information is available, however, which may be useful to the Subcommittee. The Deportable Alien Control System (DACS) currently tracks information on criminal alien removals. Data receipts through January indicate that 21,894 crimi-

nal aliens were removed from the United States in FY 1993. DACS is not able to readily sort these 21,894 cases by the panel (or other) authority which turned them over to INS.

Mr. MCCOLLUM. It is a fairly large number, I would assume.

Ms. SALE. I think it is not, but I don't want to guess a number——

Mr. MCCOLLUM [continuing]. Who are not deported.

Mr. SCHUMER. Would the gentleman yield?

Mr. MCCOLLUM. I would be glad to yield.

Mr. SCHUMER. My information from New York State is different than Ms. Sale's which is that they seem to feel that the overwhelming majority of people they let out who are illegal aliens are not deported.

I may have misheard you. You are saying in New York and California you think over 50 percent are whose terms are of some length. They are not saying that at all. What is the length? I mean if it is 20 years maybe you are right.

Ms. SALE. No, no, no. We have been going after people who are at least a year in their sentence.

Mr. SCHUMER. My information differs.

Ms. SALE. Let me then correct and say with regard to California we are now removing about 50 percent of the people that we have identified through their correction system. In New York we are probably further behind.

We have only this spring come to an agreement with the State of New York correctional people where they will move from seven facilities to three facilities, and we will centralize our people much as we do in California and in the Federal prison system and hopefully approach the California number. I am not sure that we are doing 50 percent in New York.

Mr. MCCOLLUM. If I could reclaim here from the gentleman, I would very much like to see us explore this further in terms of information you can give us. I would like to know, for example, what the ratio is, if you have it, on Florida, which is my State, and so forth.

I think, as Chairman Mazzoli said, this may be difficult data for you to gather, but I think it is very important for us to have somebody gather it, whether we have to put it into a statutory request or report over time that is reasonable for you to respond or not, but I just think it is important.

Let me ask Mr. Hurwitz a question about those you mentioned that were being deported in this IHP process.

I think you said a pretty high percentage were Mexican who were being deported in this process.

Mr. Hunter asked a relevant question, a pregnant question, in his testimony earlier today, I thought, and that is, are we taking them just to the border and letting them go, or are we deep seeding them into Mexico when they go down there, or do you know?

Mr. HURWITZ. That is a question that would better be addressed to INS. The judges basically end their——

Mr. MCCOLLUM. All right. I will go over and ask Ms. Sale that.

Do you know that? Are we deep seeding them, or are they going just to the border and being released?

Ms. SALE. It really depends on where they are, Mr. McCollum. If they are in California, for example, we are taking them to the border and releasing them into Mexican custody, where they then become released at the land port of entry.

We attempted an experiment working in collaboration with California and identified 300 people last year and paid for commercial flights into Mexico City for them, intending to see what would happen if we moved them into the interior of Mexico. Within a year we knew that 52 were back.

Assuming that our rate of catching people is not at 50 percent of what is actually back in the country, I would estimate that 100 or more were actually back in the country despite the fact that we had removed them to the interior of Mexico.

From our perspective, the bottom line is that interior repatriation is not cost-effective, not with regard to California. Now if you are flying them from Florida to Jamaica, maybe your rates are better, but we are doing that anyway.

Mr. MCCOLLUM. Let me ask you at some point if you would identify—changing the subject completely—the aggravated felony additions from my bill, H.R. 1459, that you would think as appropriate and those that you don't. You didn't specify that in here. I would appreciate if you would ship me a list saying why, why not.

Ms. SALE. Can we submit it for the record?

Mr. MCCOLLUM. Sure, if you would submit it for the record. I am not asking you to do that in front of me here today.

Ms. SALE. Thank you.

[The information follows:]

Section 2 of H.R. 1459 amends section 101(a)(43) of the Act by adding over a dozen new crimes to the definition. The proposed added crimes generally involve sufficiently serious offenses, Class A to E felonies, to include them in the definition of aggravated felony. However, because of the severe immigration consequences resulting from a conviction for an aggravated felony, such as the bar to asylum and withholding of deportation, bars to other forms of relief, and a permanent bar to naturalization, the following offenses should be deleted from the proposed expansion:

Theft, gambling, prostitution, perjury, and failure to appear in court.

While these represent significant violations of law, they are not the type of "particularly serious crimes" which would justify denying withholding of deportation on account of persecution or threat of torture or death if the person is returned to the home country.

The remaining listed crimes appear sufficiently serious to require swifter and more certain deportation proceedings for the convicted criminal alien. However, since aggravated felons are required to be detained under section 242(a)(2)(A) and (2)(B) of the Act, expanding the definition will necessitate additional detention resources.

Mr. MCCOLLUM. Also, though I read your testimony at some length, I didn't see why you got into other things about summary deportation. Any comment that directly said you did or you didn't agree or why you did or didn't with the idea of eliminating all discretionary relief from deportation, including withholding deportation to aggravated felons who are not lawful permanent resident aliens? I assume there is a reason. I mean you either like it or you don't like it, but I don't think you actually said that in here anywhere, and why or why not, and I would just like for the record for you to do that at some point.

Ms. SALE. Yes, sir.

[The information follows:]

(a) *Technical corrections to ensure due process and detention:* Section 3(a) of H.R. 1459 will streamline deportation for aliens described in the section. However, certain technical corrections are recommended to ensure administrative due process and detention during the process.

The proposal adds section 242A(c) to the Act to provide for summary deportation, "[n]otwithstanding section 242," of non-lawful permanent residents (non-LPRs) or conditional resident aliens who are convicted of aggravated felonies, and to eliminate all discretionary relief from deportation, including withholding of deportation. This provision also authorizes the Attorney General to delegate to the Commissioner or to any INS district director the authority to order deportation and limits judicial review of the decision to habeas corpus review in the U.S. District Court based upon a petition filed within fourteen days after the administrative deportation order. The federal court may review only the narrow issue whether the alien is, in fact, an alien convicted of an aggravated felony who is a non-LPR or conditional resident alien.

In order to ensure fundamental fairness in this proposed summary deportation process, the following minimum procedural safeguards should be statutorily provided to the alien:

a. The alien is given reasonable notice of the charges;

b. The alien has an opportunity to be represented at no expense to the government;

c. The alien has a reasonable opportunity to inspect the evidence and rebut the charges;

d. The charge must be supported by clear, convincing, and unequivocal evidence and a record maintained for judicial review; and

e. The investigative officer who issues a notice of intent to deport is not the same person as the adjudicator who enters the final administrative order.

Since discretionary relief is not available to an alien described in section 3(a), there is no need to conduct a full evidentiary hearing before an immigration judge in these cases. Moreover, the reason for having separated the immigration judges from the INS, namely, to separate the prosecutive from the adjudicative function with respect to discretionary determinations would not be adversely affected by the proposed section 3(a).

Because subsection (c) "Technical Amendments" is potentially damaging to the Institutional Hearing Program (IHP) (see Ms. Sale's testimony before the Judiciary Committee Joint Hearing), that subsection should be revised, paragraph (d) "Effective Date" should be redesignated as paragraph "(e)," and paragraph (d) should provide for detention during the new administrative process, to read as follows:

§ 3(a). DEPORTATION PROCEDURES FOR CERTAIN CRIMINAL ALIENS WHO ARE NOT PERMANENT RESIDENTS.

(a) * * *

(b) * * *

(c) Administrative Process. —

Proceedings before the Attorney General under this section shall be in accordance with such regulations as the Attorney General shall prescribe and shall provide that—

a. The alien is given reasonable notice of the charges;

b. The alien has an opportunity to be represented at no expense to the government;

c. The alien has a reasonable opportunity to inspect the evidence and rebut the charges;

d. The determination of deportability is supported by clear, convincing, and unequivocal evidence and a record is maintained for judicial review under this section; and

e. The investigative officer who issues a notice of intent to deport is not the same person as the adjudicator who enters the final administrative order.

(d) Detention. —

Pending a determination of deportability under this section, the Attorney General shall not release the alien. An order of deportation entered pursuant to this section shall be executed by the Attorney General in accordance with section 243.

(e) Effective date. —

* * *

These corrections will ensure fairness in the administrative adjudicative process, provide clear authority of the Attorney General to detain the alien during the process and guidance as to which countries may be designated for deportation, and facilitate prosecution for reentry after deportation which typically is based upon an order falling within section 243 of the Act.

Elimination of relief: The INS supports the elimination of discretionary relief in the summary deportation proposal. The Act currently bars asylum and withholding of deportation, even in the case of a lawful permanent resident, once the alien is convicted of an aggravated felony. Sections 208 and 243(h) of the Act. We have already recommended strengthening the aggravated felony bar to section 212(c) relief (for seven-year lawful permanent residents), by changing the criteria from five years "served" (in prison) to five years "sentenced."

This summary deportation proposal describes non-lawful permanent residents who have few, if any, ties to this country and whose deportation should be made quicker and more certain due to the serious crime committed. If amended in accordance with our above recommendations, the proposal would greatly serve the mission of the Service, the public need to combat the scourge of drugs and violence in our country, and alleviate overcrowded prison conditions by eliminating potentially protracted deportation hearings while the aggravated felon is detained.

Mr. MCCOLLUM. One other thing, too—and I am going to slip off Ms. Sales for a second.

Ms. Ryan, I must say that you may have heard from listening to the previous testimony that I personally have a real hard time on the member question of these organizations that are identified as terrorist organizations as to why we cannot—why it is so bad to exclude members even if they aren't demonstrably active in an organization, especially if it is a terrorist organization, because it seems to me that it is just common sense that some of these people—I don't know what percentage—are coming in here who have never been active, never been identified as being active. The organizations themselves may have no requirement on them to be active, but they are planted here, and they are allowed to stay here, from my terrorism task force study, for several years in some cases, it appears, and then they are being called upon to become active, and they are pretty willing subjects at that juncture, you know.

Isn't it a concern of yours of national security that we may be allowing even a handful of those types in if we don't exclude members?

Ms. RYAN. Mr. McCollum, the way I would answer that is to say that we think the current statute allows us to exclude people who are responsible for, who are engaged in, or who direct terrorism.

Mr. MCCOLLUM. I understand.

Ms. RYAN. And we think that we have that now.

If the committee decides to go to full membership of terrorist organizations, the problem that we would have with that is, one, whether or not we would be able to obtain the membership lists—in other words, whether we would know whether these people were really members of this organization or not.

Mr. MCCOLLUM. Yes, but if you do, that is the only case we would hold you responsible for, if you do know.

Ms. RYAN. If we have all of that information in the lookout system, it will significantly delay the name check, I mean the processing, so that time will be stretched out, and I am not sure that it would serve the national security interests to have names of all members of an organization that we might think of as terrorist, or some of us might think of as terrorist, in there.

Mr. SCHUMER. Why not?

Ms. RYAN. Well, if there is no national security concern—I mean you are saying now——

Mr. MCCOLLUM. I just think there is ipso facto a national security concern, and I guess that is a judgment call on our part versus yours.

Ms. RYAN. But if you are saying now that you should go back to membership in organizations as a ground for excludability.

Mr. MCCOLLUM. Yes, that is what I am saying, absolutely.

Ms. RYAN. I mean obviously we will do whatever you say.

Mr. MCCOLLUM. OK.

Ms. RYAN. But we just changed the law, the law was just changed 2 years ago.

Mr. MCCOLLUM. Oh, I know. I disagreed with that change at the time, especially with regard to terrorist organizations. If you recall, there were other organizations as well, and maybe there were reasons for not doing that, but the terrorist part—my time is up.

Mr. MAZZOLI. Before we go, because we do have a vote, and I want my colleagues to decide if we can come back or if they will come back—but I think you said in your statement, Ms. Ryan, that the State Department has enough flexibility to get to membership factors if the organizations requires as a premise of membership past action or future pledges of action.

Ms. RYAN. Yes, sir, we do.

Mr. MAZZOLI. The State Department has said that they believe they can get people from organizations like this even by reason of membership alone if that organization has a track record of requiring of its members certain kinds of action.

Ms. RYAN. Yes, sir.

Mr. MAZZOLI. Do the gentlemen want to come back?

Mr. SANGMEISTER. I think we can maybe finish this up. I will yield to Mr. Schumer for a quick statement.

Mr. SCHUMER. I just want to say that I don't have any idea what the national security interest would be in letting in any member of Hezbollah or something like that. So I yield back to my colleague.

Mr. MAZZOLI. Thank you.

George.

Mr. SANGMEISTER. Well, as you know, for a long time I have had an interest in making better use of the National Crime Information Center and as a result filed H.R. 2993. I have submitted numerous and lengthy questions to Ms. Sale and INS which they have all answered very nicely, and what I would like to do is to take the questions and the answers that have been submitted and make it part of the record in support of H.R. 2993.

The only question I have of Ms. Sale is, you have got these all marked as "draft." Is that any problem?

Your answer is yes. You put "draft" on them. Is there any reason why they cannot be——

Ms. SALE. I assume we are awaiting some sort of clearance, sir, and I will make sure that it isn't a problem in time for the publication of the hearing.

Mr. SANGMEISTER. Well, if there is any problem with that, you will let us know.

Ms. SALE. Thank you for the courtesy.

Mr. SANGMEISTER. All right. Then I will submit that all for the record, and I do have a couple of other questions that were not quite explained, but in deference to the time I will defer those.

[See appendix 4.]

Mr. MAZZOLI. Thank you very much, George. We appreciate that.

I have a series of questions myself dealing with a number of issues, but on this same topic of the left hand knowing what the right hand is doing both in the Federal setting and to the extent that this national criminal thing—what do you call that?

Ms. SALE. The tracking center, sir?

Mr. MAZZOLI. Yes, exactly. To what extent that tracking is on line and working, to what extent States can call that number and get information. It is very important to know that because that would again allow all this stuff to be cross pollinated, which I think is as much a problem as anything else, trying to do that, and then to try to develop procedures where, during at least the pendency of the procedures at the Federal court, there may be some activity which, with consultation of the INS and the Attorney General, could then move the deportation case to a certain point of maturity or later maybe have to be taken up by the EOIR people, but nonetheless at least that time not be wasted; at least there seems to be some evidence that there is today.

So there is a series of questions mostly trying to work through the procedures so that they are fair but that they work more expeditiously than we think they have worked today.

So thank you all very much. We appreciate it. Thank you.

[Whereupon, at 1:10 p.m., the subcommittee adjourned.]

APPENDIXES

APPENDIX 1.—LETTER DATED MARCH 18, 1994, FROM ROBERT D. EVANS, AMERICAN BAR ASSOCIATION

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March 18, 1994

The Honorable Romano Mazzoli
Chairman
Subcommittee on International Law,
Immigration and Refugees
Committee on the Judiciary
House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

The American Bar Association has a number of concerns about legislation that was the subject of hearings on February 23, 1994, before your Subcommittee. I respectfully request that this letter be made a part of the hearing record.

H.R.1459, introduced by Rep. McCollum, proposes to modify the deportation procedures for noncitizens convicted of crimes. The provision would: (1) allow the INS to deport suspected "aggravated felons" without first conducting a hearing to determine their alienage or whether they have been convicted of a deportable offense; (2) expand significantly the offenses subject to these procedures; and (3) limit the relief available to long-term permanent residents. The bill gives a person only 14 days to appeal an erroneous deportation order to the federal court of appeals where he or she would have to prove that the order was mistakenly entered. The provision also would narrow the scope of judicial review so that affected individuals could not appeal whether or not the crime for which they were convicted is in fact an aggravated felony or whether they have been the subject of mistaken identity. These provisions are similar to the Simpson amendment in the Senate crime bill, sections 5001-5007, as well as those in H.R.3860, sections 501-510.

The ABA opposes the "summary deportation" provisions included in H.R.1459 because they violate the most fundamental standards of due process: the right to be notified of the charges against one; the right to be present and defend oneself in person or through legal

assistance; and the right to examine the witnesses against one. There is no question that these constitutional rights apply to persons accused of being deportable aliens as well as to citizens. Matthews v. Diaz, 426 U.S. 67 (1976).

H.R.1459 is also unnecessarily harsh toward permanent residents who have been rehabilitated. Under section 212(c) of the Immigration and Nationality Act (INA), an immigration judge may grant relief from deportation to permanent residents of seven years or longer if they have served less than five years imprisonment and demonstrate rehabilitation and other equities. Section 5 of H.R.1459, as well as section 505 of H.R.3860, would bar long-term permanent residents from 212(c) relief if they have been sentenced to a five-year term even if the entire sentence is suspended and the individual serves no prison time.1/ The resulting deportation may separate U.S. citizen children from their parents or force innocent children to be uprooted to a distant land.

Although it would penalize people who are given lenient sentences, the proposed limitation on 212(c) will have little, if any, impact on the deportation process as a whole. According to the Executive Office for Immigration Review, only 10% of the "criminal alien" population in deportation proceedings are permanent residents with sufficient tenure to apply for 212(c) relief. But, of those who apply, the courts find 40% worthy of relief. This would suggest that preserving access to 212(c) relief for these long-term permanent residents would in no way impede the INS's ability to process and deport the 90% who are not eligible to apply.

I have attached a letter from a retired immigration judge opposing the proposed restriction on 212(c) and summaries of cases in which the immigration courts and Board of Immigration Appeals awarded 212(c) relief to deserving individuals. All of these individuals would have been deported if the McCollum proposal had been enacted.

Section 5 of H.R.1459 would also bar aliens convicted of aggravated felonies from "withholding of deportation." INA §245(h). For convicted felons who can prove they would be persecuted in their home country, withholding of deportation is the exclusive remedy from deportation. It does not give the

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1/ Some states, such as New York, impose indeterminate sentences which would have the effect of putting all convicted aliens over the five-year sentence requirement, even if they serve less than five years time, thus barring them automatically from 212(c) relief.

person any status other than the right not to be returned to persecution. This relief was specifically preserved in the Immigration Act of 1990 2/ and is protected by international law, although rarely conferred upon a person convicted of an aggravated felony.

H.R.1459 and H.R. 3860 would also expand significantly the offenses classified as aggravated felonies that would be subject to the summary procedures described above. Among the numerous offenses that would be added to the list of "aggravated felonies" enacted in 1990 are the following: theft of more than $100 of U.S. property (18 U.S.C. 641); theft of mail (18 U.S.C. 1708); interstate transportation of stolen livestock [no minimum value of livestock] (18 U.S.C. 2316); theft by intimidation [ex. purse snatching] on certain federal lands (18 USC §2111); theft of over $100 from a bank or credit union (18 USC §2113). Thus, a person convicted of transporting a pig across state lines, or stealing a postcard from a mail carrier, would be subject to expedited procedures, barred from most forms of relief, including asylum and perhaps 212(c), and ineligible for future immigration benefits.

As noted earlier, the ABA opposes summary deportation procedures and finds it particularly troublesome that these procedures may be expanded to cover less serious offenses. Even the INS has expressed concerns that the proposed definition is "overly broad" and would include crimes that the United Nations High Commissioner for Refugees would not categorize as "particularly serious crimes" that may exclude a refugee from protection. See Testimony of Chris Sale before your Subcommittee, February 23, 1994, at page 3.

In lieu of these proposals, the Administration could expand its institutional hearings program (IHP) in which deportation hearings are conducted while the alien serves his or her criminal sentence. This program preserves due process rights while permitting swift deportation at the conclusion of the sentence. Under IHP, the Department of Justice, in conjunction with the states and Bureau of Prisons, specifies certain institutions for the imprisonment of noncitizens where immigration judges and INS prosecutors are detailed to conduct deportation proceedings. Careful consideration must be given to where these

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2/ See C. Hampe. "Immigration Enforcement, Exclusions, and Deportation Provisions of the Immigration Act of 1990," The Immigration Act of 1990, American Bar Association, 1990, at 216-17. Article 33 of the United Nations Convention and Protocol Relating to the Status of Refugees permits the deportation of an individual who (continued on next page)

facilities are located, however. Often these facilities are located in areas where access to immigration representation is unavailable.3/ This should not be the case.

We would also like to take this opportunity to point out several objectionable immigration provisions in the Senate crime bill. An amendment offered by Senator Smith would create special courts and procedures for the deportation of suspected alien terrorists, including the in camera submission of classified evidence. This provision, which also appears in section 601 of H.R.3860, would violate traditional standards of due process. Current procedures for the exclusion and deportation of aliens who commit terrorist offenses seem to be adequate to meet the government's needs.

A floor amendment offered by Senator Exon would disqualify certain legal residents from a variety of federal programs for which they currently are eligible, including legal services. This amendment concerns the ABA because it appears to violate the Sixth Amendment of the U.S. Constitution as well as prevent indigent aliens from receiving legal assistance to en- force their civil legal rights. Proposals regarding eligibility for public benefits and services should be handled by the appropriate authorizing committees and should be removed from the crime legislation.

(continued from preceeding page) has been convicted of a "particularly serious crime," but requires a balancing of the nature of the criminal offense against the severity of persecution. The BIA, however, has interpreted the Immigration Act of 1990 as establishing a per se bar on aggravated felons from even applying for withholding of deportation. Matter of Garcia-Garrocho, Int. Dec. 3022 (BIA 1986). U.S. law should be clarified to comport with the international law and to provide aliens with the opportunity to prove their persecution claims notwithstanding their criminal convictions.

3/ According to the INS, 25% of the "foreign-born" population in the federal prisons are U.S. citizens, not aliens. See Staff Statement of the Permanent Subcommittee on Investigations regarding Investigation of the INS Criminal Alien Program, before the U.S. Senate Permanent Subcommittee on Investigations, November 10, 1993, at 3. In fact, U.S. citizens are periodically put into deportation proceedings. See National Immigration Project, Due Process Implications of Expedited Deportation Hearings for Criminal Offenders, April 1990. Without counsel, proving their citizenship claims is difficult. Representation is also vital to prove 212(c) eligibility.

In addition, an amendment offered by Senator Roth would withhold federal funds from schools, police, hospitals and other state and local agencies that do not report to the INS people suspected of being in the United States unlawfully. Immigration enforcement is a federal responsibility for which state and local police are not trained. They should not exercise the powers of an immigration officer under, or directly or indirectly enforce, the federal immigration laws, except in the case of alien smuggling. State and local police should not interrogate individuals with regard to violations of the federal immigration laws. However, when the person is in custody, has been properly charged with a crime under state or local law, and there is a basis to believe the individual is undocumented based on information they have received but not sought, they should, when consistent with applicable law, inform the INS.

Proposals to authorize state and local police to enforce the federal immigration laws have raised grave concerns that they will jeopardize the civil rights of minority citizens and lawful residents and further strain police-community relations. Studies in the last decade cited numerous examples where local police have, without justification, arrested U.S. citizens on the pretext that they are undocumented aliens or detained or held "foreign-looking" persons to question their legal status. See Racial and Ethnic Tensions in American Communities: Poverty, Inequality, and Discrimination, A Report of the U.S. Commission on Civil Rights, January, 1993; The Rights of the Immigrant Poor: A Legal Analysis, Chapter IX, "Local Police Enforcement," Mexican-American Legal Defense and Education Fund, March 1983.

Local police enforcement of immigration laws may also deter persons who are victims of or witnesses to crimes from cooperating with or seeking the assistance of law enforcement agencies for fear that any contact with local authorities may expose them or their family members to deportation. This realization caused some police departments to establish policies specifically prohibiting their officers from enquiring into immigration status or engaging in other enforcement activities. See, e.g. Circular #7, Guidelines for Members Coming into Contact with Foreign Nationals, from the Chief of Police, Metropolitan Police Department, Washington, D.C., June 7, 1993; Memorandum #5, Enforcement Policy Regarding Undocumented Aliens, from the office of the Chief of Police, Los Angeles Police Department, June 17, 1982. The federal government ought not to ask or require other institutions of society, including state and local governments, to assume enforcement responsibility for immigration law. Instead, the federal government ought to provide the resources the INS needs to meet its responsibilities.

There has been heightened focus on noncitizens in the criminal justice system, exaggerated claims about their numbers, and numerous proposals to expedite their removal from the United States. In fact, only 4% of the state inmate population is comprised of noncitizens. Survey of State Prison Inmates, 1991, Bureau of Justice Statistics, March 1993, at 8. Moreover, according to John J. Miller, associate director of the Manhattan Institute's Center for the New American Community, most of the aliens in the federal prisons are "international criminals, not immigrants." Miller, "Immigrant-Bashing's Latest Falsehood," The Wall Street Journal, March 8, 1994.

In conclusion, any procedures adopted by the Congress should be narrowly crafted to protect citizens and permanent residents, should preserve discretionary relief for deserving individuals, and must comport with constitutional notions of due process. Unfortunately, most of the legislation under consideration does not meet these standards.

Sincerely,

Robert D. Evans

Robert D. Evans

Enclosures

Arvid C. Boyes
9744 Windwood Dr.
Rt. 1, Box 1520
Boerne, Texas 78006

January 21, 1994

The Honorable Senator Edward M. Kennedy
United States Senate
Washington, D.C. 20510

Dear Senator Kennedy:

I write to express my concerns regarding the proposed Senate Crime Bill amendment to section 212(c) of the Immigration and Nationality Act, as amended, 8 U.S.C. section 1182(c). Section 212(c), a form of relief from deportation for long term lawful permanent residents of the United States, is in essence a forgiveness statute that provides a second chance to certain long term residents who have committed crimes and are subject to deportation.

At the present time, section 212(c) bars from its protection a long term lawful permanent resident who has been convicted of a crime and who has served a five year term of imprisonment. The proposed amendment to section 212(c) contained in the Senate Crime Bill seeks to re-write the language of section 212(c) and bar its protection to a long term resident alien who has been merely sentenced to a five year term of imprisonment even though he or she may have actually served no imprisonment time.

The change offered in the Crime Bill, therefore, is monumental and will affect many lives for the worse. I served as an United States Immigration Judge for nearly twenty years and retired in 1993. During my tenure as a judge, I presided over hundreds of section 212(c) cases.

Section 212(c) cases are delicate cases because they bring into play a considerable number of considerations. In attempting to arrive at a fair and just resolution to each section 212(c) case, an immigration judge must exercise the administrative discretion he is given in a sound and sensible way. A significant number of considerations are and must be taken into account as a judge attempts to decide a given case. These considerations include such things as closeness of a family relationship, the emotional need of the alien and his or her spouse to remain together in the United States, the likelihood that deportation would cause the destruction of a family, the social, psychological and emotional effects on young U.S. citizen

children if their alien parent is uprooted and deported, a vast array of psychological effects on U.S. citizen children who may be forced to follow their deported alien parent onto a new and bewildering land, and countless other similar considerations that a given section 212(c) may present.

In sum, a section 212(c) turns on values, standards, factors and judgments that are inherently incommensurables. In my humble opinion, the best and the most sensible way of dealing with long term resident aliens with ties to this Nation who have committed crimes is to leave the resolution of their request for relief under section 212(c) in the sound discretion of immigration judges. That is the state of the law now, and I approve of it. To simply bar a long term resident alien from even seeking section 212(c) relief by making him or her statutorily ineligible (because he has been sentenced to a certain number of years, as the new amendment proposes to do) is to disregard numerous factors that rightly must be taken into account. The proposed amendment seeks to deny to an immigration judge the administrative discretion he is given to discern and to make the right decision. That is neither a sensible nor a compassionate way of dealing with crimes in America.

I respectfully ask you not to permit the re-writing of section 212(c) as proposed in the Senate Crime Bill. I thank you for your time and attention.

Arvid C. Boyes

Arvid C. Boyes
U.S. Immigration Judge (Retired)

EXAMPLES OF 212(c) RELIEF

The following are examples of cases in which 212(c) relief was awarded to a permanent resident who was convicted of an aggravated felony. Section 5004 of the crime bill would make a permanent resident ineligible for 212(c) relief if he or she is sentenced to five years, whether or not the sentence was actually imposed or served. The following individuals would not have had relief available and would have been deported if this proposal were already law, notwithstanding equities such as U.S. citizen and lawful resident family members, rehabilitation and long U.S. residence.

Harlingen, TX

The Board of Immigration Appeals granted Mr. G, a 34-year-old lawful permanent resident for 19 years, a 212(c) waiver. Mr. G, a native of Mexico, owns a house and has three U.S. citizen children, among other close family ties in the United States. In 1989 he was convicted of illegal investment and received a 5-year suspended sentence and probation. The Board noted that this was Mr. G's only conviction during 19 years of residency, that during the one-year period between his conviction and his hearing he "had been in no further trouble," and that he "appears to have been completely honest about his involvement in the crime and remorseful that he had ever been involved at all."

Chicago

Mr. M is a 60-year-old Mexican native who has been a lawful permanent resident since 1956. The Board of Immigration Appeals granted him relief under 212(c). Mr. M was convicted of conspiracy to distribute and possess heroin and cocaine, as well as using communication facilities to cause and facilitate the distribution and possession of narcotics, and was sentenced to a total of 8 years in prison, a 5-year probation period, and a $250 fine. The Board concluded that Mr. M "demonstrated unusual and outstanding equities in his 35 years of lawful permanent residence, his close family ties, and his stable employment history." It pointed out that he established his rehabilitation through a series of actions: he had paid his income taxes, he had been steadily working, he had complied with his probation, he was dedicated to his family, and he had disassociated himself from those who had involved him in criminal activities. Mr. M never used drugs, never imported or distributed them, did not actively sell them, and had no prior criminal history.

San Antonio

The Board of Immigration Appeals granted 212(c) relief to Ms. A, a 32-year-old native of the Domincan Republic and lawful permanent resident since 1967. She was convicted of unlawful possession of cocaine and sentenced to 8 years probation; a year later, she was convicted of violating her probation and was sentenced to 8 years imprisonment. Ms. A had "strong family ties," including her mother and brother, who are lawful permanent residents, and her father, two sisters, and two children, who are United States citizens. Ms. A was paroled with a clean record, enrolled in vocational training upon her release, and was involved in her church.

San Francisco

The Board of Immigration Appeals granted a 212(c) waiver to Mr. C, a 30-year-old man from Thailand. Mr. C had been a legal permanent resident of the United States since the age of fourteen. In 1986, the Eastern District Court of California sentenced him to five years in prison for distribution of metamphetamine. The BIA, while stating that it "has consistently regarded violations of our country's drug laws to be an extremely serious negative factor," concluded the "equities and humanitarian considerations presented in this case are decidedly strong." The favorable factors included Mr. C's expression of "genuine remorse with respect to his previous criminal behavior," as well as his remaining drug-free for the last four years. The board also noted Mr. C's 16-year residence in the United States and his numerous family ties, including a mother and brother who are lawful permanent residents and a U.S. citizen step-father. Regarding rehabilitation, the board pointed out that Mr. C had obtained his GED, was steadily employed, and "appears to comprehend the seriousness of the situation in which he finds himself and seems genuinely determined to put his life in order."

Joliet

The Board of Immigration Appeals granted a 212(c) waiver to Mr. B, a 44-year-old native of Belize who has been a lawful permanent resident since 1973. Mr. B was sentenced to 6 years confinement and a $7,000 fine for his conviction of unlawful possession of marijuana with intent to deliver. The Board noted Mr. B's extensive family ties as one of the "strong factors in the respondent's favor," including two young citizen children, six step-children, two adult children, and numerous grandchildren. Mr. B was steadily employed both in an autobody shop and as a professional musician. He participated in community services, including organizing talent shows for children and holding benefit concerts. The BIA recognized that he "has been a model prisoner," completing bible courses, aiding the prison chaplain, and providing musical entertainment for his fellow inmates. The Board concluded that "the respondent's length of residence, family ties, history of community service, and record of employment, in addition to his exemplary behavior in prison, are sufficient to offset his conviction."

Harlingen

Mr. P, a 29-year-old native of Mexico and a lawful permanent resident since the age of ten, was granted a 212(c) waiver. Mr. P received a 6-year suspended sentence with probation for his conviction of cocaine possession. Mr. P is married to a United States citizen, has one child, and is very close to his parents, siblings, and other relatives living in Texas. The BIA held that he had outstanding equities as well and was rehabilitated, mentioning his 19-year residence, his employment history, his provision of "financial and emotional support to his family," and the belief that Mr. P's "experience with drugs appears to be an anomaly rather than indicative of serious substance abuse or criminal tendencies."

APPENDIX 2.—LETTER DATED MARCH 24, 1994, FROM WARREN R. LEIDEN, EXECUTIVE DIRECTOR, AND JEANNE A. BUTTERFIELD, SENIOR POLICY ANALYST, AMERICAN IMMIGRATION LAWYERS ASSOCIATION

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

March 24, 1994

The Honorable Romano Mazzoli, Chairman
Subcommittee on International Law, Immigration and Refugees
House Committee on the Judiciary
370-B Rayburn House Office Building
Washington, D.C. 20515

Dear Chairman Mazzoli:

The American Immigration Lawyers Association, a voluntary bar association of over 3,700 lawyers and law professors practicing and teaching in the field of immigration and nationality law, is deeply concerned about several provisions relating to the entry and deportation of criminal aliens that were the subject of hearings before your Subcommittee on February 23, 1994. We respectfully request that this letter be made a part of the hearing record.

We share your concern with the abhorrent criminal behavior of certain aliens in the United States. We too believe that there should be strong and expedited penalties for those who abuse the very community that first welcomed them through its doors.

However, we firmly believe that in order to protect the rights of all, the rights of even those who are least among us must be safeguarded as well. We feel strongly that certain provisions that were considered during your February 23rd hearing, while rightly seeking to penalize those who deserve it, may unintentionally penalize those who have done no wrong.

Provisions which sacrifice procedural and substantive safeguards in the name of efficiency are those which can easily lead to the mistaken deportation of U.S. citizens and lawful permanent residents who have been convicted of no crime at all. Provisions which seek to impose extremely harsh sanctions on very broad classes of criminal offenders are overzealous in reach and can result in life-threatening sanctions for very minor mistakes indeed.

We urge the House as a whole to refrain from adopting the bills, or the portions which most concern us, considered at the February 23rd hearing when it votes on crime legislation. We further urge you not to accept similar Senate provisions when the Conference Committee meets on crime legislation in the coming weeks.

Our main concerns with the several bills that were considered at the February 23rd hearing are as follows:

1) **The proposed elimination of administrative deportation hearings could result in the mistaken deportation of U.S. citizens and lawful permanent residents. (H.R. 1459 Section 3, H.R. 3320 Section 402, H.R. 3860 Section 503)**

Rep. McCollum's bill, H.R. 1459 (and similar provisions in Rep. Bilbray's bill, H.R. 3320, and Rep. Smith's bill, H.R. 3860) would totally eliminate administrative deportation hearings for individuals who are not lawful permanent residents of the United States if they have been convicted of certain crimes classified as "aggravated felonies". (The Senate has already adopted a similar provision in Sections 5001-5007 of its crime bill, S. 1607/H.R. 3355.)

Such a proposal would expose U.S. citizens and lawful permanent residents to the risk of mistaken deportation and would deprive those affected of basic due process protections under the Fifth Amendment to the U.S. Constitution. While purporting to be a rational proposal on its face, this provision would place the final decision to deport an alien in the hands of a single INS District Director who could mistakenly believe that he was deporting an illegal alien who had been convicted of a heinous crime. Instead, because the person being deported would have no deportation hearing and no opportunity to challenge the INS order, the practice could result in the mistaken deportation of a long-time permanent resident who has committed as minor a crime as stealing a post-card from a U.S. mail carrier! Such a result would be contrary to long-standing constitutional protections and to the overall intent of U.S. immigration law.

a) **Administrative deportation hearings are required in order to protect lawful residents and U.S. citizens.**

The record of administrative deportation hearings is replete with examples of individuals charged by the INS with being deportable aliens who were later proved to be lawful permanent residents or U.S. citizens. (See attached list of such cases.) While the INS maintains certain records of lawful permanent resident aliens and of naturalized U.S. citizens, those records are incomplete, sometimes inaccurate, and do not include records of those who are U.S. citizens by birth or by derivative citizenship. An administrative deportation hearing, in which the INS must bear its burden of proving alienage, is the only fundamental safeguard against such errors.

The record of administrative deportation hearings is also replete with examples of cases in which the INS has initiated deportation proceedings when a conviction is still on direct appeal and before the conviction is final for deportation purposes. In the procedure contemplated by Rep. McCollum and others, a final order of deportation issued by an INS District Director could be executed within 14 calendar days of its issue. Such a procedure gives an alien no meaningful opportunity to prove that his conviction is not final, nor to challenge the District Director's determination of alienage.

The proposed elimination of administrative deportation hearings deprives an alien of the fundamental, constitutionally-protected right to hear and confront the evidence against him/her. This is not an abstract right, but one which is designed to protect innocent persons from mistaken penalties. The McCollum proposal (and the Simpson amendment already adopted by the Senate) would allow for the Attorney General, or any District Director of the Immigration and Naturalization Service, to issue a final order of deportation against certain aliens. Such a procedure would relieve the INS of its long-standing burden to prove, by clear, unequivocal, and convincing evidence, that the person in question is indeed an alien (and not a lawful permanent resident alien or U.S. citizen) and that the person has been convicted of a crime which under one of a myriad of federal and state statutes can be classified as an "aggravated felony". This procedure is contrary to the long-standing principle that "no deportation may be entered unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true." Woodby v. INS, 385 U.S. 276, 286 (1966).

Any proposal to eliminate administrative deportation hearings contradicts the long-standing constitutional principle that aliens are entitled to full due process. Bridges v. Wixon, 326 U.S. 135 (1945). The elimination of a deportation hearing circumvents the most fundamental essence of due process, that a person be given "notice of the case against him and opportunity to meet it". Mathews v. Eldridge, 424 U.S. 319, 348 (1976). Courts have long held that "[t]he Fifth Amendment, as well as the Fourteenth Amendment, protects every [alien] from the deprivations of life, liberty, or property without due process of law. Even one whose presence in this country is unlawful, involuntary, or transitory is entitled to that constitutional protection." Mathews v. Diaz, 426 U.S. 67, 77 (1976).

b) The elimination of administrative deportation hearings is inefficient and imposes an unfair burden on the U.S. federal courts system.

An individual facing a final order of deportation issued by an INS District Director without an administration deportation hearing would have no meaningful opportunity to challenge the INS assertion of alienage and of conviction. The only opportunity for such an alien to be heard is to file an appeal in federal court and obtain a stay of deportation within 14 days of the issuance of the final order. Such a procedure would not only impose a heavy burden on the individual in question. It would also impose an extremely heavy burden on the federal court system. An alien who at present can challenge a charge of deportability in a hearing before an immigration judge would now be required to file extensive and lengthy pleadings in federal court. The federal court would be forced to determine basic questions of fact--such as whether this person has been confused by the INS with another individual with a similar (often unusual or hyphenated) last name. The federal court would also be forced to determine whether the conviction in question is an "aggravated felony" for deportation purposes.

Eliminating administrative deportation hearings for certain classes of aliens in the name of administrative efficiency overlooks the burden that such a procedure will pose for the federal court system.

2) Judicial deportation is a potential alternative for administrative deportation hearings. (H.R. 1459 Section 4, H.R. 3320 Section 403, H.R. 3860 Section 504)

The provision for a process of judicial deportation (included in all three bills cited above) would overcome the concerns expressed above, if such a procedure were available to every individual charged with deportability on account of a criminal conviction. The district court at the time of sentencing would be required under this proposal to determine whether the INS had demonstrated by clear, unequivocal, and convincing evidence that the alien is deportable under the Immigration and Nationality Act on the basis of his/her conviction for an aggravated felony. The district court might well be more competent than most immigration courts to determine whether the INS had met its burden.

The question remains whether it would promote judicial economy to make criminal courts responsible for determining questions of deportability. Further, in such proceedings, all defendants should receive a notice from the court explaining that the entry of certain please, or conviction, could affect their immigration status. At least ten states already require such notice.

3) The proposed expanded definition of "aggravated felony" would result in irrationally harsh sanctions for relatively minor crimes. (H.R. 1459 Section 2, H.R. 3320 Section 401, H.R. 3860 Section 502)

While we agree that those who commit serious criminal offenses should be subject to serious consequences, up to and including deportation in many cases, the proposed expansion of what crimes constitute an "aggravated felony" for deportation purposes is absurd in its result. Under the expanded definition of "aggravated felony" contained in the bills cited above, for example, any of the following theft offenses would be considered an "aggravated felony" and would subject an individual to deportation without benefit of an administrative deportation hearing: 1) theft of more than $100 of U.S. property (18 U.S.C. §641); 2) theft of mail (18 U.S.C. §1708); 3) interstate transportation of stolen livestock [no minimum value of livestock] (18 U.S.C. §2316)--all theft offenses where "a sentence of 5 years imprisonment or more may be imposed".

The aggravated felony provisions were added to U.S. immigration law by the Anti-Drug Abuse Act of 1988 (when the term first became part of the Immigration and Nationality Act) and were further expanded by the Immigration Act of 1990. The provisions are already the subject of intense litigation as to applicable effective dates of the various crimes and various provisions related to aggravated felonies. The definition is already broad enough to include murder, crimes of violence, firearms trafficking, and drug trafficking crimes (which according to the listed statutes encompass any drug-related crime except that of simple possession). The proposed expansion of the definition of aggravated felony contemplated by the McCollum bill would result in the harshest of consequences being meted out for the most minor of crimes.

4) The proposed new restriction on relief from deportation for long-term lawful permanent resident aliens is unnecessarily harsh. (H.R. 1459 Section 5, H.R. 3320 Section 404, H.R. 3860 Section 505)

Under present law, a lawful permanent resident (LPR) of the United States who has been convicted of a crime defined as an "aggravated felony" remains eligible for relief from deportation at the discretion of the immigration judge if he or she has resided in the U.S. as a lawful permanent resident for 7 years or more, and if he or she has not *served* more than 5 years imprisonment for the crime (INA §212(c)). Extensive case law provides that the judge must weigh the equities involved (dependence of U.S. citizen family members on the LPR, length of time in the U.S., lack of ties back home, community service, rehabilitation, etc.) against the severity

of the crime and any mitigating circumstances. The length of sentence is often weighed heavily in a judge's evaluation of the seriousness of the criminal offense.

An LPR who has *served* more than 5 years imprisonment for an aggravated felony conviction is ineligible for discretionary §212(c) relief. H.R. 1459, H.R. 3320, and H.R. 3860 (and Section 5004 of the Senate Crime Bill) would change this provision and make any LPR who has been *sentenced* to five years or more completely ineligible for §212(c) relief.

A wide range of crimes are classified as "aggravated felonies"--for instance any drug crime except simple possession. Mandatory sentencing requirements often result in lengthy criminal sentences. Section 212(c) allows an immigration judge to make a judgement about whether a person should be allowed to return to his or her family and community after paying his or her debt to society by serving the required prison sentence when time actually served is less than five years. This discretion should remain with the immigration judge. Further restrictions will result in the deportation of many lawful permanent residents whose crime is far outweighed by the contributions they make to their U.S. families and communities.

Examples of lawful permanent residents granted relief under §212(c) who would be deported if H.R. 1459, H.R. 3860, (or Section 5004 of S. 1607) are enacted:

A 36-year old British man--who has lawfully resided in the U.S. for 34 years. Parents worked for their home Embassy in U.S., are naturalized U.S. citizens. LPR sentenced to more than 5 years for "possession with intent" to distribute a modest amount of marijuana. Served 1 and 1/2 years imprisonment. §212(c) relief granted.

A 64-year old Haitian woman--who has lawfully resided in the U.S. for 38 years. Large U.S. citizen family, good work history, speaks seven languages. LPR sentenced to more than 5 years for drug conviction. Served less than 5 years. §212(c) relief granted.

A 58-year old Soviet Jewish woman--who has lawfully resided in the U.S. for 13 years. Has U.S. citizen spouse, professional work history as an engineer. LPR sentenced to 6 years for drug offense, after first jury hung 10-2 for acquittal. §212(c) relief granted.

A 48-year old Lebanese woman--who has lawfully resided in the U.S. for 27 years. Has U.S. citizen husband and children, does extensive volunteer work in her community. Sentenced to 20 years for drug offense. §212(c) relief granted.

f) The proposed bar to withholding of deportation for those convicted of an aggravated felony would result in the return to persecution of those who have committed a single minor violation of U.S. law. (H.R. 1459 Section 5, H.R. 3320 Section 405, H.R. 3860 Section 505)

The expanded definition of "aggravated felony", along with the absolute bar to withholding of deportation under the provisions of the McCollum, Bilbray, and Smith bills would result in practice in the return of a bona fide refugee to certain persecution. In order to qualify for withholding of deportation, a person must convince an immigration judge that he or she faces a clear probability of persecution. Once a person meets this high standard of proof, U.S. law (and international law) prohibits his or her return to persecution. Under the proposed amendments to the crime bill, someone who makes a mistake and commits a single, relatively minor crime (such as one of the included theft offenses) would be barred from withholding of deportation. Such a result is neither consistent with humanitarian considerations or with international law.

5) Secret evidence, secret witnesses, and secret trials have no place in a democratic United States. (H.R. 3860, Title VI, Section 601)

The Smith bill, H.R. 3860 (and a similar provision in Section 5110 of the Senate Crime Bill) would provide for the use of secret evidence and secret proceedings in making determinations to deport "alien terrorists". While the U.S. can and should deport terrorists, secret methods have no place in an open and democratic society such as ours. Such procedures are contrary to everything that the U.S. stands for, and are condemned by the U.S. when used by other repressive regimes around the world.

The Smith bill would provide for something never before seen in 200 years of U.S. history--deportation proceedings conducted before a special secret court, with a special secret judge, with the use of secret charges and secret evidence. Such a process is unprecedented, unconstitutional, and unnecessary.

a) The secret evidence provision violates the U.S. constitution

The use of secret charges and secret evidence to deprive an individual of liberty is a basic denial of due process under the Fifth Amendment. As the Supreme Court has ruled, "[t]he essence of due process is the requirement that a person in jeopardy of serious loss [be given] notice of the case against him and opportunity to meet it." Mathews v. Eldridge, 424 U.S. 319, 348 (1976).

The U.S. has developed strict guidelines when it comes to secret evidence. Such procedures as those contemplated by the Smith amendment contravene the protections provided by the Classified Information Procedures Act (CIPA), 50 U.S.C. App. IV. While CIPA applies to the use of classified information in criminal trials, the principles which it protects pertain in deportation hearings as well.

CIPA is designed to protect a person's due process rights by providing that a case must be dismissed where evidence cannot be introduced either directly or as a substitution. The Smith bill would strip aliens of such protection by allowing for the use of secret evidence and a lower standard of proof in cases where substitutions are used in place of evidence. Such a procedure is clearly unconstitutional and in direct violation of Woodby v. INS, 385 U.S. 276, 286 (1966) which provides that "no deportation may be entered unless it is found by clear, unequivocal, and convincing evidence that the facts alleged as grounds for deportation are true."

The limitation of secret deportation proceedings to cases where classified information would be involved is no protection at all for those who stand accused based on routinely classified information. U.S. immigration history itself contains examples of persons ordered excluded on the basis of secret "evidence" later revealed in a hearing to be false.

The most fundamental cornerstone of the U.S. system of justice is the right to be heard and to confront the evidence against one. Such a right should not be compromised in the name of "anti-terrorism". There have been no Congressional findings and no real life examples that demonstrate the need for such a constitutionally suspect procedure as that contemplated by the Smith bill.

b) The INA already provides for the exclusion and deportation of terrorists.

The Immigration and Nationality Act was amended in 1990 to provide explicit authority for the Attorney General to exclude and deport terrorists and any others who pose a threat to the security of the United States. See INA Sections 212(a)(3) and 241(a)(4). Such exclusion and deportation hearings are to be conducted as provided for by the INA in administrative hearings before an immigration judge. Such procedures are sufficient to accomplish the worthy goal of removing genuine alien terrorists from the United States.

No one has ever pointed to a single alien whom the INS was unable to deport because to do so would have required it to reveal

secret classified evidence. The use of secret information to deport an alien terrorist is unnecessary.

c) The expansion of exclusion grounds to include membership in a terrorist organization is unconstitutionally broad. (H.R. 2041, H.R. 2730, and H.R. 1279)

In addition to the special procedures contemplated by the Smith bill, the Snowe bills, H.R. 2041 and 2730, would expand the definition of "terrorist" to include anyone who "is a member of an organization that engages in terrorist activity or who actively supports or advocates terrorist activity", regardless of whether such a person has committed or would commit a crime. The Deutsch bill, H.R. 1279, would exclude any "member, officer, official, representative of Hamas". Such definitions are unconstitutionally broad, and would include within their ambit those who commit no crime but who may support the entirely lawful activities of an organization the U.S. deems "terrorist". These bills' expansion of the definition of "terrorism" would bring within its provision any foreign citizen who ever was a member of the African National Congress, the Contras in Nicaragua, or the Palestine Liberation Organization. The bills' definitions would be so broad as to include constitutionally protected "membership" and speech, whether or not the individual ever committed or contributed to the commission of a terrorist act. Such provisions are a violation of the First Amendment to the U.S. Constitution and have no place in U.S. immigration law.

CONCLUSION

Many of the immigration, deportation and terrorism provisions considered by the House Subcommittee on International Law, Immigration and Refugees on February 23rd, 1994, contain provisions which are not only deeply troubling, but unconstitutional as well. AILA urges the House Judiciary Committee members to reject these provisions if they are presented for consideration as amendments to the House crime bill or if they are considered in any way on the House floor. AILA also urges members to oppose at the Conference Committee any of the similar provisions which were adopted as part of the Senate crime bill.

Respectfully submitted,

AMERICAN IMMIGRATION LAWYERS ASSOCIATION

Warren R. Leiden
Executive Director

Jeanne A. Butterfield
Senior Policy Analyst

2RLE4008

The Southwest
Immigrant & Refugee
Rights Project

November 8, 1993

To Whom It May Concern:

I am an attorney and coordinator of the Southwest Immigrant and Refugee Rights Project. I also work from time to time as a visiting attorney with the Florence Immigrant and Refugee Rights Project (the Florence Project), located in Florence, Arizona. The Florence Project assists thousands of individuals detained by the Immigration and Naturalization Service (INS) at its facility in Florence each year.

I have been asked to provide examples that might be helpful in the evaluating the impact of pending legislation. I have looked into the matter only today and come up with a few, but this list is by no means exhaustive.

Since its inception in 1990, the Florence Project has come across many cases of permanent residents who were thought by the INS to be undocumented aliens and U.S. citizens who were thought to be permanent residents or undocumented aliens. There have also been cases of mistaken identity. A few such cases are described below.

1. Potential Lawful Permanent Resident (LPR) Charged as Undocumented Alien -- One man currently detained at the Florence detention center says that he immigrated 16 years ago. He is married to a U.S. citizen and has four U.S. citizen children. He says that he had left his green card with his wife and that it was stolen from her. This man was able to pay a lawyer to represent him at a bond reduction hearing today. There has not yet been a chance to verify the man's claim, but similar claims have been confirmed due to intervention by counsel (See #2 below). If his claim can be verified, he may be eligible to apply for relief from deportation.

2. Lawful Permanent Resident (LPR) Charged as Undocumented Alien -- In June of 1993, a 33-year old detainee with criminal convictions was brought to court. The INS alleged that he had overstayed his visa. The man, whose mother and siblings are U.S. citizens, claimed to have immigrated to the U.S. at age 8. At the request of the Florence Project, the INS ran the identification number ("A number") in its computer, but could not verify the man's claim. After further persistence by the Project, the INS did, in fact, verify the claim. The man was released on bond and returned to California, where he would be in a better position to pursue his claim for a waiver of deportability.

3. Mistaken identity. When I was working at the Florence Project during the Summer of 1991, a man who had been a longterm permanent resident was charged by the INS with having been convicted of numerous crimes. The man, the father of three U.S. citizen children and husband of an LPR, adamantly denied that the convictions were his. A law student working for the Florence Project asked the INS to run a fingerprint check. The man spent over a month in custody and was on the verge of being deported when the INS confirmed that someone else had been using this man's name and green card, and that he had not committed the crimes as charged.

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4. U.S. citizen charged with being undocumented. Also in the Summer of 1991, a man claiming to have been born in Clint, Texas was brought to Florence. He was charged with being an undocumented alien. He had been deported before. The Florence Project contacted the man's brother, who brought the man's birth certificate, verifying his claim to U.S. citizenship.

5. U.S. citizens charged as LPRs or undocumented aliens. Each year, the Florence Project identifies approximately 12 individuals with potential claims to U.S. citizenship. The majority are claims to citizenship acquired at birth through the U.S. citizenship of one parent and the parent's residence in the U.S. for at least 10 years during a certain period of time. These cases are extremely time-consuming, as they require extensive research and documentation. I have represented two such individuals, both successfully. Both were the sons of hardworking U.S. citizen fathers, one of whom worked for years as a ranch hand and farmworker, the other of whom worked for many years for the Southern Pacific Railroad Company. The Florence Project's regular attorneys have referred several successful U.S. citizenship cases to *pro bono* attorneys.

As the above cases indicate, grave injustices may occur if it is assumed that an individual is undocumented or is not a U.S. citizen simply because that is the position initially taken by the government.

I hope you find this information helpful.

Sincerely,

Lynn Marcus
Attorney/Project Coordinator

APPENDIX 3.—RESPONSES OF MR. GILMAN TO QUESTIONS SUBMITTED BY MR. MCCOLLUM

TERRORIST EXCLUSION AUTHORITY

Q'S & A'S

Q = McCollum
A = Gilman

Q: Would your bill create a double-standard between free speech protections for American citizens and protections for foreign nationals who want to visit the United States? Does this deny fundamental rights to such foreign nationals?

A: Is there some kind of "natural right" for an alien terrorist to visit Disneyland? Does denying this "right" somehow deny a person his or her personal freedom, life or livelihood? I am not aware of any provision of the U.S. Constitution that extends its protection to foreign nationals residing abroad. There is no "right" to visit the United States; it is a privilege, not an entitlement. Our first responsibility is to protect the rights of Americans, not foreign terrorists. This includes the inalienable rights of Americans to life and liberty, both of which are endangered by the efforts of terrorist organizations to bring their cowardly brand of violence into the United States.

Q: Your bill, H.R. 2730, would allow exclusion of an organization "which engages in, or has engaged in, terrorist activity." Are you asking for exclusion of members of groups which once engaged in terrorism, but which have fundamentally changed their nature?

A: No. Again, this authority is discretionary, and it is totally left up to the Attorney General to determine what groups to list for exclusion. I provided authority to exclude members of groups that "once engaged in terrorism" to address the problem of groups that may not have recently carried out an act of terrorism -- at least not that we know of -- but which have not changed their basic nature and which the Attorney General believes to still support or advocate terrorism. If you believe this distinction needs to be more clearly defined, that could be done either in the report language or in the bill itself.

Q: Some Administration officials have argued that current law may be sufficient to exclude all members of small, particularly violent terrorist organizations. Why is your bill needed?

A: First, that view is controversial even within the Administration. A strong case can be made that even this insufficiently narrow terrorist exclusion policy runs counter to the clear reading of the Immigration and Nationality Act. A simple reading of that act only allows the exclusion of an alien who, and I QUOTE "has engaged in terrorist activity or a consular officer or the Attorney General knows, or has reasonable ground to believe, is likely to engage after entry in any terrorist activity." The law allows only two grounds for exclusion: past personal involvement in terrorism or knowledge of an intent to personally conduct terrorist activity once in the U.S.

Q: Does the 1990 Act's definition of "engage in terrorist activity" provide enough administrative flexibility to exclude members of terrorist groups?

A: The 1990 Act does attempt to define the words "engage" and "terrorist activity" in a way to provide some additional protection. For instance, the Act would allow the exclusion of specific members of terrorist organizations if we have some advance knowledge that they were coming to the United States to solicit membership or to raise funds specifically for the purpose of carrying out an act of terrorism. This has proven remarkably easy to get around. First, few terrorist groups pass out membership cards, so proving intent to solicit membership while in the United States is extraordinarily difficult. Second, even when a member of a terrorist organization is coming to the U.S. for fundraising purposes, some proof is still necessary that the funds would be used to conduct terrorist acts. For this reason, many terrorist groups, such as the IRA, Hammas and the PFLP conduct supposed charitable activities, such as clinics or, in a cruel irony, orphanages. Fundraising tours in the United States inevitably are justified, when questioned, as being purely philanthropic.

Q: Do you have an example of the definition's inadequacy?

A: Let me give you a concrete example. Let me describe an incident in April, 1991, at the INS pre-clearance station at Ireland's Shannon Airport. An INS officer caught a high-ranking IRA official, Sheena Campbell, who was attempting to come to the United States for what was clearly a multi-city fundraising tour. But Ms. Campbell had no personal criminal record, and she claimed to work for one of the IRA's alleged charitable operations. A member of my staff talked to the INS officer who caught Ms. Campbell. That officer described his frustration over the inadequacy of current exclusion laws, and said that he used a questionable technicality to keep Ms. Campbell out of the United States. Since there was reason to believe that Ms. Campbell was not coming to the U.S. for purely tourist purposes, as she insisted, but rather to conduct a surreptitious fundraising tour the INS officer kept her off the plane by arguing that she should have applied for a temporary business visa rather than a tourist visa.

The INS officer said that his claim was part bluff, but because he was posted outside of the U.S., where Ms. Campbell had no easy access to appeal, he managed to carry it off. There is no way of knowing, however, whether Ms. Campbell simply later entered the U.S. through another transit point where there was no INS pre-clearance facility. If my bill had been law, that INS officer could have placed her name on the lookout list for membership in a terrorist organization, and we could have had more confidence that she has been kept out of the U.S. until such time as the character of the IRA has changed.

ADDITIONAL Q's & A's

Q: Would your bill hamper the Administration's ability to advance sensitive foreign policy interests by excluding people like Gerry Adams, the head of the IRA's political arm, Sinn Fein?

A: Not at all. Gerry Adams, who has a long history of personal involvement in terrorism, is already excludable under current law. In fact, he has repeatedly been refused an American visa both before and after 1991. Mr. Adams was allowed into this country on a Presidential foreign policy waiver that will still exist under my bill. My legislation would not touch any of the existing waiver authority. It would only change the underlying presumption for excludability.

Obviously, the President's decision on Gerry Adams is controversial. This controversy stems from press reports that the NSC overruled a rare unanimous recommendation among State, Justice and the intelligence community that the waiver should not be granted. The Agencies argued that neither Adams nor the IRA have really renounced violence, either in theory or in practice. But I haven't heard of anyone who argues that the President lacked the legal authority to make the waiver, and that authority would remain untouched under my legislation.

Q: How would your legislation make distinctions between terrorist groups and legitimate resistance groups? Would your bill have required exclusion of Afghan freedom fighters or members of UNITA? How exactly would your law distinguish between these kinds of groups and other groups such as Hammas or Egypt's Islamic Group?

A: These are important, and difficult distinctions to make. But my bill recognizes that it is most appropriate -- in most instances -- for the Attorney General and Secretary of State to make those distinctions, and not try to include a long list of terrorist groups in law. I would like to emphasize that my bill provides permissive authority to the Administration. It does not mandate the listing of any specific group. The reason for this is simple. In the world of terrorism there are always new groups being created, old groups splintering, and, in some cases, old groups either withering away or fundamentally changing their character. Congress cannot always be passing a new terrorism listing law every month.

Q: You claim to want to leave the listing of terrorist groups up to the Executive Branch, and yet you are a cosponsor of Congressman Deutsch's bill to formally list Hammas by law. Isn't this contradictory?

A. Not at all. I believe that there will always be a very small number of groups where it serves a useful policy goal to formally list a group under law. I supported Congress' listing of the PLO several years ago. This unique listing, I believe, demonstrated such a strong united American position on PLO terrorism that it helped set the stage for the fundamental change that the PLO may now be undergoing. I hope the same will prove to be the case for Hammas, and so I also support the formal legislative listing of Hammas as a terrorist group.

But such exceptions will always be rare legislative occurrences -- as they should be. This in no way affects the need to change the underlying legal presumption on excluding members of terrorist organizations from the United States.

APPENDIX 4.—RESPONSES OF MS. SALE TO QUESTIONS SUBMITTED BY MR. SANGMEISTER

Penalty for Failing to Appear for Asylum Interview/Hearing

Is there any penalty for failing to appear for asylum interviews/hearings or for failure to appear for any other exclusion/deportation hearing?

Answer: Section 242B(c) of the Immigration and Nationality Act (the Act) provides an alien who, after proper written notice, fails to appear for a deportation hearing shall be ordered deported in absentia if the Service establishes by clear, unequivocal, and convincing evidence that the written notice was so provided and the alien is deportable. If political asylum is relief sought from deportation in a deportation hearing, section 242B(c) of the Act would be applicable for failures to appear at hearings scheduled in connection with the relief application if the notice requirements of section 242B are met.

Section 242B(c) also limits reconsideration of the in absentia decision by the immigration judge and judicial review of such a decision.

Section 242B(e) provides for limitations of the discretionary relief for which an alien may apply if the alien fails to appear for a deportation hearing or for an asylum hearing. In the context of limiting discretionary relief, both written and verbal (oral) notice must be provided to the alien of the time and place of the proceedings, as well as the consequences for failure to appear. The written notice and the verbal notice are required each and every time such proceedings are rescheduled. Inasmuch as notice of many hearings are provided by mail, meeting the oral notice requirements is virtually impossible.

Additionally, administrative asylum interviews are scheduled and noticed by mail, generally in response to applications that have been filed by mail. There is no contact with the applicant at which oral notice may be provided until and unless the alien appears for the asylum interview, at which point, oral notice is moot unless the interview is continued and rescheduled.

Failure to Appear Affect Immigration Status

Does an alien's failure to appear have any affect on their immigration status?

Answer: An alien who fails to appear for his or her deportation or exclusion hearing, after appropriate notice and without reasonable excuse, may have an in absentia order of deportation or exclusion entered against him or her pursuant to sections 242(b) and 242B(c) of the Immigration and Nationality Act (Act), 8 U.S.C. § 1252(b), and decisional law.

Penalty for Failure to Appear

Should there be a penalty for failure to appear, provided adequate notice is given to the alien?

Answer: The principal penalty for failing to appear where adequate notice and a warning of the consequences of failure to appear have been given is an in absentia order of deportation or exclusion. Additionally, an alien can be barred for five years from obtaining certain forms of relief described in sections 242B(e)(3) and (e)(5) of the Act. There is no other civil or criminal penalty, nor is one recommended.

Penalty: Administrative or Criminal Offense

Should the penalty be an administrative penalty affecting their immigration status or should it be a criminal offense?

Answer: See answer above. In addition, changing one's address without notifying the INS, which results in the non-receipt of notice to report for deportation, already is a criminal misdemeanor violation under section 266(b) of the Act, 8 U.S.C. § 1306(b). Information concerning this criminal penalty could be required to be placed in the NCIC, and the arresting officer could thereby make a criminal arrest within the statute of limitations period which could facilitate closing out the case by the removal of the alien from the United States.

Failure to Appear Justify a "Warrant of Arrest"

In certain instances, would such a penalty for failure to appear justify issuing a "warrant of arrest'? If so, could this information be placed into the NCIC system?

Answer: Under current law, the INS already has authority to arrest any alien, with or without a warrant of arrest, if the officer has reason to believe that the alien is in the United States in violation of law and is likely to escape. See section 287(a)(2) of the Act, 8 U.S.C. § 1357(a)(2). See also 8 C.F.R. § 242.2(c). If the alien's failure to appear were made a criminal violation, such information could appropriately be placed in the current NCIC, as in the case of failure to report one's change of address, mentioned above.

However, if a civil penalty were put into law, certain modifications to the NCIC would need to be made and thus should also be required by the legislative proposal. For example, if information concerning civil violations were added to the NCIC, the NCIC system should be required to clearly distinguish between criminal and non-criminal immigration violators who are listed, in order that state and local arresting officers and other users of the computer system can readily determine from the NCIC system whether a criminal arrest is authorized.

While a violation under section 242(e) of the Act for willful refusal to depart the United States pursuant to a final order of deportation is a federal criminal offense, an alien's failure to appear at a deportation hearing presently does not constitute a criminal violation under the Act and therefore cannot justify a criminal arrest by a police officer. In the latter instance, a telephonic detainer should be requested from the INS in order to permit the INS to take custody of the alien who has a civil immigration violation. Unlike an INS officer who is authorized to arrest illegal aliens for civil immigration violations, a police officer could incur possible tort liability for arresting only a civil immigration violator who has committed no criminal offense under federal or state law.

Police-officer protection from tort liability could be provided by a clear indication in the NCIC that the INS must be contracted and a telephonic detainer must be secured from the INS in the case of a civil immigration violator whose name is found on the list, in order to temporarily detain the alien to permit INS assumption of custody pursuant to current regulacions.

Ordered Deported "in absentia"

If an alien fails to appear after proper notice; they can be ordered deported "in absentia." I understand that this can limit availability of claims to relief. This does not, however, limit their ability to claim asylum. Should this loophole be closed?

Answer: An alien who has been ordered deported in absentia, who was given appropriate written and oral notice (see response above) is currently precluded for a five year period from being granted voluntary departure, suspension of deportation, or from adjusting or changing status under sections 242(b)(1), 244, 245, 248, or 249 of the Act (section 242B(e)(1) of the Act).

We are currently reviewing whether limitations on applications for asylum (under section 208 of the Act) for an alien who has been ordered deported in absentia, and who was given appropriate written and oral notice (see response above) should not be imposed on an alien who seeks to apply for asylum if such an alien establishes the claim is based on circumstances and or events emanating after the issuance of the deportation order.

If such an amendment is made, consideration should be given to amending the five year period as well. As currently stated in the statute, the preclusions are only in effect for the five year period following the date of the entry of the final order of deportation. Therefore, if an alien subject to such an order remains at large for the five year period, he may no longer be subjected to the sanctions for failure to appear. This encourages the alien to evade apprehension for five years. We are reviewing whether the five year period should not begin to toll until the alien has been reapprehended.

Scheduling Deportation/Asylum Hearings

In order to avoid the legal/logical difficulties of giving proper notice after the initial contact, should INS schedule deportation/asylum hearings at the time when an individual is released from custody?

Answer: Providing notice to appear for a deportation hearing or an asylum interview at the time of release from Service custody in advantageous. However, administrative deportation proceedings are scheduled by the Executive Office for Immigration Review (EOIR). Administrative asylum interviews are generally scheduled and noticed by mail in response to applications that have been filed by mail. There is no personal contact with the aliens until the scheduled interview.

Currently, the Service and EOIR have an ongoing cooperative pilot program in effect for scheduling and providing notice to aliens to appear for initial deportation hearings. This automated program is currently in effect in four major areas: San Diego, California; Harlingen, Texas; Chicago, Illinois; and New York City, New York.

In the Chicago area, aliens who are denied asylum are included in the program, and in New York City aliens arriving at John F. Kennedy International Airport who are placed in exclusion proceedings are given hearing dates under this program.

The program will be phased into other areas as resource become available. The results of this program to date have indicated a higher rate of hearing attendance by aliens who are given a date to appear at the time of issuance of the charging documents, and aliens who fail to appear for their hearings after being notified of the date and time, are more likely to have an in absentia deportation order issued by EOIR.

Giving Proper Notice at time an Individual is Released

By giving proper notice at the time an individual is released, wouldn't this cut failures to appear and subsequently, allow orders of deportation in absentia to be issued?

Answer: The statistics relating to the pilot program discussed above indicate an alien is more likely to appear for a hearing when notice of the time and place of the hearing is provided at the time of issuance of the charging document.

The Service may more readily establish by clear, unequivocal, and convincing evidence that appropriate written notice of the hearing was provided to the alien when notice is provided personally while the alien is in custody. Upon establishing the alien is deportable, the statute requires such an alien (who fails to appear) to be ordered deported in absentia.

Computerized Database of Individual who Failed to Appear for Asylum/Deportation Hearings

Does INS presently maintain a computerized database of individuals who have failed to appear for asylum/deportation hearings? If so, is this information shared with other Federal, State, and local law enforcement authorities? If not, why not? Is it feasible to do so?

Answer: The cases relating to aliens in deportation or exclusion proceedings are maintained in the Deportable Alien Control System. Deportable aliens who fail to appear for hearings or who fail to surrender for deportation are tracked in this database. Information from this records system may be shared with other law enforcement authorities upon request.

Asylum cases are maintained in the Refugees, Asylum, and Parole System database. Aliens who fail to appear for interviews are tracked in this system.

Information relating to asylum applicants may be disclosed to FBI and/or CIA officials when the need to examine such information is in conjunction with a United States Government investigation concerning a criminal or civil proceeding. Access to information from asylum records for the purpose of gathering intelligence unrelated to pending proceedings is not generally permitted. However, the Attorney General has discretion to disclose such information. The Service could therefore provide the FBI or CIA access to asylum records with approval by the Commissioner.

Executive Office of Immigration Review (EOIR)

With the Executive Office of Immigration Review (EOIR) responsible for conducting hearings and maintaining dockets within its' jurisdiction, does EOIR share this information with the INS through a centralized computer system? If not, why? Wouldn't access to this type of information facilitate quicker adjudication of cases?

Answer: Presently, INS issues an Order to Show Cause (OSC) to an alien and forwards the original to EOIR who then must provide, by mail, a specific notice of hearing (date, time and location) to the alien. Often, the address previously provided by the alien is either not valid or is outdated by the time EOIR mails the notice. Under these circumstances, when an alien does not appear for the hearing, Immigration Judges (IJ) often "administratively close" the case rather than issue a final order of deportation in absentia, because the IJ does not have a basis to determine that the alien has been properly notified of the hearing.

A joint INS-EOIR effort is underway to electronically schedule initial Master Calendar Hearings (MCH) for aliens at the time INS serves an alien with an Order to Show Cause (OSC). INS electronically accesses EOIR's database to schedule a hearing and records the hearing information on the OSC. INS provides the alien with written notification of specific date/time/location of the hearing. The original OSC is forwarded to EOIR to establish a Record of Processing (ROP) file.

The pilot system is underway in Harlingen, Texas; Chicago, Illinois; San Diego, California; and New York City JFK Airport, New York. The four sites were selected to test the system in a Border Patrol Sector, a District Office operations, INS Asylum office, and a major airport environments.

First results indicate an increase in appearance rate for aliens and an increase of "in-absentia" decisions being rendered by the Immigration Judges.

Printed (paper) reports are shared between EOIR and INS to gather statistics on the pilot system.

The plan is to establish a nation-wide electronic scheduling network to support all INS sites and EOIR courts. In addition, INS ENFORCE case tracking system development includes electronic sharing of information with EOIR databases to speed the process and establish an information base to improve decision making, management, and analysis functions.

EOIR provides INS information upon request. However, since EOIR has designed its data systems primarily for the needs of the immigration judges and the Board of Immigration Appeals, it is both unnecessary and impractical for these to be part of a centralized EOIR-INS computer system. Similarly, INS provides

information from its data systems to EOIR, but the routine use of the INS systems by INS for a multiplicity of purposes not of interest to EOIR makes a combined system for INS-EOIR not cost effective for either agency.

Tracking Aliens who do not Show up for Their Hearing

It is my understanding that if aliens do not show up for their hearing, INS and/or the Immigration Judges simply administratively closes the case and does nothing to find them. Is this correct? If so, why? Do you simply not have enough people and resources?

Answer: Trial Attorneys will insist on obtaining an in absentia order (if proper service is made). Locating people whose addresses have changed is one of our lowest investigating priorities. In addition, as an adjudicator, it is not the role of the immigration judge to find an alien who does not show up for hearing.

Component Responsible for Finding Aliens who Fail to Appear

What INS component is responsible for finding those aliens who fail to appear?

Answer: The Office of Investigations has formal responsibility, supplemented by officers from Detention and Deportation sections of local district offices.

Consequences for Failing to Appear

If aliens who fail to appear are located, what happens then? Are they simply asked to appear again or are they held in custody for a hearing? Is detention space a problem in holding these individuals?

Answer: The circumstances relating to the alien's failure to appear (for a hearing) will generally dictate the action taken by the Service when such an alien is located. Custody conditions will be reevaluated, and the alien may be detained or released on an appearance bond. Whether or not detention space is available is a consideration in establishing custody conditions for such an alien.

Obtaining Case Files Which Have Been "Administratively Closed"

Does INS have any problems in getting case files which have been "administratively closed"? Must INS refile charging documents if these cases have been closed?

Answer: No.

Number of Cases Administratively Closed by INS

How many cases were administratively closed by INS or the Immigration Court in the last few years after an alien failed to appear?

Answer: INS does not administratively close court cases.

In 1991, EOIR administratively closed 9,792 deportation cases and 2,308 exclusion cases. In 1992, EOIR administratively closed 6,035 deportation cases and 2,099 exclusion cases. In 1993, EOIR administratively closed 5,808 deportation cases and 2,225 exclusion cases. Although most administrative closings are generated by a failure to appear, a few are generated for other reasons.

Processing Capabilities of Law Enforcement Information Exchange Systems

Are existing law enforcement information exchange systems capable of processing this quantity of information without having to add another system such as the National Criminal Alien Tracking Center (NCATC) -- which may, according to some, take years to fully develop and implement?

Answer: The issue isn't really a question of one or more systems. The existing law enforcement information exchange mechanisms are adequate for their purpose -- which is the sharing of similar information, i.e., criminal histories, wanted/missing persons notices, stolen vehicles, etc.

The National Criminal Alien Tracking Center is not a system per se. It is intended to be an INS specific information resource available to other law enforcement agencies. The information available will include: the immigration status of individuals known to INS and encountered in law enforcement situations; whether or not a person is wanted by INS for some reason; and whether or not the nature of the law enforcement encounter (e.g., arrest, confinement, conviction, etc.) would affect the person's lawful immigration status.

The issue of aliens not known to INS is more complex. There are considerable resource implications involved in whether or not INS will respond and take physical custody of every illegal alien regardless of the nature of the law enforcement encounter. For example, simply turning over of an illegal alien who happens to be stopped for drunk driving has little effect and requires significantly more resources than are currently available to INS.

Broadening the Scope of Immigration Information Presently in NCIC

Could broadening the scope of immigration information presently in the NCIC accomplish this goal? If so, what administrative policy must be changed to broaden this scope?

Answer: Broadening the scope of immigration information presently in the NCIC would not be consistent with the function of NCIC nor would it have any effect on the larger issues in dealing with the overall problem of illegal immigration.

Inclusion of Warrants of Deportation and Criminal Aliens in the NCIC System

In 1987, NCIC Advisory Policy Board concluded that "administration functions" undertaken in connection with deportation fall within the definition of a criminal justice function. Should this type of information, in addition to warrants of deportation and criminal aliens, now be included in the NCIC system?

Answer: The current practice related to the entry of warrants of deportation into the NCIC system is consistent with this APB policy related to INS deportation functions. Other information contained in the criminal history component of NCIC, related to deportations and exclusion is also available to the extent the information is reported, via fingerprint submissions, by our field offices. There is no other information that would be consistent with the mission and function of NCIC.

NCATC System Better Suited for National Information

Would the NCATC system be better suited for this type of national information? If so, what additional resources are needed or what administrative policy must be changed to accomplish this?

Answer: The NCATC, as proposed, is an information exchange process. Specific information related to an individual can be shared and the effect criminal activity may have on his/her lawful status can be obtained. There are so many variable sets of circumstances that could arise in a given case that makes it virtually impossible to have a system that can define whether or not a person is here legally.

For example, a permanent resident alien who is arrested for drug trafficking does not automatically lose such status. The individual must be convicted of a specific offense and then undergo the deportation hearing process. INS has varying degrees of interest in such an individual, depending on their stage within the criminal justice process.

The NCATC would provide a means to address those differing levels of interest depending the specifics of a given case. It would also give INS a jump start on identifying aliens earlier in the criminal justice process. I would also like to emphasize that the NCATC is not a cure-all for the larger issues related to the resources necessary to address the very complex issues surrounding the deportation hearing and removal process.

Interfacing NCATC with all Other Federal Systems

Is it possible to effectively interface NCATC with all other federal systems which maintain immigration information?

Answer: One of the purposes of the NCATC is to assist in the distillation of INS information that comes from a number of sources and to provide that information in useful form to the rest of the law enforcement community.

Identification Process of Illegal Aliens by Their Names

Some have argued that it is difficult to positively identify illegal aliens by their names in the computer. How does your positive identification process work?

Answer: INS records systems are not based on positive identification. INS systems are all based on names and other characteristics such as date of birth, country of birth, etc. This approach does present problems when people have similar identifying names, birth dates, etc., or when people lie for whatever the reason. INS requires the submission of fingerprints with applications. The use of these fingerprints is limited to the extent they are used effectively. They are currently not placed into an INS data base which we can check at a later time.

Conversely, criminal history record systems used by the FBI and the States operate on the principal that each record transaction must be supported by a fingerprint submission that is matched against existing records to provide a definitive and comprehensive record on each individual.

This approach is much different than that used by INS. This issue is very complex and I don't want to make either approach sound too simplistic.

Fingerprinting and Photographing for Identification Purposes

Are benefit applications or persons placed in exclusion/deportation proceeding fingerprinted and photographed for identification purposes? Should they be?

Answer: The Act requires fingerprinting and photographing of individuals placed in deportation proceedings. Although this had been common practice and had been a regulatory requirement, the statutory requirement was put in place with the reforms in 1990. It was mandated by statute that the fingerprints be submitted to the FBI to update its criminal history files. This is the only process whereby positive identification is made.

Benefit applicants are also required to submit fingerprints with their applications. These applicant fingerprint cards are also submitted to the FBI for checks against their criminal history file to identify records that may have an impact on the applicant eligibility for the benefit requested.

"Person" Based System Vs. Record Based System

Would such a "persons" based system facilitate a more positive identification than the present records based system? What would the costs be to properly implement this?

Answer: Certainly a positive identification process would be more effective and desirable to the existing name-based process. I am unable to give you a figure of what the cost would be to implement such a system. I can, however, safely say it would likely be very expensive.

Effectively Locating Aliens Through NCIC

How effective has the current use of the National Crime Information (NCIC) system been in helping the INS to locate aliens who have failed to appear for deportation on the basis of a warrant of deportation?

Answer: As of November 11, 1993, a total of 2,473 warrants of deportation have been entered into NCIC. On that same date, the 291st NCIC apprehension was made when Houston, Texas police officers encountered a Mexican national during a routine traffic stop. The alien had been ordered deported in 1990 based on his previous drug convictions. Of the 291 apprehensions, the Service has effected 158 deportations. The remaining cases are pending judicial review or proceedings initiated by the apprehending department.

As you may note, the Service is experiencing a "hit" rate of about twelve percent (291 hits out of 2,473 cases entered). Without the NCIC project, the Service would have to devote thousands of unproductive work hours seeking the location of the same 2,216 aliens.

Immigration Information Proposed in H.R. 2993

Would the additional immigration information proposed in H.R. 2993 allow Federal, State, and local law enforcement agencies to more easily identify those who are in this country illegally and thus, work together to finally close these cases?

Answer: H.R. 2993 requires that information be entered in the National Crime Information Center (NCIC) computer system concerning any alien against whom a final order of deportation has been entered or who has failed to appear for his or her deportation hearing. With some clarification, this bill can be very beneficial to the INS' enforcement efforts because it can at least alert police officers to contact the INS whenever an arrest is made, during normal police work, involving an immigration violator whose name appears on the NCIC list.

However, as noted above, the bill should be clarified to require that the NCIC system clearly distinguish between criminal and non-criminal immigration violators who are listed. Thus, state and local arresting officers and other users of the computer system should be able to determine from the NCIC system whether an arrest for a criminal offense against the United States is authorized. A violation under section 242(e) of the Act of the wilful refusal to depart the United States pursuant to a final deportation order is a federal criminal offense. On the other hand, a telephonic detainer should be requested from the INS in order to permit the INS to take custody of an alien who has committed only a civil immigration violation.

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