

**HEARING OF THE SENATE JUDICIARY COMMITTEE; SUBJECT:  
COMPREHENSIVE IMMIGRATION REFORM; CHAIRED BY: SENATOR  
PATRICK LEAHY (D-VT); WITNESSES: SECRETARY CARLOS M.  
GUTIERREZ, DEPARTMENT OF COMMERCE; AND SECRETARY MICHAEL  
CHERTOFF, DEPARTMENT OF HOMELAND SECURITY; LOCATION: 216  
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## **Body**

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CHAIRED BY: SENATOR PATRICK LEAHY (D-VT) WITNESSES: SECRETARY CARLOS M. GUTIERREZ,  
DEPARTMENT OF COMMERCE; AND SECRETARY MICHAEL CHERTOFF, DEPARTMENT OF HOMELAND  
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SEN. LEAHY: (Sounds gavel.) Thank you very much for being here. We're actually conducting business here in the back.

I want to thank the secretaries -- both secretaries -- Secretary Gutierrez and Secretary Chertoff for agreeing to appear. I also want to thank both these gentlemen for the private meetings you've had with me and with a number of other senators on both sides of the aisle on issues of immigration. I found them to be well worthwhile.

I'm hoping that the fact that both of you are here today will demonstrate the president's wholehearted commitment to working with us to enact comprehensive immigration reform legislation this year, because if we don't have the president's full-hearted cooperation and support, I think it will probably suffer the same fate as it did last year.

We reported a comprehensive immigration reform bill. Senator Specter kept us on practically around the clock till we did. But then we saw what happened -- the Republican leadership decided that there would **not** be a House-Senate conference; instead, they forced through a bill calling for billions to be wasted constructing a 700-mile fence along our 2,000-mile southern border -- sort of a Potemkin fence. And this year we have a renewed opportunity to do the right thing, and we should.

The votes in the most recent elections, the American people reaffirmed America's traditional place as a nation of immigrants. We all are either immigrants, came here as immigrants or of immigrant parents or grandparents. We are **not** anti-immigrant, we are **not** racist. We understand people seeking a better life for their children and grandchildren as naturally as we do. Americans understand that comprehensive immigration reform does **not** mean criminalizing the hard work of law-abiding people, deporting millions of families who have lived here for years, or seeking to wall ourselves off from our neighbors and the world around us. And thankfully, the politics of fear did **not** succeed. Americans rejected the poisonous rhetoric of intolerance in favor of a more confident, realistic and humane approach, and find strength in diversity and human dignity.

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If we're going to reclaim America's promise, we need to keep our eyes on the core principles of comprehensive reform.

To his credit -- and I praise the president for this -- he's called for comprehensive legislation and an immigration system worthy of America. We should all -- Republicans and Democratic members alike should listen to the president's words on that. But he also has to demonstrate his commitment to those principles and lead Republicans toward achieving that goal so that -- not as members of a political party but as Americans -- we can honor our history as a nation of immigrants and strengthen our future and leadership in the world.

The president said that no one element of immigration reform can succeed without a comprehensive approach. A committee-reported bill last year took a comprehensive approach. The Senate-based bill took a comprehensive approach. The House-generated bill that the president signed just before the election did not take a comprehensive approach. Our broken system has fostered incongruities from coast to coast, from our biggest cities to our smallest towns and from our factories through our farms. Reform is overdue.

We have to be realistic about the millions of undocumented people in this country. We need to bring people out of the shadows. When we provide opportunity for people to be responsible, the vast majority will be, and we're all going to be better for it. We can and should do everything necessary to protect opportunities for our domestic workers. We need to reduce illegal immigration by reforming our temporary worker programs to allow more access to the unfulfilled jobs and unmet needs of our economy. These are not either/or propositions; we can do both.

In one example -- and I don't mean this to be parochial, but we could show similar examples in every one of our 50 states. In Vermont, a dairy farm is more than a job, an industry; it's a way of life. Our agriculture and economy depends on the hundreds of millions of dollars dairy farmers bring to our state every year. That way of life is threatened when family dairies cannot find help to milk cows, deliver calves, keep up with chores. Finding help has become increasingly difficult for hundreds of Vermont farms, and they have turned to migrant workers from Mexico and Central America. Currently, that means an estimated 2,000 foreign workers.

We know there's something wrong with this hodgepodge arrangement in my state, and other states could say the same. We need to do better. We need to bring order and common sense to a broken system. In my state, Vermont dairy farmers should not have to choose between saving their family farms or obeying the law.

The president has acknowledged he can't deport 10 million people that have been here working. He said at the southern border last August, it's unrealistic. It may sound good in certain circles; in political circles, it's not going to work. He went on to outline what he called the best plan for those who are here illegally. He recommended saying to them, if you've been paying your taxes, if you got a good criminal record, that you could pay a fine for being here illegally and you can learn English like the rest of us have done and you can get in a citizenship line to apply for citizenship, you don't get to go in the front to get in the back of line. He called this a reasonable way to treat people with respect, to accomplish what we want to accomplish, which is to be a country of law and a country of decency and respect. I agree with President Bush, and those are precisely the elements we had in the Senate bill last year.

We have to create an immigration system for the 21st century that honors the great history and tradition of our nation and secures our future, for we must always remember that immigrants are real people.

They have families, they have hopes, they have dreams the same way my grandparents did when they came here from Italy. In most cases, these are people who want to contribute, who work hard, who are striving to overcome the fortuitousness of where they were born.

They contribute to our armed forces. They sacrifice and even die to protect the freedoms we have and they hope to enjoy. They contribute to our economy and our lifestyle, and they help with our most important responsibility when they raise America's children.

So as I said, as the grandson of immigrants to the United States, I'll work to reaffirm the promise of America's lamp beside the golden door for the poor and oppressed.

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Senator Specter, you showed iron will in moving this forward last year, and I'll work again with you this year.

SEN. ARLEN SPECTER (R-PA): Well, thank you, Mr. Chairman. I'm pleased to see you schedule this hearing before February has elapsed. I thank you for the comment about iron will last year in moving the bipartisan bill out of the committee. And there is no piece of legislation for the Congress to move on and move on quickly than a comprehensive immigration reform bill.

And I'm glad to see the two distinguished secretaries who are involved in this issue, Secretary of Commerce Gutierrez and Secretary of Homeland Security Chertoff, here this morning to move this along.

And I believe that we can maintain both objectives, the objective of rule of law and control of our borders, and at the same time maintain America as the beacon of hope for people who wish to come here to contribute and join in our democratic way of life.

We are a land of immigrants, and each of us has his or her own story to tell. Both of my parents were immigrants. My mother came here in 1906 with her father and mother and a younger brother. My father was 18 in Russia in 1911, when the czar was in control. The czar wanted to send him to Siberia. He didn't want to go to Siberia. He heard it was cold there. He wanted to go to Kansas. It was a closed question, and he got to Kansas, where I was born.

We last year reported out, on a bipartisan basis, legislation which was comprehensive, which maintained the rule of law. And from the activities of the Congress last year and the work of the president's administration, there have been improvements made on border security.

It is tighter now than it was a year ago, not tight enough.

And we need to have employer verification, but there has to be the federal responsibility to provide fraud-proof identification, so that with employers having the opportunity to verify citizenship, we can then be in a position to hold them accountable and responsible with tough sanctions.

We need a guest worker program. There was a commitment to that last year by President Bush and by then-Speaker of the House of Representatives Dennis Hastert. And we need to be able to deal with the 11 million undocumented immigrants so that we can identify those who have criminal records and take appropriate action as to them. But it is a practical impossibility to deport 11 million undocumented immigrants. And if someone has a better idea than the legislation which we passed out of the Senate last year, this committee is open to those ideas. We are prepared to listen.

It is not amnesty to have legislation which imposes a fine, requires people to learn English, requires people to pay back taxes, puts them at the end of the line. It is not amnesty.

Just one word of caution: I think it is very important that this committee proceeds on a bipartisan basis, where all of us know what is going on. I have been concerned about reading what is happening behind the scenes in the newspapers. And my staff, Michael O'Neill, a very able chief of staff, have brought to my attention several weeks ago that our staffs were not being consulted.

And I call that to the attention of Senator Kennedy, who did such outstanding work last year and before, a long history of outstanding work in immigration. And we worked on the McCain-Kennedy bill as the takeoff last year for the chairman's mark, for my mark as chairman. But the staffs were not communicating, and I brought that to Kennedy's attention again, and we had a meeting where we were told that the staffs would communicate. And as of yesterday, we haven't been consulted on the draft which Senator Kennedy's staff has been preparing. The (old ?) statement is if you want to be in at the landing, you have to be in at the takeoff. And we have to have an exchange of information, so that we are prepared to work with you.

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But we can't segment this committee. If we do, we're not going to have the kind of bipartisan cooperation which Senator Leahy and I were able to achieve last year for the betterment of the committee and the betterment of the Senate and the betterment of the Congress.

So with that one word of caution and concern, I hope we can share information and find a way to have both sides of the aisle involved every step of the way, so that we can get a bill which will have bipartisan support.

Again I commend you, Mr. Chairman, for scheduling this hearing early, and look forward to bipartisan cooperation with Senator Kennedy, who has been the leader for decades on this subject, and with you, Mr. Chairman.

SEN. LEAHY: Over a hundred years for Senator Kennedy.

But, gentlemen, could you please stand and raise your right hand?

(Witnesses are sworn.)

We will go first with Secretary Gutierrez. He was sworn into office on February 7th, 2005 as the 35th secretary of the U.S. Department of Commerce. I've known many of those. But he is the first secretary, I believe, in any department that was born in Havana, Cuba. Came to the United States with his family in 1960. Joined Kellogg as a sales representative in 1975 -- the year I came to the Senate; rose to president and chief executive officer in 1999. I believe that made you the youngest CEO in that company's nearly 100- year history. April 2000, named chairman of the board of Kellogg. Studied business administration at the Monterrey Institute of Technology in -- you got to tell me -- in Mexico --

SEC. GUTIERREZ: Queretaro.

SEN. LEAHY: Queretaro. Thank you.

Secretary Michael Chertoff has appeared many times before this committee. On February 15, 2005, as a Circuit Court of Appeals Judge, he resigned from that and was sworn in as the second secretary of the Department of Homeland Security. He was on the 3rd Circuit Court of Appeals before. He was previously confirmed by the Senate and served in the Bush administration as assistant attorney general for the Criminal Division. Before joining the Bush administration, he was a partner in the law firm of Latham & Watkins. From '94, '96, he served as special counsel to the U.S. Senate Whitewater Committee. Prior to that, he spent more than a decade as a federal prosecutor, including service as a U.S. Attorney for the District of New Jersey. Graduated magna cum laude from Harvard in '75; magna cum laude from Harvard Law School in '78. From '79 to 1980 served as a clerk to Supreme Court Justice William Brennan -- a friend of many of us on this committee.

So, Secretary Gutierrez, please.

SEC. GUTIERREZ: Thank you. Chairman Leahy, Ranking Member Specter, members of the committee, I'm pleased to have this opportunity to discuss immigration reform with you, and I thank you for your leadership and your hard work on this important issue.

For several years we have been in the midst of a vigorous debate about the role of immigration in our country.

This is not the first time, of course, in our nation's history that immigration has been a source of contention in the halls of Congress and communities across America.

One result of this passionate debate is that many words in our immigration discourse have lost their meaning, with people often just talking past each other. However, when you peel back the rhetoric and actually have a conversation with members on both sides of the aisle and on all sides of the issue, as I have on dozens of occasions over the past year, you find that while there are some policy differences, we are much closer to common ground than one would expect.

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Secretary Chertoff and I come before you today on behalf of the president with a very simple message. We believe that with some hard work, a solution can be found, and we pledge to roll up our sleeves and work with you on a bipartisan basis to find a solution that serves our national interest.

We believe that there are three goals central to a successful immigration solution. The first is national security, two is economic growth, and the third is American unity.

First, we must have a focus on national security. We must secure our borders and implement a system that will enable us to know who enters our country and who is already here. In order to hold employers accountable, we need to give them new tools to verify the immigration status of workers. We must establish a tamper-proof biometric identity card for a temporary worker program, which will enable us to verify, and also an employee verification database. And I happened to bring with me a sample of a biometric card. Very easy. The technology is very much available.

Secondly, economic growth is essential for our continued prosperity as a nation, and we recognize that immigration has been a crucial part of our economic growth. Immigrants make up 15 percent of our labor force and account for about half of labor force growth since 1996. Even so, the reality is that there are thousands of jobs that aren't getting filled by Americans. There were 4.4 million job openings in December, and our unemployment stands at 4.6 percent.

I have met with farmers from around the country whose fruit lay rotting in their orchards. Businesses across the nation report difficulty filling jobs that are essential to their growth. Our immigration policy must recognize the reality of our labor needs by creating a temporary worker program.

The third goal of our comprehensive immigration policy is American unity. We are a society governed by the rule of law and we should not reward unlawful behavior. And we must also find a solution that brings workers out of the shadows and into the mainstream without amnesty. We believe we can do that.

Many advanced economies face declining populations and struggle to assimilate immigrants. The U.S. can make immigration a competitive advantage because assimilation is a historic national strength. This can be an advantage for us 10, 20, 30, 40, 50 years down the road.

Assimilation also involves learning English. English is the language of custom and opportunity, and we do immigrants a great disservice if we do not urge them to learn English. In fact, one of the very best things that ever happened to me when I came to this country is that I was forced to learn English.

In the end, we must craft a solution that is viable and workable, one that will not have us back in this room debating the same issue in 10 years. Our solution should enable the future flow of immigration to be orderly, legal, and controlled. The good news is that all of the pieces necessary are on the table. The question of course before us is, do we have the political will to assemble them in a way that furthers the national interest?

Mr. Chairman, I believe we do, and I look forward to working with you on this important manner. Thank you, sir.

SEN. LEAHY: Thank you very much, Mr. Secretary.

And Secretary Chertoff.

SEC. CHERTOFF: Thank you, Mr. Chairman, and thank you Senator Specter and other members of the committee.

I also appreciate the invitation to come and speak to you today about the need for immigration reform, and I appreciate the leadership that members of this committee have shown in moving forward on this very important issue to the nation. I fully associate myself, obviously, with the testimony of Secretary Gutierrez. I also submitted a full statement which I request be made part of the record, and which I will spare you repeating now. I would like to, however, very briefly touch on some of the highlights of progress that we have already made on some of the

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elements of a multi-pronged approach to immigration reform, including effective control of the border, building a tough interior enforcement program and moving forward with respect to other dimensions of what will be a comprehensive solution to this issue.

Since we launched the Secure Border Initiative last year, we have made some significant progress in gaining control of the border. This does not mean that we are declaring victory. What it does mean, though, is that we have begun to turn the tide, and this ought to be a source of encouragement, and also needs to increase our determination to get the job done.

We have increased the boots on the ground, adding new Border Patrol agents and enlisting the National Guard in Operation Jump Start. Importantly, we ended a pernicious practice called "catch and release" at the border, in which we used to release large numbers of non-Mexicans into the community. There was a story in The New York Times a few days ago that talked about how it was such a received wisdom that non-Mexicans would be released in order to disappear that people actually were told to turn themselves in to the Border Patrol as soon as they crossed the border, because it would mean that they could then make their way to the interior conveniently.

We have reversed and ended that practice at the border, and this has begun to show some real results. In the three quarters that we have had -- three quarters of the year that has passed since we put into effect Operation Jump Start, we have seen in each quarter a significant decline in the number of people that we are seeing crossing the border, and an even more significant decline in the percentage of apprehensions that reflect non-Mexicans.

And both the statistics and the anecdotes support the view that this is a direct reflection that deterrence works if we are determined and tough about enforcing the rules at the border.

We've been equally tough enforcing the law at the worksite in the interior. Last year in fiscal year 2006, we arrested 760 individuals on criminal charges and more than 3,600 on administrative charges. The increase in criminal prosecutions reflect seven times the number of arrests that we saw in 2002, and it is the most significant year of worksite enforcement in living memory. In fact, in the last couple of weeks, we saw ICE agents raiding and arresting senior executives at the Rosenbaum-Cunningham International company, which -- (audio break) -- at several national restaurants across the country, and we saw some -- (audio break) -- at the IFCO corporation, which was the subject of raids earlier last year.

Continuing our success in the area of tough enforcement at the border and the interior will require continued support from Congress. Among other things that we have previously requested which are important are additional sanctions for those individuals who dodge our checkpoints that we use in order to control the flow of illegal migrants or those who defy the orders of a DHS officer. We need to make it clear that not obeying the law will be criminally punishable.

We need to continue to move forward with tough sanctions for those employers who willfully violate the immigration laws by building their businesses on the premise that they will be getting illegal migrants to do jobs. And that means we need to continue to build and roll out our electronic employment verification system, which is one very useful tool in helping employers verify the status of their workers.

Finally, as the president has said, we have to create a lawful mechanism so that foreign workers can come into the United States and fill jobs that will otherwise go unfilled. Having a regulated channel for this kind of labor force is actually going to help our border enforcement, because it is going to reduce the pressure on the border that is caused by the huge economic demand that is drawing the tens of thousands of migrants to cross the desert or cross the Rio Grande River to work in the United States. Bringing these people into a regulated, visible system will help our ability to promote national security.

Now, we have talked with a number of members of Congress, you and your colleagues, over the past few weeks, and we will continue to do so, to listen carefully to your views on the issue of how precisely to craft an approach to dealing with this long-standing difficult but very important issue. And we hope to return to you soon so we can work together in a bipartisan way on sound and long overdue immigration reform.

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But let me conclude by making one point. What is critical to anything that Congress does is workability. Whatever measures are passed must work in the real world. And that seems to me to mean at least three general principles have to be followed.

First, we need to have clear and consistent standards that will protect applicants, guide those who have to review applications, and defend against fraud. The more confusing and complicated a process is, the more arbitrariness and error find their way into that process.

Second, we need to carefully design judicial review of application decisions to ensure that any temporary worker program that is put into effect treats applicants fairly but does not become a source of never-ending litigation. As a result of the Immigration Reform and Control Act of 1986, judicial review provisions continue to jam federal courts 20 years later. We still haven't litigated our way out of that measure after two decades.

Finally, there cannot be an amnesty. And that means we cannot give those who are here illegally because they've broken the law a leg up and an advantage over those who have played by the rules.

I think those general principles, which are consistent with what the president said last year, are important as we move forward on this issue.

We look forward to working with the committee and with Congress to build on what we've done at the border and to give the American people the immigration system that they have a right to expect.

Thank you.

SEN. LEAHY: Thank you.

Secretary Gutierrez, last year when you testified, you spoke about the advantage people have if they learn different languages, and I agree we should do a lot more of that in our country. You also spoke of the advantage to immigrants of learning English. I agree with you there. Both my mother and my wife had to learn English as a second language. But are you saying the administration would support making English the official or national language of the United States by law?

SEC. GUTIERREZ: The point I was making is that -- and I go back to what the president said when he talked about immigration, that if you learn English, you can go from cleaning an office to managing an office.

SEN. LEAHY: But you're not asking the Congress to legislate in this area of language.

SEC. GUTIERREZ: No. We believe that there is a lot that we can do to ensure that immigrants understand that it is in their interest to learn English, to be part of society and to be integrated.

SEN. LEAHY: There I absolutely agree. Again, my grandparents, my mother my wife. I certainly understand that.

The president, though, has also expressed his support for a plan that includes bringing millions of undocumented people in the United States out of the shadows onto a path toward earned citizenship; not amnesty, but earned citizenship. And I agree that we need a plan to realistically deal with this current situation.

Is the administration committed today to a path to citizenship as part of an overall comprehensive immigration reform? Is that both the president and the administration's position?

SEC. GUTIERREZ: One of the principles that we have, Mr. Chairman, is to ensure that people who are working in the country today illegally come out and enable us to know who is here because it is a national security concern. We don't know who's crossing, we don't know who's here. Once they have been identified, they would have to be given either legal status to work here or not.

In terms of a path to citizenship, that is something that we need to discuss, we need to think through. There is a path today to citizenship, so it's not as if though we need to create a new path to citizenship.

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SEN. LEAHY: But if you want these people to come out of the shadows, aren't you going to have to have some kind of a path to citizenship available to them, or otherwise, what's the incentive to come out of the shadows?

SEC. GUTIERREZ: It's a good question. I believe, Mr. Chairman, it's hard to get a precise sense of this, but I believe that what people want first and foremost is to have legal status. And I'm not sure that everyone wants to be a U.S. citizen. Many just want to be able to work, and if they can work legally, one day they would like to go back home. So I don't think that citizenship is what will make them come out of the shadows, it's just the opportunity to have legal status so they don't have to be in the shadows.

SEN. LEAHY: Well, let's talk about this. Again, it's so easy to say amnesty, not amnesty. Will the administration and the president help us educate members of the public -- actually educate members of Congress, that if you have a comprehensive reform that consists of requirements to pay back taxes, fines, and making it clear what your criminal history or lack of criminal history is, that that's not amnesty. Can we get some education from the administration to that effect? Or do you agree with that?

SEC. GUTIERREZ: Well, as I think about amnesty, for me it's unconditional pardon. And if we start there, we have to move away from that and ensure that our principles and our conditions fit the fact that the law was broken. How we do that I think is a matter of debate, and I think we have to work that through, and that's part of the complexity.

SEN. LEAHY: But -- but we're not going to really have a debate on it without involvement of the administration. This cannot be done as a --

SEC. GUTIERREZ: Right.

SEN. LEAHY: -- one side, one party piece of legislation.

I assume, Secretary Chertoff, that you couldn't realistically find, apprehend, deport the millions of people who are here today. Some you could, but you couldn't begin to get anywhere near the majority of them. Is that correct?

SEC. CHERTOFF: I think it would be a gargantuan task to try to locate, detain and depart 12 million people.

SEN. LEAHY: But don't you -- then don't you have to have, in some kind of a comprehensive immigration policy, some way for most of them -- if you're going to get them out -- to find some way of legal status? Now, as Secretary Gutierrez has just said, some don't want to be citizens.

I mean, you have a lot of people come here to work. They want to work here for a period of time, earn some money, go back home. They don't want to have U.S. citizenship. Some are here as students and other reasons.

Some, however, if their children are born here, they're starting to go to school here, they're establishing roots here, they do want to become (sic) citizenship.

Either way, don't you have a -- have to have a comprehensive plan to make their status here legal?

SEC. CHERTOFF: Well, I think what Secretary Gutierrez said is correct: that one needs to give people the inducement of getting legal status in the country if they're going to come out of the shadows. And that's got to be an element of immigration reform, because brute force alone will not deal with the challenge that we have of all the undocumented workers in the country.

SEN. LEAHY: Thank you.

Senator Specter.

SEN. SPECTER: Thank you, Mr. Chairman.

We have to move with dispatch on this very important matter. It is worth noting the prodigious efforts which were undertaken in the last Congress. We had six -- we had five hearings at full committee, six markups, with a total of



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357 amendments being circulated, and 60 votes taken at the committee level. We were given a deadline by the majority leader, and we came back the day after a recess, convened early in the morning, worked about 10 hours, reported a bill out.

On the Senate floor, there were 228 amendments filed. Forty roll call votes were held. Twenty-seven amendments were adopted, and the bill was finally passed by a margin of 62 to 36. And then we could not come to agreement with the House of Representatives, which wanted an enforcement bill only.

I review those prodigious efforts made last Congress to emphasize the kind of tough job we have ahead of us. And it's going to require cooperation by both Congress and the administration to get there.

The big obstacle we faced last year was the issue of amnesty. And if someone has a better idea on how to handle these 11 million undocumented immigrants, we're open to suggestion. But this is what last year's bill provided: a criminal background check, a meaningful penalty, back taxes, stand in line, learn English, and having a job.

Mr. Secretary Gutierrez, is there anything more that can be done to impose sanctions and penalties than that to avoid the categorization of amnesty?

SEC. GUTIERREZ: I think the other thing I would just add to that is to not -- to ensure that they don't have an advantage, that somehow they don't have an advantage because they happened to come to the country illegally, and that would add to your list.

SEN. SPECTER: Well, we have provided that by requiring they go to the end of the line.

SEC. GUTIERREZ: That's right.

SEN. SPECTER: If somebody can come up with a tougher line, we are open to suggestions, but it seems to me that that is not amnesty. And I think to be successful in getting this bill passed, we have to persuade first the House of Representatives, or perhaps first the American people and then the House of Representatives, that it is not amnesty.

You came to this country from foreign shores. You're Exhibit A. My parents are Exhibits B and C. We have lots of exhibits, but how do we persuade the American people that this is as much as can be done in dealing with the 11 million undocumented immigrants. We'll deport those with criminal records where they are not qualified. That is manageable, but you can't deport 11 million people.

What more can be done, Secretary Chertoff, on that subject to deal with the critical issue of amnesty at the outset?

SEC. CHERTOFF: Obviously, Senator, things like penalties, as Secretary Gutierrez said, making sure that there's no advantage to people who came here illegally, requirements like learning English, and things of that sort -- those are certainly measures which I think would demonstrate to a lot of people that the individuals are getting right with the law. Now you're going to get differences of opinion about what kind of penalty is appropriate, as you do in almost every other area. But it seems to me, this is --

SEN. SPECTER: Secretary, I have to interrupt you. I want to ask one more question before my time expires, and I want to observe the time meticulously. I would appreciate it if both of you would think through this amnesty issue and find the best arguments we have or what else can be done to eliminate this argument. Because it is an impediment in dealing with the 11 million undocumented immigrants.

I think we need to focus on the advantages which we derive from having talented people come to this country. And other countries frequently complain about the brain drain which comes to this country. Bill Gates of Microsoft, an enormously successful entrepreneur, wrote just last Sunday in The Washington Post -- the need to expand the number of H1-B visas to improve the number of people who can come to this country, who want to come to this country, to meet our changing scientific and technological, industrial needs, with only 65,000 temporary visas now.

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Secretary Chertoff, what do you think we ought to do on that issue?

SEC. CHERTOFF: Well, I do know -- and I know Secretary Gutierrez can talk about this, too -- this competitiveness issue is a big deal. Obviously, this is a little bit different than the issue of the illegal migrants who are coming to pick lettuce or work in hotels, because we're talking about knowledge-based workers. Nevertheless, obviously Congress is going to want to probably look generally at the issue of how we deal with the visa issue, recognizing that first and foremost, our immigration policy should be one that serves the United States. That's our number one priority here.

SEN. SPECTER: Thank you, Mr. -- thank you very much.

Thank you, Mr. Chairman.

SEN. LEAHY: Senator Kennedy.

SEN. EDWARD M. KENNEDY (D-MA): Thank you, Mr. Chairman, and thank you, Judge Chertoff, Mr. Gutierrez. Thank you very much for being here.

I think we've just had a review about what the words "amnesty" mean and also what is in the legislation. In this legislation, there is no special treatment, there is no free pass, there is no jumping of the line, there is no total forgiveness, there's no unconditional pardon. Senator Specter has pointed out the requirements that were in the legislation the last time; I imagine it will be included on this legislation.

Let me mention just on one of the requirements, and that's learning English, Secretary Gutierrez. At the present time, we have 18,000 people in my city of Boston, Massachusetts, who are in line trying to learn English at the present time, and there's not adequate funding for that program. (Light applause.) And I think we have to try, if we're going to make this a requirement -- which I support -- we have to be able to give the kind of opportunities for people to learn that are desirous of doing so. We can talk about that at another time, but I make the point now. You can -- if you want to make a brief comment -- I really want to get on to other things.

SEC. GUTIERREZ: I think it's a great point. And learning English is job number one, and it opens up vast opportunities. So --

SEN. KENNEDY: Now let me ask Mr. Chertoff, we understand that the president is going to be involved in a comprehensive legislative effort.

Am I correct in that understanding?

SEC. CHERTOFF: As the president said last year, he's interested in being very engaged with Congress on immigration reform across the board.

SEN. KENNEDY: And he wants to work with us to get that to pass in the Senate --

SEC. CHERTOFF: That's correct.

SEN. KENNEDY: -- and he'll also work with us to get it passed in the House of Representatives?

SEC. CHERTOFF: That's correct.

SEN. KENNEDY: He believes that this is in our national interest to get this job done.

Let me ask you, from your own review, what it takes in terms of these elements to develop the -- you've outlined, and in the legislation there's a very detailed program that is necessary in terms of border security. What is your own best estimate of the time it's going to take to develop the tamper-proof card, both in terms of availability in country and also in terms of enforcement here?

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SEC. CHERTOFF: Well, of course, as we currently stand right now, there is no legislative mandate or appropriation to have a tamper- proof card in this area. But we do have other similar mandates in other areas. The technology exists. The business processes exist. We are in the process of using them now in a variety of different areas. Once Congress passes a measure that actually lays out the dimensions of the requirement, it's simply a question of scaling up the technology and funding the technology in order to make sure you can distribute the card. But the technology exists. I think that Secretary Gutierrez has a display card. It's not a new technology.

SEN. KENNEDY: Well, can you give us at least a ballpark time frame? Technology is out there. The resources have to be made available. But then we're talking about what period of time? Are we talking about 12 months? Are you talking about 18 months? Are you talking two years? What is generally the estimate of the administration?

SEC. CHERTOFF: Again, since we don't have an actual piece of legislation to work off of, it's hard to give an estimate. I can give you examples from other kinds of measures we have now. We have a Western Hemisphere Travel Initiative measure to get a secure card, we have a transportation workers measure, we have a Real ID measure. These are looking to take anywhere between a year, maybe 18 months and two years. Of course that requires that everybody be aggressive and disciplined in moving forward with these efforts.

SEN. KENNEDY: My time is moving along.

We have -- I'd be interested also in your estimates that it will take, in terms of this adjustment of status, or the earned legalization, what your sense of timing would be on that. In this legislation we crack down on passport fraud, visa fraud, document fraud, illegal entry, smuggling, gang activities, firearm offensive, drunk driving, money laundering -- all of those activities.

As a former judge, don't you agree that we must ensure that all the people in our system are going to have at least an opportunity to be heard before an impartial adjudicator or --

SEC. CHERTOFF: Well, I agree --

SEN. KENNEDY: I just want to mention that we -- if you get a speeding ticket, you have that kind of opportunity.

We're talking about more serious issues here; how are we going to make sure that we're not going to catch Americans -- legitimate Americans up in this whole process and that their rights are going to be preserved.

SEC. CHERTOFF: I do agree we ought to preserve people's rights, but I do have to caution this. Right now when people outside the United States apply for adjustment of status if they are refused entry, with very rare exceptions they don't get access to a lot of litigation.

And the one thing I will say to you is that you have to be very careful about creating a lot of process. A lot of judicial review could break any system of immigration reform. And I can tell you, having been a judge, frankly, and having sat in cases involving immigration review, they are time consuming. If we wound up with millions of people challenging every determination in federal courts, I think the judges would be unhappy and I think you would see a very, very serious practical problem.

SEN. KENNEDY: (Off mike) -- Mr. Chairman.

SEN. LEAHY: Thank you, Senator Kennedy.

Senator Hatch.

SEN. ORRIN HATCH (R-UT): Thank you, Mr. Chairman.

I was interested in your comment, Secretary Gutierrez, that many of these folks, these approximately 12 million people, probably do not want to be citizens. They just want to support their families, they want to be able to work,

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and they may very well be willing to, if the approach is reasonable, become guest workers. Do you have any idea approximately how many of them would not choose to be citizens if they had their --

SEC. GUTIERREZ: I don't have a number. And I heard Secretary Chertoff use some statistics about a previous experience we've had.

SEN. HATCH: Maybe you want to give that. That's on the Simpson- Mazzoli bill, I guess.

SEC. GUTIERREZ: Yeah. Anecdotally and just what I have read is that many people would like to go back home after having worked in the U.S. and perhaps live the rest of their life there. But today we don't know that because they're not coming out.

SEN. HATCH: They're afraid to come out right now. I suspect that's true. When the Simpson-Mazzoli bill came up and was passed in 1986, I voted against it because I thought that it did give blanket amnesty, but do you have any statistics, Secretary Chertoff, on how many of them actually became citizens under the amnesty approach of that?

SEC. CHERTOFF: My --

SEN. HATCH: They at least called it amnesty back then.

We haven't done it in the Senate bill.

SEC. CHERTOFF: My statistics --

SEN. HATCH: And we haven't called it amnesty.

SEC. CHERTOFF: The statistics that I've been given indicate about a little over a third applied to become citizens, so that the majority, a significant majority, did not choose to become citizens.

SEN. HATCH: That's interesting. On the biometric cards that you raised, if we're going to have some absolute way of identification, so that our businesses are not called to do the law enforcement aspects of this, then to have a way of figuring out who is and who is not illegal, then biometric cards may be the way we are going to have to go.

But we did pass REAL ID in the -- I think it was the supplemental appropriations bill last year. Or was it in 2005? But we're finding in Utah that it's -- they believe it's an unfunded mandate that puts a tremendous burden on the states. And it's estimated it would cost about \$11 billion to implement that program and then an ongoing set of costs thereafter.

I do believe we've got to go to that, but we can't just saddle the states with that type of billions of dollars. I think in Utah it would cost about \$5 million right off the bat and then probably an equivalent amount of money to keep it going thereafter. What do you have to say about that?

SEC. CHERTOFF: I'm going to have more to say tomorrow because I think we're going to issue a proposed rule-making, which I think will answer some of the questions and relieve some of the anxiety about this.

But I do need to make this point. Secure drivers' licenses was maybe the top recommendation made by the 9/11 commission. It's not only critical for national security and homeland security; it also happens to be a very big step forward in protecting privacy.

So what we -- while we want to work with the states to have a disciplined but reasonable approach to implementation, and we're going to see if there's some ways we can give some financial assistance, at the end of the day, this is a very, very important 9/11 commission recommendation that we are committed to seeing put into effect.

SEN. HATCH: I like what I'm hearing from both of you today, in large measure, because you're making it very clear that you don't want this to be an amnesty program.

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There are some tough cases, though. People who have been here decades, are good members of the community, religious people who've worked -- who are worker -- are hard workers, family-oriented -- we're going to have to resolve those, and how we can resolve them -- I think the current system is in such a shambles that it's pathetic.

So the more we can reform the current system -- and back to H1-B -- the Chinese are educating 300,000 engineers a year. We educate 60,000, half of whom are foreigners and many of whom then go home to their countries and educate their people, in competition with us, where they'd love to stay here and work as maybe not citizens, but at least as people who have the credentials to work. And I think Bill Gates was absolutely right on that.

And we need to up those figures to -- but every time we try to up the figures on the H-1B -- Ph.D, engineers and scientists and others that are going to be crucial to keep our country moving ahead -- we then have the other side coming out and saying, well, you're being unfair because you're taking care of them but you're not taking care of the average person.

How are we going to balance that? Because I personally believe we've got to expand the H-1B program, as Bill Gates and almost everybody in the high-tech world believes, and then of course at the same time do some reasonable things without granting amnesty and having people earn their right to citizenship the way you've been talking here today. But I'd be happy to hear your point of view.

SEC. GUTIERREZ: On the issue of --

SEN. HATCH: Wouldn't mind having you talk about the Basic Pilot Program, too, and what's working; what isn't.

SEC. GUTIERREZ: Okay.

Senator, just on the issue of high-skill workers, what I hear very often from businesses, in the high-tech field and other fields, where they cannot fill their high-skilled engineering, science-based jobs as quickly or as readily as they would like. We have students come over from the world -- India, China, primarily. They get the best education money can buy, and then they have to go back home. They can't stay here and apply their skills. We believe that we should be able to do better than that in order to serve our competitiveness needs as a nation.

SEC. CHERTOFF: With respect to Basic Pilot, Senator, let me just say, that has been a successful program. It needs to scale up. What it enables employers to do is to check online to see if they're getting a bogus Social Security number or one that doesn't match the name. I do have to make it clear -- it's not a total solution. When people have an outright identity theft, where they steal a real name and a real number, it's not picked up by Basic Pilot. And for that reason, I believe there is legislation pending now in the Senate to enable -- to lift the current restriction that prevents the Social Security Administration from advising us when they detect cases where identity theft appears to be going on because the same number and name are appearing in multiple locations.

SEN. HATCH: Well, thank you both. I appreciate you being here.

Thank you, Mr. Chairman.

SEN. LEAHY: Thank you Senator Hatch.

It's interesting when you talk about the unfunded mandate on the states. I know that's a problem for driver's -- it's a problem with mine. Would the administration, if they're going to push for this driver's license, would they agree to propose in the president's budget to fund it?

SEC. CHERTOFF: I think, Mr. Chairman, you have the president's budget. It has been submitted, and I think there is some funding, but it's certainly -- I don't think the budget proposes to pick up the entirety of the cost. I will say that I have spoken to a number of governors and states that actually are in the middle of doing an overhaul of their license process, and they welcome moving forward with this.

What they're looking for are uniform standards, and we expect to provide those in the next couple of days.

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SEN. LEAHY: Okay. The Republican governor of Vermont disagrees with that.

We'll set the clock back, and Senator Feinstein.

SEN. DIANNE FEINSTEIN (D-CA): Thank you very much, Mr. Chairman. Thank you both very much for being here today.

I come from the state, as you know, which has the largest number of people -- newcomers coming into the state and generally staying in the state. I am now of the opinion that we may have reached too far in the comprehensive bill and that we ought to take a look at doing this in tranches. We've passed the first tranche, which was the border security.

The second tranche, it seems to me, are two things -- the AgJOBS bill, because it is a system for legalization that is not an amnesty in an industry that depends on the undocumented worker, and it would essentially provide a path to legalization for 5 million people who are willing to work in agriculture for up to three years. It has also passed out of this committee. The second act would be the DREAM Act, which has also passed out of this committee.

My own view of the last bill now was that the visa expansion was too wide, too deep and that the tranche Hagel-Martinez compromise subjected itself to fraud and was problematic, and that the guest worker program was too big.

It is my view that if we are able to find a path to legalization for the 11 million people that are here, the guest worker program as such, outside of H-2A and AgJOBS, is not really mandatory or necessary.

The question I wanted to ask you both, in looking at how the 11 million people could be handled to avoid the amnesty claim and to create a structure, the thought occurs as to whether we could use a point system. In other words, an individual would be accorded points -- points for length of time in the country, for education, for language, for children who might be legal, for community service, for the absence of a felony record -- so that those with the most points would come first.

As you know, Canada uses a point system with respect to legal entries. My question would be, have you looked at this as a possible methodology for a structure to be able to handle the 11 million?

SEC. CHERTOFF: We're aware that people have suggested something of that sort, and we know that other countries have that. You know, one question is are you talking about a point system for those who are admitted into the program in the first instance for temporary work, or for those who would at some point be eligible for citizenship?

SEN. FEINSTEIN: For those who are already here in undocumented status, the 11 million, Secretary Chertoff, that you responded to -- large in number, difficult to handle.

SEC. CHERTOFF: I think I would say that what needs to be considered in addressing that approach is -- which certainly has, you know, from a -- in principle, there are some interesting elements and some attractive elements. But you have to consider, first of all, are you going to create an incentive, at least in the first instance, to bring those 11 million into a regulated system, because that's ultimately, at the end of the day, what we have to do to manage that problem.

SEN. FEINSTEIN: The answer would be yes.

SEC. CHERTOFF: And second, is whatever system is put in place cannot have so many different variables that it becomes difficult to adjudicate. It's one thing to say, for example, that lack of criminal record has to be adjudicated -- we all agree on that. When you talk about length of time in the U.S., what kind of documents and proof will establish length of time? Is it going to be a complicated process? Will we accept testimony? Will we accept affidavits? And then whatever the answer to that is, you have to multiply by 11 million.

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So, without suggesting that it's an absolutely great idea or an absolutely difficult idea, it's certainly something worth exploring, as long as we keep workability and practicality very much in the forefront of how we look at it.

SEN. FEINSTEIN: Thank you.

Secretary Gutierrez?

SEC. GUTIERREZ: Yes, I agree with Secretary Chertoff. There are some interesting aspects to it. It really comes down to can we execute it, can we implement it. Because simplicity I think is going to be our best friend here. And as we add variables, it's going to make it more complex and more difficult to execute. So for me, it would be an issue of workability.

SEN. FEINSTEIN: I would like to work with you to try to see if we can't come up with something that would be acceptable.

It -- the task is so daunting because what you're saying is, if it's complicated, we can't handle it, because there are so many people. Well, if there isn't a structure to it, if there aren't requirements, it becomes in the lexicon of some an amnesty. And that's really not what we're talking about. We're talking about people who have been here, who have worked, who have families here, who aren't going to go home. And it seems to me that there should be a methodology that we can work out to avoid the amnesty, to do it with some order, and to have some understanding of what it is that we're doing.

SEC. CHERTOFF: I think we agree with that. And I think that, again, the devil is always in the details, as they say, on the practical side of this.

SEN. FEINSTEIN: Thank you.

Thank you, Mr. Chairman.

SEN. LEAHY: Thank you. Thank you, Senator.

Senator Grassley.

SEN. CHARLES GRASSLEY (R-IA): Thank you, Mr. Chairman.

I'm going to ask my questions of Secretary Chertoff. I monitor fairly regularly the actions of the U.S. Citizen and Immigration Service. The director is committed to preventing fraud. We've seen some improvement. There are still some major problems with the processing of immigration benefits. This agency can't handle amnesty for 12 (million) to 30 million people when it can't even handle its current caseload.

The agency is 99 percent funded by fees. But how does the agency plan to use fees to implement an amnesty program, one? Two, given the president's request of 30 million (dollars) for fiscal year 2008, which would go towards an employment verification system, do you really think it's feasible to implement a temporary worker program this year? And three and last, what are you doing to prepare for the inevitable mess that an amnesty program would create?

SEC. CHERTOFF: Well, first of all, I'm going to differ by saying I don't think -- I think the president's been crystal-clear he does not want to have an amnesty program. So --

SEN. GRASSLEY: But my answer to that is, if it walks like a duck and quacks like a duck, it's a duck. But go ahead and I'll accept your --

SEC. CHERTOFF: Well, as -- I guess I'm going to respectfully disagree --

SEN. GRASSLEY: Okay. Go ahead.

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SEC. CHERTOFF: -- with this being applied to what the president has been talking about.

In terms of the issue of our ability to manage the caseload, I'd note, for example, that we have essentially eliminated the backlog over the last few years, which is what the president promised when he came into office.

There is no doubt that if we were going to need to assimilate and get secure identification for the people who are in this country illegally, and also any temporary workers, there would need to be at least a significant initial investment in money and time to design and fund the system. The hope is it would be -- the money would be recouped through fees. So I think net we would be -- we would not be out of pocket, but I think we have to be completely candid that there would need to be some significant resources applied to this over the period of time it takes to implement it.

SEN. GRASSLEY: Okay.

Next point is in regard to getting a briefing. My staff has asked for a briefing on Robert Schofield, an immigration official who accepted bribes in return for approving citizenship for aliens who were not qualified. Since Mr. Schofield pled guilty months ago and his case is no longer pending, I would like some answers. Would you commit to helping my staff get a briefing from your department?

SEC. CHERTOFF: Yes.

SEN. GRASSLEY: Okay, thank you.

The next one is: I'd like to have an answer in writing, but would you listen, please, and not answer now, because I've got some other questions?

We met over a month ago -- you were kind enough to do that -- to discuss the worksite enforcement against Swift, including the need to improve the Basic Pilot Program. One of my concerns has been the hiring of illegal aliens in critical infrastructure sites. Every other week, it seems, we're hearing about illegal aliens working on military bases.

In response to my question that day, the day we previously met, is that the Department of Defense isn't even using the basic program. A few weeks ago, the Senate unanimously passed a measure to prohibit the companies from government contracts if they are not found to hire -- if they are found to hire illegals. It would encourage companies to use the Basic Pilot Program, then.

But we wouldn't need this measure if the federal government was requiring contractors to use the basic program. In other words, we don't need to pass a law. It can't be done today. The Department of Defense, for example -- or in other words, it can be done today; we don't even have to pass a law to do it. The Department of Defense, for example, should have a policy in place that requires contractors to use this program; airports and power plants as well. I want to know if it's going to be done and to what extent.

Then, a question on employer verifications, and I'd like a very short answer on this. It's likely that Congress will mandate the use of an electronic employment verification system for all business in the United States. Can you confirm for us today that your department is ready and willing to implement a mandatory system for all employers?

SEC. CHERTOFF: We've doubled our capacity. And I think although we will need some lead time, we will be in a position in the near future to be able to offer that.

SEN. GRASSLEY: Your department has been working to implement the national standards for driver's license, mandated under the Real ID Act.

I'm told that about seven states are close to complying. One of those states is my state of Iowa.

What would a delay in the Real ID Act mean for the states that are ready to go, and what incentive would other states have to be compliant?



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SEC. CHERTOFF: I think a deal for states ready to go would actually create more uncertainty and difficulty for them. And that's why what we're going to propose to do is to, under the law, provide extensions for states that need them, but continue to move forward for the states that are poised and ready to implement the law.

SEN. GRASSLEY: Mr. Chairman, I see three lights on. So which -- how much time do I have left?

SEN. LEAHY: Well, you're 38 seconds over your time.

SEN. GRASSLEY: Oh.

SEN. LEAHY: Do you have another question you want to ask? I'll certainly --

SEN. GRASSLEY: It would be on -- one on visa revocation. Could I --

SEN. LEAHY: Go ahead, and we'll give an equal amount of time to Senator Feingold.

SEN. GRASSLEY: Okay.

I've been pushing to change the law when it comes to revoking visas of people in our country that have suspected ties to terrorism or criminal conduct. Normally, a consular officer has the full authority to deny a visa on such grounds. However, if a visa was revoked today for someone on U.S. soil, the decision could be taken to court.

Can you tell us why the department wants to change to a law that would prohibit the judicial review of revoked visas?

SEC. CHERTOFF: I think for precisely the reason that you just indicated. The fact that we can prevent someone who's coming in as a guest, basically, we can say you can't come in overseas, but once they come in, if they abuse the terms and conditions of their coming in, we have to go through a cumbersome process, that strikes me as not particularly sensible. People who are admitted as guests, like guests in my house, if the guest misbehaves, I just tell them to leave. They don't get to go to court over it.

SEN. GRASSLEY: Thank you very much.

SEN. LEAHY: Thank you very much.

Senator Feingold.

SEN. RUSSELL FEINGOLD (D-WI): Thanks very much, Mr. Chairman. I'm pleased that the committee is once again taking up the critical issue of comprehensive immigration reform. This issue is too significant to put off, too important to our national security, to our economy, and most importantly, to the millions of people whose lives will be affected.

We need to secure our borders, we need to fix our broken immigration laws, and we need to deal with the fact that there are millions of undocumented individuals in this country, and we need to do it now.

We also need tough enforcement mechanisms, but we can be strict while still providing individuals with the type of basic due process and judicial review that is consistent with the rule of law and our constitutional system of government.

I do sincerely look forward to working with the committee to report to the Senate floor a bill that takes a pragmatic and realistic approach to immigration reform, and I appreciate the support of Secretary Chertoff and Secretary Gutierrez for comprehensive immigration reform.

Secretary Chertoff, good to see you again. I want to raise the issue of the material support bar in the immigration law, and in particular how it relates to the Hmong population, a number of whom live in Wisconsin. As you are well aware, many of the Hmong who fought with or supported the United States in the Vietnam War will potentially face

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denials or lengthy delays of their applications to become refugees or to adjust their immigration status here in the U.S.

And the reason for this is the very same reason they are eligible to be resettled into the United States if they fought with or supported the United States in the Vietnam War. Their applications are put in jeopardy because of changes made to immigration laws by the passage of the REAL ID Act, which defined the term "terrorist activity" so broadly that it basically covers anyone who has ever used a firearm.

Are you planning to apply a waiver to the Hmong population, either to those in the United States who are found ineligible for adjustment of status because of the material support bar provisions, or to those outside of the United States who are filing for refugee status?

SEC. CHERTOFF: I believe I signed a number of waivers in the last few weeks. I have to confess I don't particularly remember whether the Hmong were included. But I can get you the answer to that.

SEN. FEINGOLD: Thank you. Please do, because this is a problem that's been around for several years, and I'm concerned the department thus far has applied a very limited number of waivers to the material support bar. Can you give me a sense of what your time frame would be for determining waiver eligibility for the Hmong?

SEC. CHERTOFF: I think I may have done it. The reason I'm hesitant is I think I may have done it already but I can't specifically recall. So if it's done --

SEN. FEINGOLD: My understanding from my staff is it doesn't include the Hmong at this point.

SEC. CHERTOFF: All right. I'll have to look and find out. It just -- it needs to be analyzed. It shouldn't take a very long time.

SEN. FEINGOLD: Well, I was all over my state last week and this came up a great deal. It's a matter of great concern. And let me just say also, to the degree this problem is statutory, if it is --

SEC. CHERTOFF: No, I think we -- we can deal with this. I think the statute gives us the flexibility. And as I say, I've signed a number of waivers recently and I think we can deal with this under the existing law.

SEN. FEINGOLD: Well, I'm pleased to hear that. If that's true, that's great. If there is some statutory problem, please let me know immediately. But I appreciate your commitment to work on this matter.

Secretary, the last time you were before the committee discussing immigration reform, we talked about the fact that opening more channels for workers to legally enter this country would allow us to focus our enforcement efforts on those persons who actually pose the greatest threat to our national security. You said then, quote, "I believe the effectiveness of our border security and enforcement initiatives is tied to creating legal channels for workers our economy needs to continue growing," unquote. And a 2005 Cato Institute study supports your statement. The study found that the probability of stopping an undocumented immigrant has fallen over the past two decades from 33 percent to 5 percent, despite the fact that we have tripled the number of border agents and increased the enforcement budget tenfold.

Do you continue to believe, as I do, that effective border security is dependent on creating more channels for legal immigration?

SEC. CHERTOFF: I do agree with the sentiment I expressed last year, but I don't want to agree with the Cato study, which I'm not in a position to associate myself with and I have to say sounds -- I think a 5 percent capture rate sounds like it's a really incorrect estimate. But the general principle I agree with.

SEN. FEINGOLD: Let me just reinforce that by pointing that the president -- President Bush, in his State of the Union last month, said that providing realistic, legal immigration channels would mean that immigrants looking for jobs, quote, "Won't have to try to sneak in, and that will leave Border agents free to chase down drug smugglers

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and criminals and terrorists." I agree with the president on this. This is one reason why immigration reform is really so important.

Secretary Chertoff, I'd like to talk just a bit about border enforcement. We're in agreement that border security is an absolutely critical part of immigration reform. I think we also agree that the methods we employ should be as effective and as cost-efficient as possible. I understand the department is implementing some actually promising new technologies to help secure the border. I'd like to have you tell us a little bit about the high-tech components of the department's SBInet program.

SEC. CHERTOFF: We are currently in the process of rolling out the first 28-mile stretch of SBInet. And in the area of high technology, I was at the border a week ago and saw ground-based radar that we have currently deployed in Arizona that allows us to actually scan 20 kilometers from a single fixed point and immediately hone -- home in with a camera on illegal migrants so that we can intercept them. In fact, if I'm not mistaken, I have a recollection that in the last few weeks, we've actually apprehended a murderer coming across the border using this kind of technology.

There's no question in many parts of the border the most cost-effective and most efficient way to intercept -- detect and intercept illegal migrants is high tech, things like radar.

SEN. FEINGOLD: I'm encouraged to hear that. And would you specifically say that in many border areas, those types of technologies will be both more effective and less expensive than building hundreds of miles of fencing, which has estimated costs of 3 million (dollars) to \$4 million per mile?

SEC. CHERTOFF: I would agree with that. Fencing does have its place, however, in some areas, and some areas, the high tech is more effective.

SEN. FEINGOLD: Thank you, Mr. Secretary. Thanks very much.

SEN. LEAHY: Thank you.

And Senator Kyl.

SEN. JON KYL (R-AZ): Thank you, Mr. Chairman.

First of all to Secretary Chertoff, I'm just reading some clips from the Arizona newspapers of this morning. The Arizona Republic headline: "Another Chief of Police Slain Along The Border." This is in the Sonoran town of Agua Prieta, which is right across the border from Douglas, one of the chief areas of smuggling. Police Chief Ramon Tacho Verdugo -- 40 bullets hit him in an ambush, which officials say is almost certainly involved in control of the smuggling routes into Arizona. Rival organizations are vying for control of these lucrative quarters.

His death followed a number of related killings in the area. In fact, at least 12 lawmen have died in the past year, including the chiefs in Tijuana and Nuevo Laredo.

The newspaper goes on to say the killings have made many police thinking twice about taking a top post. The Sonoran town of Naco, for example, has had 12 police chiefs in the last three years. The last one to resign was Tacho's brother, the fellow that was just killed.

There are reasons to secure our border other than simply to stop illegal immigration. I -- is that not true? And in fact could you tell us what the percentage of people apprehended coming across the border last year actually were criminals or people wanted or who had criminal records?

SEC. CHERTOFF: I vigorously agree. In fact, the principal reason to secure the border is to keep drug dealers and criminals and dangerous people out of the country. And one of the reasons we've talked about a legal channel for migration is so that we're not hunting down the housekeepers and the construction workers; we're focused on the drug dealers.

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I don't recall exactly what the figure is, but I think there's a significant percentage, around 20 percent or so --

SEN. KYL: It was over -- yeah, it was somewhere between 10 and 15 percent, on average.

SEC. CHERTOFF: Yeah.

SEN. KYL: In some areas, it was --

SEC. CHERTOFF: That are criminals.

SEN. KYL: Yeah.

One of the things that you said in your testimony -- well, before I ask you that, you talked about the ending of catch and release. There is still some unfinished business with respect to catch and release, however, with regard to people who are here illegally and we're having difficult -- returning to their home. You talked about this in your written testimony. Could you expand on that orally, just a little to that?

SEC. CHERTOFF: Yes. I mean, the key to all of our deportation, whether it's people we catch at the border and detain, or people in the interior, is, once they are removable, the home country has to take them back.

We've worked with many of our allies in actually having a very efficient system. I can tell you, however, the Chinese are still very slow to take their removable migrants back. And as a consequence, if you're looking -- if you look at the whole country, including the interior, we've got, I think, over 40,000 Chinese who have been declared removable, deportable. They're done with their court process. But we have difficulty getting the Chinese to take them back, and we're going to have to push on that.

SEN. KYL: And those people are not all in detention. In fact, probably the majority of them are not. Isn't that correct?

SEC. CHERTOFF: Correct, I mean, because they're -- in the interior, the vast majority are bailed out, or by law we have to release them after a certain period of time.

SEN. KYL: And it's not even certain that we could find them all if we wanted to.

SEC. CHERTOFF: Well, I mean, obviously once they're released, there's a risk of flight.

SEN. KYL: Right.

Now, you also talked about the need for greater sharing of information. This is reminiscent of post-9/11 discussion of our intelligence and law enforcement. But to get a handle on who's here and entitled to be legally employed, and whether or not someone might be seeking employment fraudulently, you have a variety of recommendations for statutory change, one of which had to do with sharing of data, having Social Security Administration share data with DHS.

What specifically would you like to see shared? What would be necessary for us to do in order to provide that authority?

SEC. CHERTOFF: Right now the law prohibits information which can be described as "taxpayer information," like your Social Security data, to be shared, except through a very cumbersome process. What that means is that if the same -- if Michael Chertoff with my number appears to be filing in six different places across the country, I mean there might be a reasonable explanation, but likely not. If we could have Social Security identify that and let us have that, that would give us an opportunity to be able to look to see whether we've got an identity theft problem. And by the way, it would also help the innocent victim; the real Michael Chertoff would get help.

So this is a tool which I think there's legislation that is now seeking to address.

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SEN. KYL: And this wouldn't involve a violation of people's privacy. In fact, to the contrary; it would actually assist people in protecting their privacy --

SEC. CHERTOFF: Absolutely, this protects their privacy.

SEN. KYL: And wouldn't the same thing apply for sharing of information, for example, from IRS with respect to the death of a person, so that his Social Security number would not continue to be used?

SEC. CHERTOFF: Correct. Correct. These would be actually privacy protective.

SEN. KYL: And is there any problem in -- I mean, isn't it true that we already have algorithms, and so on, that can run those programs against the database so that it shouldn't be difficult to do this, it's simply a matter of authorizing it?

SEC. CHERTOFF: Yeah, I don't think there's -- I mean, I'm sure there'll be some adjustments to the IT system. But all you're doing is comparing to see if in the same time period the same name and number have been filed in different places. It's the legal obstacle to sharing with us that I think is the real problem.

SEN. KYL: And finally, isn't it important that the Social Security database be cleaned up and operated in an accurate fashion from now on, if, A, we're going to have a valid Social Security system; B, we're going to eliminate document fraud and identity theft; and C, if we're going to be able to have an employee verification system under immigration reform?

SEC. CHERTOFF: Yes.

SEN. KYL: Thank you.

Mr. Chairman, that red light means I'm out of time?

SEN. LEAHY: It does. But --

SEN. KYL: Thank you, Mr. Chairman.

SEN. LEAHY: -- did you want another question?

SEN. KYL: No, sir.

SEN. LEAHY: Okay.

Senator Cardin.

SEN. BEN CARDIN (D-MD): Thank you very much, Mr. Chairman. And I thank you for holding these hearings on immigration reform.

It seems to me that we need to evaluate any proposal based upon several factors, the most important, of course, being the security issues. And we've had discussions here about the security issues. But we also need to know the economic impact on our country. We need to be concerned about the humanitarian aspects, and just basic fairness.

And when you look at basic fairness, I think the point that Senator Feinstein raised about amnesty is one that we have to be cautious about. People have waited in line to become citizens of America, and we need to make sure that that is respected. On the humanitarian front, it's very important to me to give people the protection of law. So I think it's important that we have some way that we can identify the people that are in this country. On the economic front, I can tell you that the guest worker program is critical to the seafood industry in Maryland. So there's economic issues here that are important to our country.

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But let me, if I might, concentrate on the security issue, because I think that's the issue that is perhaps the most perplexing and the one that is the most critically important.

Last year the Senate passed a comprehensive immigration reform bill. The House passed a bill that criminalized the activities of those who are undocumented in the United States and those who help people who are not properly documented.

So if you look at it from a security point of view, based upon the current circumstances, the current law, versus the approach taken by the Senate last year, versus the approach taken by the House, I would welcome your thoughts that for the security of this country, what is the best approach to take? Because no action is action. If we don't do anything, we have the current law. So is the current law safer for American than the bill that passed the Senate, from your perspective, or the bill that passed the House of Representatives last year? I welcome your thoughts.

SEC. CHERTOFF: I think the current situation is not a particularly good situation. I think what we need to do is to come up with an approach that addresses all elements of the problem, that does it in a way that is -- adds additional teeth to the enforcement side, that is simple and workable, and that is something that can be done in real time.

SEN. CARDIN: Now, the House took a rather limited approach. They did deal with a security wall, but they also dealt with criminalization and making it a felony conviction for those who cooperate or help or counsel, in addition to the people who are undocumented.

That approach, would you comment on?

SEC. CHERTOFF: I think -- you know, I don't think I'm in a position to go back and revive my memory about the individual pluses and minuses of each of the bills. I think starting with a clean slate, which is where we start here, I think the principles which the president outlined last year are pretty straightforward, you know: tough enforcement and a workable temporary worker program, including one that addresses and brings into a regulated system the undocumented workers who are here already.

SEN. CARDIN: Well, do you need additional tools in order to enforce our laws?

SEC. CHERTOFF: Sure. I mean, some of the things we've talked about are, for example, sanctions for those who run checkpoints, who disobey DHS officers; tougher sanctions for employers; administrative sanctions so that the systematic violation of the law doesn't become a cost of doing business. And also, equally important, if not more importantly, not weighing down the process with a lot of different complicated adjudications and determinations that in real life would sabotage our program.

SEN. CARDIN: I think that's a fair analysis, that you're being targeted in what you need. Whereas the approach taken by the House last year would have made another maybe 10, 12, 14, 15, 16 million targets -- potential targets of criminal investigations. Certainly it seems to me it will weigh down the ability to really go after the people that are the ones that we need to in order to make sure we have an enforceable system.

SEC. CHERTOFF: Well, I don't know that I want to characterize any of the legislation that was there last year. I'm looking forward. I don't see much profit in looking backward. And looking forward, I think we've outlined what it is that we need.

SEN. CARDIN: I thank you.

Thank you, Mr. Chairman.

SEN. LEAHY: Thank you.

And Senator Sessions.

(Pause.)

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At least that's my understanding -- was Senator Cornyn here first?

SEN. JEFF SESSIONS (R-AL): I believe he was.

SEN. LEAHY: If that's correct, then I'll --

SEN. SESSIONS: I believe maybe Senator Coburn was ahead of me.

SEN. LEAHY: Oh, I'm sorry. I was going by the --

SEN. SESSIONS: Thank you for --

STAFF: They were all here before the witnesses started testifying. They can go in order they want.

SEN. LEAHY: Which order, gentlemen? You were all here before the witnesses started testifying. So if you want to yield and let Senator Cornyn go first, that's fine.

I'm going to be here for the whole hearing, so --

SEN. SESSIONS: Well, I'll just take my time.

SEN. LEAHY: Okay.

SEN. SESSIONS: And we've probably wasted time already. Thank you. I don't know exactly how you calculate your rule there, but I know it's objective and fair.

Secretary Gutierrez, it's great to have you with us. And congratulations on helping us with our revenue deficit. The economy has grown. We had revenues up 15 percent in '05, 12 percent in '06 and I hear you're hoping to have 10 percent increase in revenue to the U.S. Treasury without increasing taxes, and that's good news. Thank you for that.

And, Secretary Chertoff, I admire you and your leadership. You've got a very, very difficult job. I think I told you when you took it, I'm not sure anybody could succeed in it, but you're doing about as well as could be expected under the circumstances.

And I would just say with regard to my chairman's comments about the border barriers, that bill passed -- one vote of 83 to 16, and I think the other vote was about 94 to 3 to do that, and it complied with your request to build barriers in a way that would be helpful, as they've proven to be helpful in San Diego. And, frankly, without some barriers, I don't think we are serious about what we mean to do here.

And I share Senator Specter's concerns about work going on behind closed doors. Last year, we had this matter basically sprung on us. They tried to pass it without any amendments. Senator Frist pulled the bill down, and we eventually did have amendments and a discussion, but it'd be better if we had a much more open process.

Let me raise some fundamental questions. This is what I think is concerning the American people. If there are two applicants who want to immigrate to the United States and both are from Guatemala -- one is the valedictorian of his or her high school class, speaks fluent English and has had a year or two of college or technical training but no relatives in the United States; another is a -- did not finish high school, does not speak English, has had no additional training or skills -- and they apply to come to this country, who has the clear advantage, Secretary Chertoff, under the current law?

SEC. CHERTOFF: Right now we -- the advantage goes to the person with the rather distant family relationship. The current visa allocation -- I think last year it was approximately 120,000 family members getting green cards, not -- I don't mean spouses or minor children, I mean married siblings coming in. And that's apparently a legacy of a fairly long-standing system.

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SEN. SESSIONS: In fact, the way our system works, 58 percent of the people we admit come in based on a family connection, whereas Canada, in its system that Senator Feinstein referred to which allocates points based on skills that they bring, 60 percent come in on merit or at least based on the skills that Canada felt are necessary.

Secretary Gutierrez, couldn't we do a better job of recognizing everybody can't come to the country in having a skill set factor here that could -- would be more beneficial to our economy?

SEC. GUTIERREZ: Especially for the high-skilled portion of this -- skills is what makes the difference. And we have traditionally sourced a lot of our scientists from overseas, and I believe we need to do that in the future.

In terms of low skill, that really comes down to the job and what is needed for that specific job. And if it is an agricultural job, obviously the person with the skills would be overqualified; they probably wouldn't be interested in that.

So part of this is being able to get the skills we need on the high end and then also being able to fill the jobs that we need to fill on the low end.

SEN. SESSIONS: With regard to that, I think there should be a distinction between those who want to work here in a low-skilled capacity who may not want to be citizens and those who actually apply to be full, legal, permanent residents or citizens. And I think that's where we need to be discussing.

One of my fundamental criticisms of the bill we passed last year, there was no discussion of this in any serious way. Professor George Borjas, a professor economics and social policy at the Kennedy School of government at Harvard, recommends that we as policymakers answer this question before writing any law. Quote: "What policy goals does the U.S. want to advance through its immigration rules?" Fair enough. I guess -- you nod. I guess you would agree with that.

The question is, what interest should be served, the interest of poor people or those around the world who, maybe billions, would benefit from living here if they could come, or shouldn't it be the interest of the United States, the long-term, legitimate, just interest of our country?

Professor Borjas testified before the Health Committee last year, the Labor Committee. He explained that the economic interests of the United States are not being best served by current law. And of course, Secretary Gutierrez, he also came from Cuba as a young man, so he's an immigrant himself.

He said this, quote: "Many more people want to come to the United States than the country is willing to admit. So because of this, the immigration policy needs to specify a set of rules to pick and choose from the many, many applicants. Those rules should stress family -- those rules could stress family ties, as is done now, it could stress national origin, the way it used to do, or it could stress economic values, the way Canada does, or it could even be completely random, the way the lottery system does for 50,000 visas. The crucial question that is really at the core of the immigration debate is, which set of rules should the United States have if it wants to improve its economic well-being of its population?" -- close quote.

Do you think that's a fair analysis of some of the thoughts we should give to this matter?

SEC. GUTIERREZ: Sure. In fact, Senator, I would say that the three goals that we're using to set our comprehensive plan is, one, national security, two is economic growth, and three is national unity, improving national unity and making a contribution to society. And those three goals should be met.

SEN. SESSIONS: My time is up. Thank you.

SEN. LEAHY: Senator Graham?



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SEN. LINDSEY GRAHAM (R-SC): Thank you, Mr. Chairman. I want to compliment you too for having this hearing. I think this is something we actually could accomplish as the Congress with the administration if we had the will to do it. So that's good news for the American people.

The goal is to be safe and free. And I don't think you can be safe and free without being responsible. So we have a problem on our hands, gentlemen, of 11-plus-million people who have come here illegally; what to do, how to do it, what value system we should embrace. I think we should embrace our self-interest and we should embrace American values.

And what are American values? Hard work, obeying the law, getting right with the law when you're out of touch with the law, and making sure at the end of the day you have justice.

The rule of law, if it means anything, brings about a just result.

So we're going to have some hard decisions to make, because there's some families here that have been here decades, that have done nothing but work hard. And I hope we can find a just result, living within the rule of law. But if there's not justice, it doesn't do very -- it doesn't push any value.

What's the biggest mistake we made in '86, in our last attempt to solve this problem, Secretary Chertoff?

SEC. CHERTOFF: I think the biggest mistake was, we were not tough about the enforcement side of the law. And I think that not only did it fail to meet the expectations of Congress, but I think it created a real sense of skepticism, if not cynicism, among the American people.

SEN. GRAHAM: Do you agree with that, Secretary Gutierrez?

SEC. GUTIERREZ: Yes. I would just add that -- the concept of workability and ability to execute whatever we passed in 1986.

SEN. GRAHAM: What percentage of the illegal immigrant population did not come across the border?

SEC. GUTIERREZ: My understanding today is that approximately 40 percent -- and this -- these are approximate numbers -- are visa overstay.

SEN. GRAHAM: That never came across the border?

SEC. GUTIERREZ: So they would come in through other means, perhaps an airport or --

SEN. GRAHAM: So -- and we got to build a fence; I understand that. And we've got to have a virtual fence and secure the border. That makes perfect sense to me. That's why I voted for it.

But if we did that and we said, "Job done, mission complete," we'd be wrong. Is that true?

SEC. CHERTOFF: That's correct. We need to address all the elements of the problem.

SEN. GRAHAM: As a matter of fact, if you don't get to the root cause of -- what is the root cause of illegal immigration, Secretary Gutierrez?

SEC. GUTIERREZ: I would say, Senator, is that our economy is growing. We need labor to keep it growing, and that demand needs to be supplied.

SEN. GRAHAM: Being a proud Republican, 4.6 percent unemployment is historically low. Is that correct?

SEC. GUTIERREZ: It's correct.

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SEN. GRAHAM: So one, to make the argument that illegal immigration is costing American jobs -- it just doesn't quite make sense, does it?

SEC. GUTIERREZ: Unemployment's below the average of the past four decades.

SEN. GRAHAM: As a matter of fact, there are so many segments of our economy starving for labor, if we don't deal with that, our economy is going to go backward, not forward. Is that true?

SEC. GUTIERREZ: It's correct.

SEN. GRAHAM: When it comes to the security side, Secretary Chertoff, at the end of the day, if we can't identify this workforce, this illegal immigrant population, we will never be safe. Is that correct?

SEC. CHERTOFF: Correct.

SEN. GRAHAM: And the only way we're ever going to deal with this problem is to control employment. People come to get jobs. You can make more in one day here than you can maybe in a whole week or month other places.

We need workers. They need a job, on our terms, not theirs.

So when it comes to the future flow temporary worker program, isn't part of the solution that you have to advertise, before you can hire an immigrant, that no native American -- native-born American will take the job? Is that part of the solution?

SEC. CHERTOFF: I think that's been the past practice, and I think, in the discussions in the past, all the proposals had some similar requirement.

SEN. GRAHAM: Okay. Do you recommend that we have that in this package?

SEC. CHERTOFF: I think you need to have some assurance to the public -- I don't want to be -- commit to a specific approach about advertising -- that assures people that you're not taking a job from a willing American worker.

SEN. GRAHAM: Do you believe it's possible in the next couple of years, if Congress gave you the right tools, the right amount of money, the right authorization, to create a system so every employer in America would have a chance to regularize their workforce?

SEC. CHERTOFF: Yes.

SEN. GRAHAM: And do you believe it would be fair to give them that chance because the current state of law is almost impossible to comply with?

SEC. CHERTOFF: I wouldn't agree that the current state of law is impossible to comply with. I would say it's difficult. It's more difficult than it needs to be to comply with.

SEN. GRAHAM: Can I get you -- could I get a Social Security card illegally by midnight tonight?

SEC. CHERTOFF: I don't know if you could -- (laughter) -- but I think probably an illegal immigrant --

SEN. GRAHAM: Don't sell me short. (Chuckles.)

Could you?

SEC. CHERTOFF: I don't think I could either, probably, not with my Secret Service detail.

SEN. GRAHAM: Do you know anybody that could?

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SEC. CHERTOFF: I think if your point is that it's easy to get false identification, the answer to that is yes, it -- and that is a security vulnerability as well as an immigration --

SEN. GRAHAM: It's not easy, it's ridiculously easy. Now, what America needs to come to grips with is that we don't really have any way to track who's here and why. And we need workers. And we're not going to put 11 million people in jail, nor should we. We can make people right with the law without destroying families, which we should. And we can have a workforce that brings out the best in this country.

You know, I want to make sure Bill Gates's needs are met. But the most impressive person I've ever met in my life never went to college, worked hard all their life, and that was my father.

So I don't put value on people by the title they have but what's in their heart. And there are millions of people here who can make great Americans if they got right with the law. So let's get this right and get it behind us.

Thank you for coming.

SEN. LEAHY: Thank you.

I should -- I guarantee you, I -- if I didn't worry about the legality of it, I could find your Social Security -- find mine and numerous others. You can probably get -- might not be able to do it by midnight, certainly by the end of the week -- get a fake Social Security number. I'm not suggesting people do, but I've watched how it's done, and -- as I'm sure you have, and it's pretty scary.

Senator Kennedy?

SEN. KENNEDY: Thank you, Mr. Chairman.

I don't know, Mr. Secretary, whether you saw this morning in the front page of The New York Times, "Low Pay And Broken Promises Greet Guest Workers in The United States." A rather extensive story, and in the stories which I think all of us are very familiar, they point out the -- I'd say a substantial majority of U.S. guest workers experience abuses with their paycheck, and it goes through the example.

We have provisions -- or at least we had the last time in the comprehensive program protections for monitoring these kinds of labor recruiters so that this kind of abuse we would be able to address.

But in the existing law, we know that in H1-B, the highly skilled, they can be petitioned for and they can become citizens. We're going to be, if we get this legislation on a temporary program, have temporary workers in here. Why shouldn't it be possible for employers to have the same kind of provisions so that those individuals that come on in here following a procedure, which we've outlined earlier in the day -- why -- will they also be able to be petitioned for so that they can get on the road to citizenship as well?

SEC. CHERTOFF: I assume you're talking about unskilled workers as opposed to --

SEN. KENNEDY: Yes.

SEC. CHERTOFF: Well, I mean, I think that, you know, inevitably, as Congress considers this issue and considers what the end game, so to speak, is with respect to temporary workers -- some of the sentiment I've heard here today suggests looking at the current categories and asking whether those categories ought to be reconfigured. You could certainly consider whether you want to create a category for unskilled workers, where you have an employer who has a case to be made that that person ought to come in.

SEN. KENNEDY: Well, you know, we're talking about the temporary worker program. That was in the legislation last year, where they could be petitioned, and they could get on the pathway for citizenship as well. And just to get the administration's position on that -- if you'd rather give it to us --

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SEC. CHERTOFF: I don't -- again, I'm reluctant to take positions on past pieces of legislation. I think that as we work with Congress --

SEN. KENNEDY: Well, what is your position now with regard to the temporary workers?

SEC. CHERTOFF: I think we need to have a temporary worker program that first of all addresses labor needs, that addresses the fact that we have 11 to 12 million undocumented workers and we have to bring them to a regulated system that is fair but does not advantage those workers over those who have followed the law. Those seem to me to be basic principles the president has outlined.

SEN. KENNEDY: Thank you.

SEN. LEAHY: Thank you.

Senator Cornyn?

We've had some concern on the early bird rule, which I do want to follow here. Senator Specter is going to take on the chore of keeping track of his side, and I will rely on his count of who gets here first, and I will keep track on this and we'll try to alternate sides. I apologize for the confusion to both Senator Cornyn and Senator Coburn earlier.

SEN. SPECTER: Well, thank you. Thank you, Mr. Chairman. We will keep track on this side. And we do want to observe the early bird rule, because that's the motivation for people to come early.

SEN. LEAHY: (Inaudible) -- motivation. (Laughs.)

SEN. SPECTER: And I think we agree that everybody is entitled to a first round before anybody gets a second round.

SEN. LEAHY: Yeah. I made a mistake on that. I apologize. It's -- and -- so people understand, we'll follow early bird, and we'll go alternate sides until everybody has had their first round, and I'll leave it to the Republicans. Basically what we did before, when you were chairman, I kept track of the Democratic side and I'll expect that you're keeping track of the Republican side.

Senator Cornyn.

SEN. JOHN CORNYN (R-TX): Thank you, Mr. Chairman.

Secretary Gutierrez and Secretary Chertoff, let me express my gratitude for the hard work that both of you have put in to this issue. I have been working on this issue since I came to the Senate in 2002, and frankly I think we have gone through some tough times, but we are getting to a good place. And I think a lot of the thought that's gone into coming up with a workable bill has been very constructive. And I think if we are successful, then that hard work will have been rewarded, and you both are entitled to a lot of credit.

I'm -- Secretary Chertoff, when someone asked you earlier about the reason the 1986 amnesty was a failure, I agree with your assessment that there was no real commitment to enforcement of the law. And so what the American people saw was an amnesty, with a tradeoff being worksite sanctions against employers who cheat in enforceability, and they felt like they had been scammed. And I think a lot of this profound skepticism that I hear from my constituents, and I think that we hear across America, has to do with the loss of trust that the federal government has sustained because the American people remember not -- what happened in '86.

So I think a lot of what we're doing here is trying to regain credibility, and I think that's an important function. And I want to congratulate both of you for such an emphasis on workability. If we don't come up with something that will work, then I think that we will find ourselves in the embarrassing position, that our predecessors did in '86, of scamming the American people. And we shouldn't do that, and I know you don't want to do that either. So thank you for that emphasis on workability.

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In that connection, we talked a little bit about the Basic Pilot program. And as you know, there's been a lot of concern and we've had this conversation about the Swift meat-packing plant raids by ICE.

Now, I congratulate you and your office, Secretary Chertoff, for your attempts to vigorously enforce the law, but my concern really has to do with the federal government's failure to provide good corporate citizens the means to determine whether in fact people can legally work on their premises.

And as you know, what happened is Swift complied with the Basic Pilot program, a voluntary program, but it didn't -- it wouldn't tell -- and you alluded to this earlier -- whether or not the worker actually had been guilty of an identity theft and had claimed to be somebody and had a Social Security number that was not theirs.

And as a result, this company has sustained, it estimates, about a \$30 million of business disruption, even though they are protected, by virtue of their use of Basic Pilot, from further sanctions. But is it your testimony, Secretary Chertoff, that if we were able to implement an effective system of worksite verification, the kind of biometric tamper-proof identification card that Secretary Gutierrez was displaying earlier, that that would be a good solution to that problem?

SEC. CHERTOFF: It would be a very good solution.

SEN. CORNYN: We also know that there's -- and you've alluded to this as well -- that since 9/11 we've learned that one of the ways that we've made America safer is to remove the stovepipes that have prevented information sharing between law enforcement and the intelligence community. But as you alluded to in your testimony, there are numerous stovepipes in place, legal bars passed by Congress and signed into law that prevent you from getting information that would be useful for you to enforce our immigration laws.

I believe Senator Allard has an amendment pending on the 9/11 bill that we're taking up this week that would eliminate those bars and provide you that kind of information necessary to enforce our immigration laws. Do you support such measures?

SEC. CHERTOFF: We do support removing stovepipes, and in particular, if it's what I'm thinking you're referring to, which is on the Social Security issue, I think we even asked last year to have help to remove that bar, which means we would finally be able to get a heads-up if there's identity theft going on.

SEN. CORNYN: And finally, let me just express my gratitude to you again for your willingness to meet with border mayors and business leaders, both here in Washington and in Laredo just last week. I felt like those discussions were very productive. It certainly, I think, gave those constituents of mine the sense that the federal government, and particularly people in the president's Cabinet, care a lot about their situation there on the ground, and also, I think, provided useful information to you and others at the Department of Homeland Security about how best to accomplish our goals, perhaps not with the one-size-fits-all mentality that Congress and Washington sometimes has a tendency to dictate, but one that's responsive to the need and best designed to achieve results.

So thank you for that.

SEC. CHERTOFF: Well thank you for that. Thanks to you and Senator Hutchison for arranging those meetings.

SEN. CORNYN: Thanks, Mr. Chairman.

SEN. LEAHY: Are you going to invite me down for some of those, John?

SEN. CORNYN: I beg your pardon, Mr. Chairman?

SEN. LEAHY: Are you going to invite me down to visit some of these --

SEN. CORNYN: We would love to have you in Laredo, Texas, anytime you want to come. They got great food.

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SEN. LEAHY: I used to go to -- I used to go to one Texas city fairly often when my youngest son and his wife were living there. But they're back in Vermont now.

SEN. CORNYN: In El Paso, yeah.

SEN. LEAHY: Yeah. You got a good memory. They're back in Vermont now. It's easier to visit.

Senator Coburn, and then it will be Senator Whitehouse and then Senator Durbin.

SEN. TOM CORBUN (R-OK): Thank you, Mr. Chairman.

First of all, my thanks to both of you for your service to our country. Tough times that we face and tough issues in front of you.

Secretary Chertoff, you talked about increased internal enforcement, increased border security over the last nine months; decreased number of people, decreased percentage of non-Mexicans.

What have you seen in terms of the increased egress out of the country?

SEC. CHERTOFF: You know, we don't -- we're not in a position to monitor egress through the land border, and certainly not if people return between the borders. So I can't at this point tell you that there are a large number of people who are leaving as a consequence of interior enforcement. There was some anecdotal stuff in the paper suggesting that there were people who are now beginning to leave because they were getting worried about these enforcement rates.

SEN. COBURN: I notice, Secretary Gutierrez, that we are very proud of the unemployment rate, and that's great. But that's a measure of the people that are seeking jobs. There are still people unemployed out there who aren't seeking. So it's a measure of those actively seeking jobs, not those that are not seeking. And I note that if you -- you talked about 4.4 million jobs that are out there and available right now, and we've got 9 or 10 million people that are looking for a job. That's about a 2.5 (to) 1 ratio of people who don't have a job that jobs are available. And other than the geographical disbursements or the ag differential in terms of regionalization, why do we need to have a large number of a worker program when we have 2.5 times as many people unemployed in this country as we have jobs?

Why do we need to suppress that? And then the follow-up portion to that question is is if that's really the case -- and what we've seen is the big problem in this last recovery, economic recovery is that the low- and lower-middle income salaries have not risen. And one of the reasons that they -- what are the reasons why they have not risen in terms of real wages? Part of it's health care; I understand that. But compared to other times -- and why does it make sense to have an influx of an additional workforce when we have 10 million Americans that aren't employed today and real wages for those people at those entry-level jobs aren't rising?

SEC. GUTIERREZ: I think there's three questions there, Senator.

The labor rate participation -- the percent of the population that is in the labor market has remained pretty stable. And on wages, this last year we saw actually a real increase of about 2, 2.1 percent in real wages. The broadest measure of compensation that we have is disposable income -- average disposable income, which would take into account wages, benefits, take-home pay, reduction in taxes. That number's up about 9 1/2 percent in real terms since the president took office.

The other thing I'd say about the labor and the unemployment is that the type of jobs that we are talking about here -- I believe that in general terms, a lot of our population has moved on. Our -- a lot of our young students, a lot of our children are not necessarily looking to fill jobs that perhaps they would have filled 30 or 40 years ago. And I think that suggests that as a population, as a society, we are moving forward. People's expectations of a job, their skill levels are a lot higher than they were before, and many of the jobs today that don't require skills are not the types of jobs that our people are looking for. And that's why we have these vacancies in the lower-skilled levels.

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SEN. COBURN: Just to clarify -- that 9.5 percent, 7.2 percent of that is health care costs, so it's really 2.3 percent in terms of real wages or disposable income. And if you fractionize that out to the lower-middle income or to the low-income, it's not even that great.

And again, I question the wisdom. If we really believe in markets, why would we undermine the market forces that would raise the wages of the lowest-income earners in this country by diluting the workforce with people coming in under a jobs program? I don't understand that -- why would we not want to make it more competitive and let markets raise the costs? I'm not -- I actually believe we need to have more legal immigration because I think it -- that diversity is one of the great strengths of our country. I'm not against it. But I don't understand the policy of why we would not want the market forces to actually raise the wage rates of the lowest-dollar employed people in this country.

SEC. GUTIERREZ: Yeah. The point you're making I think is a good one is how much and what is the level of immigration that we need. And to your point, we believe that the markets should determine that.

The great thing about comprehensive reform is that it will regulate the supply.

Today the supply is whatever can get in. If we determine what supply we want, who gets a card, who gets a temporary worker's permit, how many people are in the country, that will force us to limit the number of immigrants who come in. And then, over time, we can let the market decide whether that's too little or too much.

SEN. COBURN: All right. Thank you. I'm out of time. I'll wait for the second round.

SEN. LEAHY: Thank you.

Senator Whitehouse.

SEN. SHELDON WHITEHOUSE (D-RI): Thank you, Chairman.

Gentlemen, welcome. I appreciate your service.

First a political question, then an enforcement question. Looking back at the last session, we saw two things. We saw an extreme divergence of views among the president and his party in Congress, and we also saw immigration reform founder here at a time when Congress was controlled by the president's party.

And in light of those facts, as we go forward to try to put together immigration reform in this Congress, I'm interested to hear what sort of signals you all are hearing about the extent to which this administration is willing to do the political legwork of herding the cats, if you will, on its side of the aisle, so that there can in fact be a proposal that people agree on.

I think the divergence of views among the Democrats is relatively narrow and consistent with the way people tend to ordinarily disagree with each other on major pieces of legislation around here. It seems to me that within the president's party, the divergence of views is so extreme that it's going to really take a considerable effort to get anything that is acceptable. And if there isn't a really serious and sincere effort to get there, then this is all a lot of talk.

SEC. GUTIERREZ: Senator, the -- I know that the president has been committed to this from his first day in office, and it goes back to when he was governor of Texas. And so the one constant here is the commitment from the president to get something done.

I think what we learned last year is that this is such a complicated issue. It is so complex that it's going to require compromise on all sides of the aisle to get a good, solid bill. And I think we're going to see that, that it's not just one side of the aisle that needs to compromise. I think we all need to compromise in order to get a bill that serves our national interests. And that's what we're here for, and we're committed to doing that.

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SEC. CHERTOFF: I would add one thing. I think it was important over the last year to put a lot of effort and resources into tough enforcement. I think that frankly there was a lot of public skepticism built up over 20 or 30 years of what many people in the public view as lip service. And I think the changing momentum -- and I'm -- again, I want to emphasize we're not done, but we've at least -- we're moving in the right direction -- I think it's beginning to earn some credibility with the public. And that's -- keeping that up is going to be an important element of being successful.

SEN. WHITEHOUSE: Well, that's a perfect segue to my second question, which had to do with enforcement actions against corporate violators. I don't have the numbers in front of me, but I seem to recall last year the statistics were that it went from an average of about 400 successful actions a year down to about four.

I think it was a 99 percent reduction in --

SEC. CHERTOFF: That's exactly -- no, that's actually the exact opposite. It went from -- it went up to 716 criminal cases. The prior year, I think, had been like 120 or 130. And if you go back to 2002, it was one-seventh. What did happen is we moved from slap-on-the-wrist actions, where you pay a fine that's a cost of doing business, to criminal actions, which resulted in things like the guilty pleas we got yesterday, which have real teeth. And we're going to continue to do that, as we demonstrated last year.

SEN. WHITEHOUSE: Well, I'm pretty confident with my figures, and I'll double check to specify exactly what the area of enforcement was. It was against corporations. I'm not sure if it was fines or convictions, but there was a documented 99 percent reduction from about 400 per year to about four, if I remember correctly, between administrations, and I'd like to see that turned back around.

SEC. CHERTOFF: I think what you're seeing is, we moved away from civil administrative slap-on-the-wrist parking tickets to criminal felonies. You're right. We're not going to waste time doing a big investigation to fine a company \$250. It's a waste of time and effort on the part of the agents.

Just like when I was a prosecutor, we don't do little penny ante offenses. We go after big violators. When we get them, we have real teeth. And I think that if you look at the reaction you've seen in the press as well as what I've heard privately -- and the grumbling, frankly, from the corporate community -- I think it's a pretty good metric of the fact that we are rougher and tougher than anybody has ever been.

SEN. WHITEHOUSE: Mr. Chairman, I'd follow up on that in writing, and I look forward to that opportunity, Secretary Chertoff. Thank you.

SEN. LEAHY: Thank you very much, Senator Whitehouse.

Senator Specter.

SEN. SPECTER: Well, thank you very much, Mr. Chairman, and thank you, Secretary Gutierrez and Secretary Chertoff. Your testimony is very helpful.

We will push ahead in the committee to produce a bill as promptly as we can. I believe the committee will be committed to a comprehensive bill. We need to articulate the strong case we have that it is not amnesty. We need to tell the American people that the protection of the borders is serious, and that employer verification will be done, and that the government will provide the technical assistance so that employers can know who is legal and who is not, so that they can be held accountable with tough employer sanctions, and that we will look for a guest worker program which will be responsive to the needs of specific industries. If there are American workers available, we will not bring guest workers in. We will have guest workers only where American workers are not available to do the job.

And with respect to the 11 million undocumented aliens, we will structure a bill which will seek to identify those who have criminal records and do not deserve to stay here from those who do have roots and who are making a contribution. But I'm convinced that we can maintain the rule of law, protect our borders, and at the same time,



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accommodate in a guest worker program the needs of American industry and have a realistic program to put on a citizenship track those who deserve it at the end of the line. But again, I say if anybody has a better idea, we're ready to listen.

But we do appreciate the outstanding work you both have done. And we will work with you, and we will work with the House to try to structure a bill which will come out of conference.

Thank you, Mr. Chairman.

SEC. GUTIERREZ: Thank you.

SEN. LEAHY: Thank you very much.

Senator Graham, did you have anything further?

SEN. GRAHAM: Just very briefly, if I may.

SEN. LEAHY: Certainly.

SEN. GRAHAM: It is important to start with a clean sheet of paper, but I think the point we're trying to make is that we need to understand our past work product and how close to the sweet spot we are.

Would either one of you consider last year's provisions -- or the bill that passed the Senate, the provisions regarding punishment, to be amnesty? The fines, learn English, go through a criminal background check, what the Senate did last year, would you consider that to be a grant of amnesty?

SEC. GUTIERREZ: I don't have the specific provisions in my mind, but if it is a punishment, then I don't think it can be amnesty. So you know --

SEN. GRAHAM: Well, all due respect, not asking you for a recall, but there was a lot of attention paid to this, and I would think both of you during last year's debate would have to the conclusion as individuals whether or not the Senate is repeating the mistakes of 1986.

Secretary Chertoff, did you think we were doing that?

SEN. CHERTOFF: I think -- I think -- you know, I agree with Secretary Gutierrez that when there are penalties -- if the penalties are enforced -- it's not an amnesty. But I also have to say it's not just a question of convincing us; it's a question of what do the American people think. And I think that what has to --

SEN. GRAHAM: Well, the American people need to hear from their leaders, and the American people are dying to be led in a lot of areas, and the American people are very open-minded to solutions. Two out of three are open-minded to assimilating people without throwing over the rule of law.

What is the violation for illegal border crossing? Is it a felony or a misdemeanor under our current law?

SEN. CHERTOFF: I think it's currently a misdemeanor. Although I think if you've been -- and I can be -- I'm subject to being corrected; I'm working from memory. But if you are removed and then you come back again, I think it can be done as a felony.

SEN. GRAHAM: But the initial violation is a misdemeanor.

SEN. CHERTOFF: I believe, if that. Yeah. It's --

SEN. GRAHAM: As a judge, do you believe in proportionality of punishment, that the sentence needs to fit the crime?

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SEN. CHERTOFF: Sure.

SEN. GRAHAM: Okay.

Well, anyway, at the end of the day this amnesty question, as Senator Specter and Chairman Leahy has indicated, will dominate this debate. And we need to come to grips with what the term "amnesty" means in terms of the law.

And you've been a judge. And I've looked at the punishments available under the law for someone who's caught crossing the border illegally. I think they're more severe than if you were caught dealing drugs -- (chuckles) -- the first time in terms of paying fines and having to wait 11 years before you could ever get back into the back of the line. I just -- I would encourage both of you that when we come up with whatever comprehensive view of the problem that we agree upon, that you stress to the American people you're not getting away with this. You can only stay on our terms. And if you've committed a violation of the law, you're not even eligible to be considered. And you have to make yourself right with the law.

And the last comment would be that we've got to convince the American people that until you know who is here and why, we will fail again. And the ID card controlling employment is, to me, the wall that works. And please stress as we go forward the importance to the American people that we give employers notice of what they should do, and we hold them accountable when they fail. And this ID card is the key to solving this problem.

And I look forward to working with you. We can do this.

SEC. GUTIERREZ: Thank you.

SEN. LEAHY: Senator Sessions, do you have another question?

SEN. SESSIONS: I'll be brief, Mr. Chairman.

SEN. LEAHY: I'd certainly appreciate that.

SEN. SESSIONS: You know, our hearts go out to the whole world. Professor Borhaus (ph) pointed out that with regard to the 50,000 lottery slots that we have in this country, where you submit your name and your name is drawn, that of that 50,000, 5 million applied. Almost, you know, nine-tenths of the world economically would benefit if they came to the United States. We have to know that, and we have to ask ourselves if everybody can't come, are we going to think like Canada or other European countries that are revising their laws and choose people -- allow those to become on a path to citizenship that are most likely to be successful here, and also benefit the United States.

I would ask either one of you if you know these statistics. In 1997, the National Academy of Sciences told us in their study, "The New Americans," that the key to success in the United States and the ability to contribute to the United States is an education level. And this is the National Academy of Sciences, not something I came up with. Those who did not have a high school diploma would cost the Treasury of the United States \$89,000. In other words, they would draw out more in welfare and benefits than they would pay in over their lifetime. Those with high school diplomas would draw out \$31,000. But those with any college, just some advanced education, would pay \$105,000 more in a lifetime in taxes than they are going to take out.

Now, is this something that -- is this an immoral thing for us to think about? Let's just put it that way. Is that immoral for the United States to think like Canada and Australia and other nations are, that they need to think about how this person is likely to fare in the country, and focus more on the skills and educational levels that they bring?

SEC. CHERTOFF: Well, I think -- you know, this is a complicated issue, but I think one principle is very clear: Whatever we do should be that which benefits the United States. That's what we are here to do, to benefit the United States first. And while we might debate about what the best way to maximize that benefit is, I don't think there's anything immoral. I think, in fact, we have an obligation to put American interests at the top of the list by a country mile.

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SEC. GUTIERREZ: This has to be the national interest, first and foremost. The one issue that we have to wrestle with is the fact that the jobs that are available happen to be low-skill jobs because American citizens are improving their education and they are not filling those jobs. And we don't want those jobs to go overseas. And that becomes the reality that we have to confront.

SEN. SESSIONS: Well, I would just suggest again -- and I think we could maybe reach some bipartisan ground on this -- if we chose -- if we have a real temporary worker program for people focused on low-skill work, seasonal workers and things of that kind, and those people could also apply in another track for citizenship based on a competitive -- maybe they learn English while they're in the United States, maybe they take college courses at night, and they become very competitive in the application process, and then have a(n) application process for citizenship based on a more meritorious basis than we have today.

Is that something that's conceivable in your mind, Mr. Secretary Gutierrez?

SEC. GUTIERREZ: I think the important thing is that when we have a temporary workers program, that we be able to explain to you why we call it temporary. And it is always in the country's interest to have anyone who is working here improve their skills and grow and contribute to society. So yes, we want everyone to grow and to improve their skills.

SEN. SESSIONS: Secretary Chertoff?

SEC. CHERTOFF: I agree. I think that we ought to look at ways to maximize the benefit to the country in terms of how we ultimately admit people to permanent status.

SEN. SESSIONS: Well, Robert Rector at the Heritage Foundation says it's a myth that by legalizing the 11 million people here now -- about 50 percent do not have a high school diploma -- that it's going to help our Medicare, our Society Security, our long-term financial threats that are out there. In fact, it's going to exacerbate them. And he's absolutely firm in that view, and he's studied it quite in depth.

So I think we do have the right to ask what's in our national interest, and as we go forward I hope that some of those of us who have not been involved in this process of writing a bill that will soon be foisted upon us will at least have an opportunity to read it and to maybe make some amendments.

SEN. LEAHY: Thank you.

A high school diploma should not be the only criteria. I'm sure you're not suggesting that. My father was one of the leading business-people in Montpelier, employed a lot of people, printing business. It's still there, bearing our name. He never got a high school diploma, nor did my Italian grandfather, who also employed an awful lot of people in his stone shed.

Senator Coburn.

SEN. COBURN: Mr. Chairman, unanimous consent to submit additional questions for the record.

SEN. LEAHY: Oh, of course. Of course. And we will keep the record --

SEN. COBURN: If you all would respond to those.

SEN. LEAHY: We will keep the record open for anybody -- we'll keep the record open for all members for that.

SEN. COBURN: I wanted to make a comment about what Secretary Chertoff has said. And I think it's dead accurate. The American people don't trust this government on immigration. They don't trust the Republicans or the Democrats because we have not earned their trust on this issue. And I think it's very important that the process of now starting to secure our borders becomes more visible to the American public, starting to enhance internal enforcement becomes.

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And I also will tell the chairman that I think any bill that goes through the Senate that doesn't have the Isaakson amendment in it is doomed for failure. It's doomed for rejection by the American people and it will not work. We have to reestablish confidence before we address the issue of the 11 million people that are here.

And I would hope that the administration would take that position -- since they're going to be the one negotiating with the majority, it's obvious that the Republicans are not -- that Isaakson amendment that says that we will start addressing these other issues in a humanitarian way once we have certified that we have a secure border, and not until then.

And that's what the American people expect and that's what they deserve.

A couple of other questions, and you don't have to answer them other than short and I'll make them -- (inaudible).

I'd like to know about the exit portion of the US-VISIT program, because I know we're not functioning at a level there. We can't -- from both Homeland Security, where you've testified, and here, Secretary Chertoff, that's a gaping hole for us right now. We don't know -- we know who comes in; we have no idea who leaves, which means we don't know whether people are actually violating their visas or not.

SEC. CHERTOFF: We're on track to doing an air and seaport exit system. The land port is complicated -- this is going to be near and dear to the chairman's heart -- because --

SEN. LEAHY: We've had some long discussions of this, Senator.

SEC. CHERTOFF: -- we have never built infrastructure monitoring people who leave the country. Now, one solution might be to work with the Canadians and the Mexicans and get their information about who enters, which would, of course, achieve the same thing. And we're talking to them about the possibility of pursuing that.

SEN. COBURN: All right. The other thing -- and I will submit this -- just in terms of ICE agents and administrative apprehensions and the number of ICE agents and the ratio of that and whether or not we're being efficient with that. I'd appreciate you answering that by letter.

Then I have one final question. It strikes me as I go around the country that when -- and, Secretary Gutierrez, I certainly do not mean to embarrass you with this question, or Secretary Chertoff, when you were asked by the chairman about English as the official language of this country. And we don't embrace that. And, you know, I find it rather ironic -- I can be on call at my hospital and deliver a Hispanic woman who can't speak English, but her medical record is all in English. The official record of her being there, the business record, is in English, it's not in Spanish. And my poor Spanish is enough to coach me through delivering her baby.

But why would we not embrace that? Whether we have to help people come to the level of English education or English as a second language, but why wouldn't we not embrace that the official language of this country is English? It's what we operate our law under, it's what we operate -- why do we not embrace that? Why does the administration not embrace that? Why does my colleague from Vermont not embrace that, when in fact the commonality of our English is the thing that keeps us together and united as a country?

SEC. GUTIERREZ: Well, I'll say two things, because it's a very -- I think you're asking a legal question. But I'll give you my two points of view. One is, we have to do everything we possibly can to send the message out that everyone needs to learn English. And we do a great disservice to immigrants if we insinuate that it's not that necessary. That's the first thing I'll say.

Once we've all learned English, I think we all owe it to our country to learn a second language.

SEN. COBURN: I agree with you.

SEC. GUTIERREZ: And I would hate to give anyone the impression that we're -- that we think a second language is a bad thing. The first thing is English first; English-plus, which I believe is a term that other people have used. I

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think we can embrace those two, and I don't think there's any confusion regarding those two, I think there's a great deal of clarity.

SEC. CHERTOFF: I agree. And I think the president's made it clear that ultimately, as we deal with this issue of immigration, assimilation being part of the culture of the United States becomes a critical element of the policy.

You know, I think people look with alarm at what is going on in other parts of the world where there are large groups of immigrants who never actually become part of the fabric of society, and we're now seeing some of the unfortunate harvest.

The really good news in this country is, we've -- traditionally, without necessarily being legally coercive, but we've traditionally built a system that encourages people, and we need to make sure whatever we do, we continue to push this issue of becoming part of the fabric of America as a critical cornerstone of our policy.

SEN. COBURN: Do you see some danger, with having a guest worker program, that would have a persistent underclass, underpaid worker class who does not assimilate; and because we have guest worker program, rather than welcoming them in as Americans, helping them get a greater education, have them climb the ladder, rather than -- create a guest worker program that says you're in a slot, that you're not going to become an American, we're just going to use you as an underclass to supplement what we don't want to do?

SEC. CHERTOFF: I think what we have now is an underclass --

SEN. COBURN: I do too.

SEC. CHERTOFF: -- because I think when you have an invisible, fearful group of people who are nevertheless here, that is the most likely to produce an underclass. I think when you give them legal status, and therefore they get certain basic legal protections, I think that actually decreases the element of an underclass. And then, as somebody said earlier, to the extent that people, when they're here legally, get educations and move to better themselves, you know, there may be opportunities for them under existing programs.

But I think this is an area where, as the secretary said, starting out, there's far greater agreement, I actually believe, on where we need to get. The disagreement tends to be on what the best way is to get there. And I think that gives me hope that we can actually solve this problem.

I know if we don't do it now, we're leaving the American people in a very difficult situation.

SEN. COBURN: All right. Thank you very much.

Thank you for your indulgence, Mr. Chairman.

SEN. LEAHY: Oh, of course. You've asked important questions, and I appreciate it.

I did see a certain smile on secretary Chertoff's face when you talked about going either way. We had had on -- across our borders. We'd had a discussion what happens if this WHTI goes -- is implemented fully, and Americans leave -- for example, going into Canada -- and Canada says, "Fine, come on through," and then an American citizen is denied entry to their own country because they don't have the passport or whatever kind of a thing we do.

I think that that is more than just a(n) exercise in thinking. I think it's a reality, and I think it's one thing we have to really look at, because you could actually have this -- and it would become a cause celebre in this country -- Americans go across the border to Canada or Mexico, American citizens born, raised here, no question of citizenship, and then without a proper paper is not allowed back into the United States.

Get a few thousand of those, I could almost write the headlines. But we've discussed that. We'll discuss it further.

Let me -- do you either of you believe that Americans are being denied jobs because of foreign workers?

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SEC. GUTIERREZ: No. In general terms, no. No.

SEN. LEAHY: And Secretary Chertoff?

SEC. CHERTOFF: I agree with Secretary Gutierrez.

SEN. LEAHY: And if we -- if our immigration system is reformed to accommodate the needs of agriculture and other industries, can we do this and make sure that Americans are not -- or make sure that Americans are accommodated there?

SEC. GUTIERREZ: Yes, Mr. Chairman, I believe we can.

SEN. LEAHY: Thank you.

Well, I appreciate you both being here. We've been longer than I think we probably told you we'd be, but I want to make sure everybody had a chance to ask questions.

I -- this is going to be a long process. It's not going to be an easy process. I'm committed to getting a comprehensive bill through. I believe everybody will say they'd be committed to get a comprehensive bill through. The question is, will it have different definitions, perhaps, of what is comprehensive?

But I think that the most important point in this whole thing is where the president is going to be and where he's going to be publicly on this. When -- the last meeting I had with him last year on this subject, I was extremely impressed with his commitment to it. With all the other things on his plate, his knowledge of the proposals being made, his reference to his own experience in Texas, it -- but we're going to need that publicly, and we're going to need very public support of leaders of both the Republican and Democratic parties in both bodies. I believe it can be done. I believe that if it's not done, we have a problem in this country that will actually hurt us. It will hurt us as being the kind of great country we are, and we will lose the chance to have the kind of diversity we need in America that makes -- has made us strong throughout the years.

So I thank you both very much for being here.

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