

Testimony of

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President

Federation for American Immigration Reform (FAIR)

Before the Subcommittee on Immigration, Citizenship, Refugees, Border Security and  
International Law  
Committee on the Judiciary

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A Hearing on Reported Problems with ICE Interrogation, Detention and Removal  
Procedures

Madame Chair, members of the subcommittee, thank you very much for the opportunity to testify here today on behalf of the Federation For American Immigration Reform (FAIR). I have included information on FAIR at the end of my statement.

FAIR strongly supports the principle that U.S. immigration law is just as important as any other law in the United States Code, and that the enforcement of these laws is vital to maintenance of a sense of fairness and justice to all Americans who work hard to respect all the laws of this nation. Basic principles of fundamental fairness and respect for law are the cornerstones of citizenship in this highly diverse society. There many who argue that violating an immigration law lacks any negative moral connotation. We disagree. One reason why many immigrants want to come to the United States is because here “the system works.”

Congress has passed laws and the Executive Branch maintains a series of procedures governing the arrest, detention and removal of aliens illegally inside the United States. They are under constant review. We support the effective and humane administration of these laws and procedures, consistent with the process that is due at all points of apprehension, detention and removal.

In the administration of these complex laws and procedures, mistakes will occasionally be made. This is especially true given the scope and complexity of these procedures, the demands of limited resources and the fact that human beings are fallible. The effective and judicious administration of all phases of these procedures will require a continued and growing infusion of resources: the management of immigration process is an extremely expensive proposition if it is to be done right.

But when mistakes are made by ICE in the administration of these laws, it is a serious matter. Our nation’s commitment to fairness and the rule of law dictate that all instances of misconduct be investigated thoroughly and, where criminal conduct is proved, a full prosecution should invariably follow. Where rules and procedures are not followed, such as in the inappropriate administration of sedation drugs, the willful failure to identify sole caregivers in the course of an interior enforcement operation and similar events, an investigation should follow from the Inspector General to ascertain why procedures were not followed.

Madame Chair, we understand at FAIR that immigration policy involves sensitive and emotional issues – the very real impacts on real people are factors that must be considered in the establishment of any enforcement policy. We must be true to our principles as a people and work to ensure that immigration enforcement –vigorous and effective – nevertheless respects basic human rights and the dignity of all involved.

At present, the Department of Homeland Security’s Immigration and Customs Enforcement Program (ICE) program for detaining and removing illegal aliens is undergoing rapid expansion. The Bush Administration’s most recent budget request seeks

an additional \$3 billion for internal enforcement, including work-site raids conducted by Immigration and Customs Enforcement officials. The President will ask for \$1.8 billion more to expand ICE's capacity to detain illegal immigrants by providing 1,000 more detention beds.

This rapid funding increase is necessitated by a rapid increase in illegal immigration, by declines in enforcement personnel and funded bed space (which declined by 3 percent and 6 percent, respectively between 2002 and 2004), and by public demands that interior immigration enforcement be dramatically expanded. Despite an increase in overall resources, bed space and personnel levels have failed to keep pace with the growing number of alien apprehensions.

According to a 2006 audit report issued by the Department of Homeland Security's Office of Inspector General, "of the 774,112 illegal aliens apprehended during the past three years, 280,987 (36 percent) were released and largely due to a lack of personnel, bed space, and funding needed to detain illegal aliens while their immigration status is being adjudicated." Further, an astounding 62 percent of the aliens released "will eventually be issued final orders of removal by the...Executive Office of Immigration Review (EOIR) and later fail to surrender or abscond." We now have over 600,000 alien fugitives in the United States.

According to DHS, three major problems facing the Detention and Removal Office (DRO) are "(1) the propensity of illegal aliens to disobey orders to appear immigration court; (2) the penchant of released illegal aliens with final orders to abscond; (3) the practice of some countries to block or inhibit the repatriation of its citizens; and (4) two recent U.S. Supreme court decisions which mandate the release of criminal and other high-risk aliens 180 days after the issuance of the final removal order except in 'Special Circumstances.'" DRO says major problems carrying out large-scale removal include lack of "sufficient resources," a lack of "political will, and the [lack of] operation of foreign governments." Department of Homeland Security Office of Inspector General, *Detention and Removal of Illegal Aliens*, OIG-06-33 (April 2006).

FAIR calls on Congress and the national political leadership of this nation to demonstrate the political will to dramatically increase the enforcement of US immigration laws in a manner consistent with credible deterrence. We would also like some broader recognition of the tremendous hidden processing and enforcement costs associated with the administration of laws associated with the use of so-called "inexpensive" foreign labor.

At present, specific problems with individual enforcement operations are properly subject to internal investigations by DHS. Every one of these allegations is worthy of serious consideration, all the while keeping in mind that many of the underlying facts are omitted from news reports. Further, we would suggest that overall policy changes not be made on the basis of one or two isolated instances of agent misconduct. Rather, we should be looking at the entire set of objectives in the aggregate and work to fashion an enforcement strategy that will operate to serve the nation as a whole.

Furthermore, we are concerned that these isolated incidents are being used to try to build political support by those who oppose immigration enforcement generally. The reaction to the recent increases in interior enforcement -- welcomed by the overwhelming majority of the American people -- has been negative among those organizations traditionally opposed to robust enforcement strategies.

With an estimated population of illegal aliens ranging from 12 to 13 million, one can hardly argue that this nation is too aggressive in its enforcement of immigration law. In 2005, DHS's Immigration Enforcement Actions report 135,610 formal removals -- perhaps 1% of the illegal immigrant population in the United States. Clearly, the government has only begun to initiate which promises to be a multiyear effort.

Commonly we hear the red herring, "What you want, mass deportations?" To which I respond that 135,000+ formal removals is already a form of mass deportation. Moreover, the sort of large-scale interior enforcement operations contemplated by the term "mass deportations" are unnecessary. This problem was not created overnight. It will not be solved overnight. Stepped up interior enforcement, when combined with the aggressive enforcement of employer sanctions, dramatically increased detention space, and streamlined removal proceedings will achieve the deterrence that will encourage most illegal aliens to return home.

Madame Chair, we believe it is possible to enforce our immigration laws in a manner that is both effective and consistent with our values. We see the effects of state-based policy changes now: deterrence sets in quickly once it becomes clear that remaining unlawfully in the United States is not a viable option.

Our immigration law enforcement is notoriously lax. While we understand that there are organizations and interests that seek to abolish nearly all forms of immigration enforcement, we believe that is a minority view. Even under today's relaxed standards, the United States deports well over 100,000 aliens from the interior of the country each year. While it will be costly to dramatically increase detention and bed space to bring about true deterrence, such costs can be reduced through expedited removal and similar streamlining techniques. The United States utilized expedited removal to repatriate over 70,000 aliens in 2005, and last year the Administration started using expedited removal for non-Mexicans apprehended near the border.

The administration has more authority to use expedited removal than it has exercised to date. Current law allows the administration to utilize expedited removal for any alien who entered illegally and has been in the United States for less than two years. FAIR has previously supported provisions of the House-passed version of the Intelligence Reform and Terrorism Prevention Act of 2004, which require the use of expedited removal for all aliens who enter the US illegally and have been here for less than five years. This is the sort of creative and innovative thinking we would like to see expanded.

Madame Chair, this nation has allowed its interior enforcement apparatus to atrophy for years. It has happened as a result of the aggressive lobbying of private, special interests

in United States who seek to use immigration to control labor costs. We believe it is time to change direction. The simple truth is that vigorously enforcing our immigration laws will have a negative impact on illegal aliens. However, we believe that the basic principles of fairness and justice require that we not provide specific benefits to those who have chosen to jump the line and break the law.

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## **About FAIR**

FAIR is the nation's oldest and largest national public interest organization working to reform U.S. immigration laws. Bound by a common purpose and broad sense of mission, we seek to advance forward-thinking immigration policies that serve the wide array of U.S. domestic priorities that, in our view, are fundamentally inconsistent with today's mass and poorly-regulated immigration system.

FAIR seeks to end illegal immigration through improved enforcement strategies, and we seek to reduce overall immigration levels to those more consistent with 400 years of history – to reduce levels from well over one million a year today to around 300,000 a year over a sustained period of time.

FAIR has a wide base of support that includes nearly 50 private foundations and nearly 200,000 individuals. Unaligned with any major party or financial interest, FAIR is noteworthy on two counts:

- 1) We are bipartisan. Our Board of Directors, Advisors and members include Democrats, Republicans and Independents. We also have a broad constituency that includes members of all ethnic and racial communities in the United States. We have members, activists and affiliated organizations that include strong representation from the African American and Latino communities.
- 2) *We have always sought to ensure that immigration policies never discriminate for or against persons on the basis of race, religion, gender or other invidious basis.*

Over the years, FAIR has played a major role in virtually all major immigration policy changes. As champion of an enlarged and long-range national interest, FAIR seeks to advance America's understanding of the role of immigration to the U.S. in the 21<sup>st</sup> Century. We fought for policy improvements in the landmark 1986 Immigration Reform and Control Act, in asylum laws in the Refugee Act of 1980 as well as in legal reforms in 1990 and 1996. From 1993 onward, FAIR was intimately involved in examining, exposing and closing loopholes that might be exploited by international terrorists. After the 9/11 terror attacks, FAIR was instrumental in fashioning important legislative and policy changes that have helped advance U.S. national security in major ways.

Perhaps most importantly, FAIR has always sought to fashion a workable immigration system that considers the downstream impacts of today's policies on tomorrow's generations. Looking ahead fifty years, FAIR has been one of the few voices in the nation to ask: *What will it mean to move from a crowded society of 300 million today to nearly one billion by the end of this century?* FAIR – unattached by party loyalties and special interest affiliations – simply seeks to help Americans consider the full dimensions of how immigration policies affect, and will affect, the nation's welfare over time.

Long considered the most credible voice on U.S. immigration policy in America today, FAIR has been asked by Congress to testify on a wide range of issues – well over 100 times – and is a routine voice on national television. FAIR and its law firm affiliate the Immigration Reform Law Institute routinely submit both popular and scholarly articles for publication and our research division puts out some of the best fact-based immigration analysis in the country.

Madame Chair, thank you very much for the opportunity to offer the views of FAIR.