

Statement of

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before the

**Subcommittee on Immigration, Border Security and Claims
of the
Committee on the Judiciary
United States House of Representatives**

Oversight Hearing on “Funding for Immigration in the President’s 2005 Budget”

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INTRODUCTION

Chairman Hostettler, Ranking Member Jackson Lee, Members of the Subcommittee.

Thank you for the invitation to appear before you to comment on the President’s FY2005 Budget request for the immigration functions of the Department of Homeland Security (DHS).

The facts about the President’s request are well known to you, especially since you have already heard from Government witnesses about them at an earlier hearing.

In outline form, the President proposes to increase funding for the Department’s two “enforcement” bureaus—Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE)—by \$538 million. At the same time, funding for the services/benefits part of DHS—Citizenship and Immigrant Services (CIS)¹—would increase by \$58 million. Even this increase, however, is deceptive in that in terms of appropriated funding, adjudications suffer an \$11 million cut and overall funding for the Bureau is cut by \$85 million. As Ms. Jackson Lee noted in her Statement of February 25, “...for every additional dollar the Administration is requesting for the benefits bureau, it is requesting 9 dollars for the enforcement bureaus.”

Perhaps this is as it should be—were it not for two important and interrelated factors.

¹ CIS is responsible for adjudicating petitions for naturalization, permanent residence, refugee and asylum status, and non-immigrant entries.

The first is the fact that CIS is falling ever further behind in discharging its principal responsibilities to US citizens and US residents, namely, the adjudication of their petitions for immigration benefits for which they have already paid the requisite fees. Adding insult to injury, petitioners, who have been waiting for several years for the immigration services' division to "get its act together," are about to be required to pay more, retroactively, for a service they will receive at some distant time in the future.

The second factor relates to the relationship between the Government's abject failure in this elementary good governance function and illegal immigration.

I will take each issue in sequence.

IMMIGRATION ADJUDICATION BACKLOGS AND THEIR CONSEQUENCES

Benefit adjudication backlogs, on a steep rise since the mid-1990s, have spiraled seemingly out of control in the last two years. CIS Director Aguirre has acknowledged as much before this Subcommittee and has offered both his explanations for this development and another iteration of a "plan" for performing magic by the end of FY2006.

And in fact, part of Director Aguirre's explanation is quite legitimate. Delivering immigration benefits must indeed be accurate, security considerations must be satisfied to virtual certainty, and the service must be professional, courteous and above reproach. But immigration benefits must also be delivered in a timely fashion.

The cost of failure in that last regard is not just longer waiting lines and the likely (but completely unnecessary and avoidable) swelling in the unauthorized population; it is the breeding of disrespect, if not disregard, for the rules, a phenomenon that has an extraordinarily corrosive effect on the rule of law. That effect is not unlike that which offends so many law-abiding Americans when they see unauthorized immigrants come and/or stay in our country illegally.

a. Backlogs

If you will allow me, I would like to give you a sense of the sorry state of our government's performance in delivering immigration benefits in the last twenty or so years.

CHART 1 ABOUT HERE

Let us take a look at Chart 1, which tracks the total benefit applications received, completed (a number that reflects approvals plus denials), and pending since 1980. (My colleagues at the Migration Policy Institute have also graphed the same data going back to 1960, and I will be happy to provide that graph to the Subcommittee, if you so wish. I assure you, however, that the trend and the relationship among these three variables are unexceptional, except for a brief spike in the number of applications received in 1976 that reflects certain one-time adjustments to our immigration formula that year.)

Returning to the chart in front of you, please note that until the early 1990s, pending applications were holding fairly steady both in absolute numbers (in the low hundreds of thousands) and relative to completion rates—as did the numbers of received and completed applications. Demand began to grow as those who received legal permanent status under the Immigration Reform and Control Act of 1986 (IRCA) became eligible for benefits, primarily as petitioners for their immediate family members. Yet, for a period, the then INS more or less was able to keep up with most of the additional demand, primarily as a result of the efforts of then INS Commissioner Doris Meissner. (Please note the sharp upward climb in completed applications—the red line—and the corresponding flattening in the number of pending cases—the light blue line—in chart 1.)

Things started to fall apart, however, by the mid-1990s, when the IRCA-fueled demand for adjudications combined with the surge in naturalization petitions that resulted from what some analysts have characterized as the “assault on immigrants” that culminated in three pieces of legislation affecting that population in 1996: The Anti-Terrorism and Effective Death Penalty Act, the Personal Responsibility and Work Opportunity Reconciliation Act, and the Illegal Immigration Reform and Immigrant Responsibility Act.

Surges in demand, however, are not the only variable responsible for what happened after 1996. The naturalization re-engineering that followed the political debacle of the Clinton Administration’s efforts to promote naturalizations in 1995 and 1996 created a sharp completion trough that lasted until 1998. At that time, completion rates increased nicely again until FY 2002, when they dropped precipitously once more—a drop from which they have shown no signs of recovering so far. In fact, at this time, the immigration services’ backlog is well over six million (it stood at 6.2 million at the end of FY2003, with more than 1.2 million pending “green card” adjudications and multiyear naturalization delays).

No part of this tale is a surprise to anyone with even a passing interest on immigration matters. During the immigration roller-coaster years of the last ten years, demands on the INS (and its successor agencies) have been increasing exponentially while the organization’s capabilities have been diminishing seemingly at even steeper rates. It is no wonder, then, that the ratio of pending-to-completed applications have been rising so steeply during this same time.

CHART 2 ABOUT HERE

Taking naturalization petitions out of the statistical picture does not alter the overall portrait dramatically. This suggests that the inability of the INS and its successor organizations to deliver services with any predictability cannot be laid to the feet of surging naturalization petitions alone. Most migration specialists would agree that this statistical picture reflects a clear systemic performance deficit. They would also agree that it reflects the failure of the services’ side of our immigration system to make an effective case to its political superiors—whether at the Justice Department or DHS, but especially at OMB, the White House proper, and the U.S. Congress—that immigration services are critical to the organization’s mission and overall objectives.

Chart 2 makes that point clear. It shows a broadly a similar pattern to that of the previous chart with similar troughs and surges and a virtually identical performance portrait. The similarity on patterns holds both for the gap between applications received and those completed but especially for the steeply growing backlogs beginning in 1993 but becoming sharply obvious after 1996.

The next two charts focus on two components of the adjudication function that should be of particular importance to this Subcommittee as it considers both the President's budget request and his immigration reform proposals put forth on January 7 of this year.

CHART 3 ABOUT HERE

The next chart offers another look at the performance pattern of the services' side of the immigration agency, this time by focusing exclusively on naturalization petitions. The chart starts again with 1980 data.

Chart 3 makes abundantly clear that when it came to naturalizations, the agency kept received, completed and pending applications within a rather narrow band essentially until 1994—when two factors began to wreak havoc with the system. By 1994, the first cohorts of those who received permanent legal status under IRCA were becoming eligible for naturalization and were in fact availing themselves of that privilege. Simultaneously, that period's intense debates about immigrants encouraged some immigrants to naturalize and persuaded others who, although eligible, had been sitting on the fence about whether to naturalize or not, to do so also. Hence the surge in applications. The severe slowdown in the adjudication of naturalizations during the re-engineering years in the late 1990s is clearly evident in the enormous spike in pending applications in 1997 and 1998, when the number stood at nearly 1.9 million.

Three more data quirks on this chart require a brief explanation.

- First, and not surprisingly, these same two years (1997 and 1998) also witnessed the formation of the largest gap between pending and completed applications for any period—about 1.2 million.
- Second, completions of naturalization petitions surged from 1998 to 2000 when, without any contextual explanation other than the chaos and dysfunctionality of an agency set adrift in the post 9/11 environment, they begin to slump sharply again, reaching their nadir today.
- Third, the number of petitions themselves dove dramatically starting in 1997, in some significant part because new applicants became discouraged by the widely-reported adjudication delays. This trend, however, reversed itself for a time after 9/11, demonstrating once more (as it did in the 1994-1996 period) the “defensive adaptation” character of naturalization surges. That is, that a proportion of those who seek to naturalize do so as a means of protecting themselves from the legal and other uncertainties of not being a citizen.

CHART 4 ABOUT HERE

The final chart is the most graphic depiction yet of the chaotic relationship between demand for and the government's capacity to adjudicate (or is it the priority it attaches to adjudicating?) lawful permanent residence (LPR) or "green card" applications. Chart 4 shows the dramatic and consistent increase in pending LPR petitions beginning with FY 1994. Remarkably, for much of that period of extended and continuous increases in demand, application completions have hardly ever kept up with new application intakes, a factor which explains the accumulation of the backlog evident in the graph. (The exceptions are 1995-1996 and 1999-2000).

Most striking perhaps is the 2002-2003 segment of the graph that shows demand spiking at the same time that the government's capacity to and priority in adjudicating petitions simultaneously plummets. While the need to be as certain as possible that no one who may wish us harm receives a green card—a perfectly natural impulse and a critical governance objective—the preponderance of the evidence still points to another, inescapable, conclusion: immigration services, whether under the old INS or the new CIS, have been no more than the stepchild in what many consider the immigration system's foremost (and all too often nearly exclusive) responsibility: enforcement, not services.

b. The Relationship of Backlogs to Illegal Immigration

Estimating the relationship between multiyear adjudication backlogs and illegal immigration with some certainty is more of an art than a science and would require an agency with the data access and resources of a GAO to undertake the task. However, even without the benefit of full access to government data files and the ability to draw and examine a sample of immigration petitioners and intended beneficiaries, common sense allows one to speculate that some of a petition's beneficiaries whose cases have been pending before the INS (and now CIS) for a long time are already in the United States illegally.

More specifically, unreasonable delays in naturalization adjudications are likely to mean that many immediate families simply "re-unify" on-their-own—an act that in many ways is within the spirit if outside the letter of the law. Similarly, there is little reason to doubt that some, perhaps even many, among those waiting for green card adjudications might have done likewise—in the process involving the petitioning U.S. entities, many of whom are U.S. employers, in an avoidable pattern of deception and illegality.

CONCLUSION

Illegal immigration has been properly targeted as one of our country's largest governance challenges. In fact, the President has stated his determination to do something about it. It seems to me that substantial investment of new government moneys to immigration services would provide two significant benefits. First, it would be the fastest, smartest, and least divisive way to reduce the size of the proverbial haystack of unknown individuals that DHS Secretary Ridge worries about. Second, it would simultaneously

reestablish respect for the law and allow the immigration services' function to regain some of the integrity it has lost (and we all want it to have) and those who deliver the function to earn once more the confidence and reputation they seek and deserve.

From both migration management and good governance perspectives we should not tolerate such enormous adjudication delays. The fact that virtually all costs associated with the delivery of immigration services are "recovered" in the form of fees, makes explanations other than the low priority the service function receives from senior decision makers in the U.S. Government seem weak, even feeble. The function's bureaucratic location per se—within the Justice Department for more than 60 years or, now, within the DHS—does not seem to matter much. The President's budget request for FY2005 continues to give immigration services the same low priority.

Budgets, we learn in school, reflect what an organization considers more or less important. The facts speak for themselves. If this Subcommittee disagrees with the President's assigned importance to immigration services, and given the obvious correlation between absurd delays in adjudications and illegal immigration, it has the ability to and, I would argue, the responsibility to stand up and say so.

You and your Congressional colleagues might go about making yourselves clearer on these issues as follows:

- First, make certain through your oversight powers that the CIS is held equally accountable for its mandated responsibilities as the immigration enforcement bureaus;
- Second, convey to the managers of CIS, and indirectly to the President, that they will be held to their commitments about better and more timely services and that excuses for failing to meet self-imposed targets and deadlines will be rejected?
- Third, accept at least co-responsibility with the Administration for reducing and eliminating adjudication backlogs because (a) they keep immediate families apart, (b) induce employers to break the law, and, more generally, (c) undermine respect for and the integrity of the immigration system itself.
- Fourth, put your shoulders behind better services in the immigration area by working with your colleagues in the relevant appropriations' committee to obligate the proper level of public resources to immigration services. Simultaneously, you should make it absolutely clear that you will not tolerate standards of excellence for that function that are less than equal to those you regularly demand from the DHS' enforcement bureaus.
- Finally, this Subcommittee and this Congress must begin to consider that maybe, just maybe, the CIS is misplaced within a bureaucracy whose mandate and measurements of success are about hard-headed homeland security functions. Put differently, and looking once more at the four charts and the inexorable falling behind of immigration services for the last decade or so, should we not be

thinking more about whether the CIS contributes anything unique to homeland security and the cost at which it does so?

- Specifically, if immigration services can be delivered in as robust a way as possible (both in homeland security and program integrity terms) why not start thinking about removing the overall function from DHS? It is in fact entirely possible that creating a new regulatory agency (perhaps something akin to the Social Security Administration) that never loses sight either of its governance obligations or its responsibility toward its fee-paying clients—yet can be held directly accountable for its performance—might prove a better administrative vehicle than having CIS within DHS.

After all, immigration services are virtually completely self-funded and, I suspect that spinning them out of DHS will in fact generate “savings” of at least one sort—personnel will be able to focus exclusively on the new agency’s mandate and its performance can be evaluated accordingly. The alternative is well known to us all: it often involves being detailed, temporarily re-assigned, or otherwise tapped for purposes other than what the function’s mandate requires and what those who seek benefits have paid for: the timely adjudication of petitions for a benefit to which they have a presumptive right.