

**STATEMENT
OF
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PRESIDENT
LOCAL 2913
(WASHINGTON, IDAHO AND MONTANA)
NATIONAL BORDER PATROL COUNCIL
OF THE
AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES
AFL-CIO**

**HOW THE IMMIGRATION AND NATURALIZATION SERVICE
PROCESSES PERSONS ARRESTED FOR ILLEGAL ENTRY INTO THE
UNITED STATES OUTSIDE PORTS OF ENTRY**

**BEFORE THE
PERMANENT SUBCOMMITTEE ON INVESTIGATIONS COMMITTEE ON
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE**

**TUESDAY, NOVEMBER 13, 2001
DIRKSEN SENATE OFFICE BUILDING
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Chairman Levin and honorable members of the Subcommittee, I thank you for providing me with this opportunity to testify about my knowledge of Border Patrol operations. I have been a Border Patrol agent for nearly 14 years, and deeply love my job and the organization. The Border Patrol was once a very proud, elite law enforcement organization whose morale was very high. This changed a few years ago, and morale has been steadily deteriorating since that time. My fellow agents and I want to reverse that trend and restore the efficiency and pride of the United States Border Patrol.

Sadly, there are some managers in the Immigration and Naturalization Service (I&NS) and Border Patrol who have been less than honest with our elected representatives and the public. Following the terrorist attacks of September 11, 2001, when asked if our northern border was secure, they tried to assure everyone that everything was under control. At that time, there were only 324 border patrol agents on the northern border. To this day, that number has not increased. Not one additional Border Patrol agent has been assigned to the northern border since that fateful day. Instead, the agents here have been working 12 hours a day, averaging from 68 to 90 hours of work each week. All 100 of the Border Patrol agents temporarily assigned to the northern border under Operation Northern Shield are assisting with security at the ports of entry where Immigration Inspectors and Customs Inspectors work. None of them are assisting us in patrolling the 4,000 miles of border between those ports of entry. There are approximately 9,000 Border Patrol agents assigned to patrol the southwest border. That translates to one agent for

every 1,300 feet on the southern border. In sharp contrast, there is only one agent for every 13 miles on the northern border. If you were a terrorist, where would you take your chances?

The Border Patrol agents on the northern border appreciate the manpower increases mandated by the USA PATRIOT Act of 2001, and urge Congress to fund these vital positions and ensure that experienced agents are allowed to transfer there instead of utilizing new-hires. It would require several years to properly train new-hires, and help is desperately needed now. Moreover, depriving experienced agents of the opportunity to fill these desirable positions would further demoralize the workforce and increase attrition beyond its alarmingly high current levels.

Accountability needs to be restored to the I&NS and Border Patrol. Committee oversight and investigations such as today's hearing are an important part of that process.

Most of the illegal aliens from countries other than Mexico that are apprehended on the northern border are released on personal recognizance pending their deportation hearings before immigration judges. In other words, they merely sign a piece of paper promising to appear when given a court date. They provide an unverified address and then walk out the door. Thousands never return for their court dates, which usually results in an order of deportation being issued *in absentia*. There are many thousands of un-served warrants of deportation languishing in I&NS file rooms across the country. Unfortunately, very little time is devoted to tracking down these law-breakers. Occasionally, the Border Patrol intercepts aliens who have an outstanding warrant during its daily operations, but that is very rare. The I&NS Investigations Program has primary jurisdiction over these matters, but it is not a priority. In fact, in the area of Washington State where I have worked since 1994, I have never seen or even heard of an I&NS investigator attempting to seek out and arrest the subjects of these warrants. This too must change. The I&NS needs to be directed to focus more of its resources on this important task. Interior enforcement has been neglected for too long, and must become a priority for the I&NS.

Because of a lack of funding for removals, the Border Patrol also routinely fails to remove illegal aliens who are apprehended on the northern border. These aliens are given a form I-210, instructing them to leave the United States within 30 days, and are released. Again, there are no controls to verify if the alien ever actually leaves the United States. It is not uncommon to re-arrest aliens who never bothered to leave the United States as instructed. Hopefully, that time there is available jail space. If not, the process is repeated all over again.

In my experience, criminal records checks are performed for most illegal aliens apprehended in my Sector. This is not uniform throughout the 21 Border Patrol Sectors, however. Most of the persons arrested for being in the United States illegally are never issued an alien registration number. Millions of illegal aliens are merely processed on the INS' alien arrest processing system known as ENFORCE. All arrested aliens are supposed to be processed in this database. After the arrested alien is processed in ENFORCE, the alien's right and left index fingerprints are entered into another database system called IDENT. In theory, this biometric database tracks every immigration arrest of an individual. In practice, however, it is flawed. It is not always on-line, making it impossible to input data for all arrested aliens. It also sometimes yields unreliable results. I have personally seen it issue two different record numbers for the same person when in theory there should only be one arrest history number based on the same

set of two fingerprints. This can happen for a variety of reasons, such as dirty fingerprints, severely scraped or cut and damaged fingerprints from manual labor, which alters the skin patterns. I don't claim to be a fingerprint expert, but since the IDENT system is based on only two fingerprints, it appears to me that this small sampling contributes to the errors. It is important to note that the I&NS IDENT system does not interface with the FBI's fingerprint system and vice versa. The FBI fingerprint system is based on all ten fingerprints, not just two. Perhaps the biggest flaw in the IDENT system is its limited amount of storage. Once it reaches its maximum memory, it deletes the oldest records in order to make room for newer entries. Obviously, all fingerprint data should be retained indefinitely.

If an agent suspects that an alien has a criminal record, the agent must take fingerprints the old-fashioned way with cards and ink, enlarge them to 200% on a photocopier and then fax those copies to the FBI for analysis. Even with such an archaic method, we frequently get a match from the FBI. Taking advantage of the available technology would undoubtedly allow us to submit more fingerprints and increase the number of matches. The FBI fingerprint check is not a mandatory required record check. It is performed solely at the discretion of the arresting agent.

The I&NS has a number of other record check subsystems, most of which do not even interface with each other, much less with those of other law enforcement agencies. There is clearly a need for much more coordination and information sharing. Moreover, information on many non-immigrant visitors is not entered into any databases, diminishing their utility.

Further complicating the difficult task of determining an arrested alien's criminal history is the fact that it is almost impossible to obtain criminal checks from other countries. The only foreign criminal records that I have ever received were from Canada.

The low amount of bonds placed on criminal aliens is another major problem in the current system. For example, aliens who are arrested by the Border Patrol and determined to be a public safety or flight risk are generally given a bond amount of over \$25,000. That figure is entered into the appropriate space on the form I-286, Bond Determination form, and the subject is turned over to the I&NS District detention facility. While at the detention facility, an I&NS deportation officer can re-determine the subject's bond down to a figure as low as \$500.00 or even a personal recognizance signature. For the sake of the safety of our communities, this should not be allowed to happen.

Despite its flaws, the U.S. Border Patrol retains a fair degree of respect among federal law enforcement agencies. It would be greatly improved if it were free to make enforcement decisions based on the law instead of the political agenda of bureaucrats. These concerns are shared by labor and management alike. You will hear the same concerns voiced by my former Deputy Chief Patrol Agent who is also here to testify today.

I sincerely believe that these problems are not insurmountable, and in fact I am heartened by the willingness of the new I&NS Commissioner to take a fresh look at some of the problems in the organization. For example, he has recognized that the low pay structure of the Border Patrol agent position contributes greatly to the attrition problem, and is actively seeking funding for an upgrade. I am also hopeful that we can work with him to correct some of the

problems that I have identified today.

We also need the assistance of Congress to obtain the resources and provide the mandate necessary for us to do our job. The brave men and women of the U.S. Border Patrol stand ready to secure our nation's borders and interior areas and enforce the immigration laws of the United States. As one of their union representatives, I stand ready to provide you with truthful answers to your questions.