

# EXHIBIT A

**IMMIGRATION REFORM AND CONTROL ACT OF  
1985**

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**HEARINGS**  
BEFORE THE  
SUBCOMMITTEE ON  
IMMIGRATION AND REFUGEE POLICY  
OF THE  
COMMITTEE ON THE JUDICIARY  
UNITED STATES SENATE

NINETY-NINTH CONGRESS

FIRST SESSION

ON

**S. 1200**

A BILL TO AMEND THE IMMIGRATION AND NATIONALITY ACT TO EFFECTIVELY CONTROL UNAUTHORIZED IMMIGRATION TO THE UNITED STATES, AND FOR OTHER PURPOSES

\_\_\_\_\_  
JUNE 17, 18, AND 24, 1985

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**IMMIGRATION REFORM AND CONTROL ACT OF  
1985**

MONDAY, JUNE 17, 1985

U.S. SENATE,  
SUBCOMMITTEE ON IMMIGRATION AND REFUGEE POLICY,  
COMMITTEE ON THE JUDICIARY,  
*Washington, DC.*

The subcommittee met, at 9:30 a.m., in room 226, Dirksen Senate Office Building, Hon. Alan K. Simpson (chairman of the subcommittee) presiding.

Present: Senators Denton and Simon.

Staff present: Richard W. Day, staff director and chief counsel; Carl Hampe, John Ratigan, Deborah Gibbs, and Charles Wood.

**OPENING STATEMENT OF ALAN K. SIMPSON, A U.S. SENATOR  
FROM THE STATE OF WYOMING**

Senator SIMPSON. The hearing will come to order, please.

Good morning. I want to stress I was very sorry we had to cancel the Friday hearing, but after we had all that good progress in the Senate with clean water and the Nuclear Regulatory Commission, and our leader said "I think we can wind up Friday," I said: "Great. I will head for Cody, WY." And so I did so, and it was only because of our accelerated schedule there that I was able to do that. We will pick up today, just where we left off.

Well, Father Ted Hesburgh. Nice to see you there. I will come to you in just a moment. Always a pleasure to have you. You are very important to me and my past. I want to express appreciation for two able members who served on the subcommittee last year, Senator McC. Mathias and Senator Howell Heflin, who are no longer on the subcommittee. I deeply appreciated their help in every way.

We have two new fine members, Senator Jerry Denton and Senator Paul Simon. I am very much looking forward to working with them and benefiting from them.

Speaking of Senator Simon, there he is, and it is a real pleasure to have him on this subcommittee. I look forward to working with him and benefiting from his thoughtful participation, and I will have that, because I know Paul. We were legislators together in State legislative activities, so it is a personal privilege to have them aboard.

I will say come on in, the water is fine. It is hot, but it is fine. People do not usually crash the doors down to get on to this subcommittee, so you are welcome. Very welcome. I look forward again to working with Senator Grassley, who has been my strong



sions of this bill, both within the INS and in other relevant Government agencies such as the Department of Labor.

A final comment: Mr. Chairman, as all Members of Congress are unhappily aware, the U.S. Congress is held in very low public esteem. Given the recent history of scandals, pork barrel and other special interest activities on the part of some members, some of this negative image is justified.

However, someone has to say that during the past 4 years of debate on immigration reform, Members of this House have proved able to rise above parochial and ideological considerations in the interest of reforms that clearly serve the national interest. They have diligently pursued reasoned and balanced proposals in a cautious and sensitive manner, in the full expectation that their political careers were unlikely to benefit and might well suffer as a result. In so doing, they took great care to avoid the excesses of xenophobia and racism that prevailed in all previous national debates on immigration policy, although resort to such appeals might have increased political support for adoption. While some have taken considerable flak from vocal lobby groups for their efforts, anyone who has read the remarkable series of laudatory editorials from national and local media around the country must acknowledge that their efforts have established them as respected leaders on the national scene. Meanwhile the opposition of other prominent Members of Congress, based on ignorance or on parochial economic, ethnic or partisan interests, have inflicted severe damage upon their reputations and credibility.

Cynics may doubt this, but it does appear that statesmanship on immigration reform pays handsome political dividends.

And with that, I will stop and express my appreciation for your attention.

Senator SIMPSON. Thank you very much.

Now, it is in the order of our agenda, Dr. Barry Chiswick, please.

Dr. CHISWICK. Thank you very much.

I am very pleased to be here, to be once again testifying before this subcommittee. Let me just say at the outset that although I am a research professor at the University of Illinois, at Chicago and a visiting scholar at Stanford University's Hoover Institution, I speak for neither of these institutions. I speak only for myself, and my comments are to be attributed solely to me, although I hope after they are heard, they will be shared by many others.

My research interest in immigration issues in general, and illegal aliens in particular, began nearly a decade ago when I served in 1976 as technical advisor to the Domestic Council Committee on Illegal Aliens, chaired by then Attorney General Edward Levi. This topic has been my primary research interest for the past decade.

The Ford administration endorsed the Domestic Council Committee's recommendations that employer sanctions should be enacted and amnesty should be granted. We are here today, a decade later, discussing the same proposals. I believe that employer sanctions and amnesty have not been enacted precisely because separately and jointly they are perceived as being contrary to the best interests of the American public. And I believe that this perception is correct. Rather than rehashing old stale proposals, it is time to

bring fresh ideas to the issue. It is in this spirit that I offer the new policy recommendations with which I close this testimony.

This testimony must necessarily be a condensed version of what I have learned from my research and what I would like to convey to this subcommittee. A fuller version of the analysis and policy recommendations are to be found in my co-authored book with Pastora San Juan Cafferty, Andrew Greeley and Teresa Sullivan, "The Dilemma of American Immigration: Beyond the Golden Door," Transaction Books, 1983.

The most recent public focus on immigration has been with respect to illegal aliens. From the last days of the Ford administration to the present, each session of Congress has given serious consideration to the enactment of legislation to grant amnesty to illegal aliens living the United States, to impose for the first time Federal sanctions on employers of illegal aliens, and to strengthen enforcement at the border. The persistence with which the legislation is brought forward, the heated debate, the widely divergent support in the House and Senate, and the periodic changes in position of Presidents and Presidential candidates suggests that illegal aliens are a difficult policy issue.

Illegal aliens exist because workers are attracted to the United States by jobs provided by the economy and because there is an incomplete enforcement of immigration law by the Government. Illegal aliens impact on the labor market by decreasing the earnings and employment opportunities of some U.S. workers and increasing them for other U.S. workers. The size of the illegal alien population is believed to be large and growing. It has recently been estimated by 3 Census Bureau statisticians that there were 3 to 6 million illegal aliens residing in the United States in 1980. It is also estimated that half of these illegal aliens are Mexican nationals. Every indication suggests that the continued deterioration of the Mexican economy and political upheavals in Central and South America will be further spurs to illegal immigration. Yet, we know surprisingly little about illegal aliens.

There is a legislative stalemate in Washington. Too few resources are budgeted to enforcement for the Immigration and Naturalization Service, INS, to have any substantial impact. Yet, there is an unwillingness to publicly acknowledge this lack of will and offer amnesty. This public ambivalence has been quite obvious for at least a decade.

The legislative stalemate may not represent a lack of will, but rather may be interpreted as a rational short-run response to a policy dilemma. We want foreign workers, but not their dependents. We allow illegal migration but keep the probability of arrest and deportation high enough to discourage the entry of family members. Amnesty, of course, would allow erstwhile illegal aliens to bring their dependents—spouse, minor children, aged parents—to the United States. This would give them access to our system of free public education as well as to the generous welfare and social service benefits that were designed to help Americans disadvantaged through no fault of their own. The welfare benefits include Aid to Families with Dependent Children [AFDC], Food Stamps, Supplemental Security Income [SSI], and Medicaid. Because we want the workers but not the dependents, and we find it awkward

to say so openly, we perpetuate a cat and mouse game between the immigration authorities and illegal aliens.

If this interpretation is correct, we need not be concerned with more information on illegal aliens. We prefer continued obfuscation of the issues to the embarrassment that clarification might bring. It is apparently better to let the monster sleep. As this subcommittee recognizes, the monster will eventually wake up, and more massive social and economic problems may be at hand—a large, restless and low-skilled illegal alien populations.

To put these matters in historical perspective, it is important to indicate that the illegal alien issue is not new. In this decade we celebrate the 100th anniversary of illegal aliens in the United States. The first illegal aliens were Chinese because the first barriers to legal immigration were imposed against unskilled Chinese workers in the 1880's. There was a racist fear of the "Yellow Peril," of hordes of unskilled Chinese workers flooding California and depressing wages for similarly unskilled whites. It is unlikely that the feared massive migration would have taken place even if there were no barriers. Perhaps more intriguing, data from recent censuses indicate that the descendants of the Chinese workers have achieved higher levels of schooling, occupational status and earnings than the descendants of the whites who, a century ago, believed the Chinese could never be anything but unskilled laborers.

In the 20th century, however, the main focus has been on Mexican illegal aliens. A cyclical pattern has emerged. During periods of political turmoil or economic slack in Mexico, the migration is northward. During periods of economic slack in the United States, the northward flow is slowed or stopped, and sometimes reversed. In the 1920's, during the recession following the World War I boom, in the early 1930's and during the early 1950's, the net flow may have been toward Mexico. These reverse flows have sometimes been generated by wholesale arrests and deportations of persons who "look Mexican."

Even in the 1980's, Mexican nationals form the bulk of the illegal alien population. The data on apprehensions indicated that 90 percent are Mexican nationals. But this statistic overstates the proportion of Mexicans in the illegal alien population. INS concentrates its resources along the Mexican border, perhaps, as some alleged, because it is relatively inexpensive to catch people sneaking across the border and deport them. In addition, many Mexican illegal aliens work in the United States only part of the year and they return to Mexico during the slack season. Since apprehensions are most likely to take place at or shortly after entry, this to and fro migration also raises the proportion of Mexican nationals in the arrest data relative to the stock of illegal aliens residing in the United States.

It is believed that about half of the illegal alien population living in the United States are Mexican nationals, and that the other half come from a wide range of countries and all parts of the globe. West Indians, Central and South Americans, East Asians, South Asians, Africans, Near Easterners, Europeans and Canadians are all represented among illegal aliens. Of the Mexican illegal aliens, about 70 percent originate in 6 States of Mexico's Central Plateau. This is a poor area which served as a battlefield during the revolu-

tions and rebellions earlier in this century, and which has been passed over by whatever benefits emerged from the Green Revolution of the 1950's and the short-lived oil bonanza in the 1970's.

There are reasons why Mexico provides the largest number of illegal aliens. We share a border about 2,000 miles long which runs through wilderness areas. Where rivers form part of the border, they are often shallow and easy to cross. Hence, entry without inspection is relatively easy for Mexican nationals. Illegal aliens from most other countries either use fraudulent documents to enter the United States or have to violate a legal visa, such as working in violation of a student or visitor visa, or overstaying their visa. Increasingly, nationals of other countries are using Mexico and Canada for the purpose of surreptitiously entering the United States.

Ease of entry may be a necessary condition for illegal immigration, but it is not a sufficient explanation. After all, the border with Canada is as easy to cross as the border with Mexico, yet there are relatively few Canadian illegal aliens; less than one percent of apprehended illegal aliens are Canadian nationals. Nor are legal immigrants more numerous from Canada than from Mexico. In recent years, there have been fewer than 15,000 Canadian immigrants annually, while legal immigrants from Mexico have exceeded 55,000 annually.

The United States-Mexican border is unique. There is no other border separating 2 countries that differ so sharply in average income. The temptation to go north to strike it rich working as a busboy, a dishwasher, or fruit picker is just too strong to resist. Mexico's economy has not done well in the 20th century in spite of its abundance of natural resources. High fertility rates combined with falling death rates, particularly infant mortality rates, have generated large cohorts of youths. Development policy has focused on capital intensive rather than labor intensive sectors of the economy. The poverty and absence of job opportunities, particularly in the rural areas, have generated a massive migration to Mexico City, the border towns, and the United States.

Many Mexican farmworkers gained experience working in the United States in the bracero program. This was a contract farm labor program started in 1942 to augment war-time labor supplies and was terminated in 1964. As a result of the experience gained in the bracero program, hundreds of thousands of Mexican farmworkers had their appetites whetted for the good life up north. They, their younger brothers, their sons, became illegal aliens when the bracero program ended and other opportunities for legal migration were reduced. Indeed, in the face of a growing supply of immigrants from Mexico, the imposition of the numerical ceilings on Western Hemisphere immigration in 1968, and the country ceiling in 1977, reduced avenues for legal migration, thereby generating pressures for increased illegal immigration.

There is little solid data on the demographic or labor market characteristics of illegal aliens. The data on apprehensions suggest that they are predominantly low-skilled, young adult, age 18 to 30, males from Mexico. While it is undoubtedly true that the apprehensions data can be expected to exaggerate these very characteristics, it seems reasonable that qualitatively these characterizations

are accurate. Illegal aliens tend to be unskilled in part because workers in higher skilled jobs may have more difficulty in masking their illegal status and in part because an occupational license, certification or union membership may be required. In addition, because of the existence of skills that are specific to the country in which they are acquired, apprehensions and deportations may be more costly for skilled illegal aliens than for workers with few if any skills. Thus, among unsuccessful visa applicants, or potential applicants, those with few or no skills have the greater incentive to attempt an illegal entry.

The skewed demographic composition of illegal aliens and the high rate of to and fro migration, particularly with respect to Mexico, are consequences of illegal alien workers leaving their wives, young children and aged parents in the home country. This does not arise from their preferences, but from the circumstances of their illegal status. Dependent family members are costly to move to the United States, particularly if illegal means are to be used. Once in the United States, the dependents may not confer the eligibility for welfare and social service benefits that legal residents may receive. Indeed, the dependents may increase the probability of the entire family being apprehended and deported. In addition, their presence makes deportation more costly.

If illegal alien workers were granted amnesty and could bring their dependents to the United States, the demographic characteristics of this population would change. The extent of to and fro migration would decline, the ratio of dependents to workers would increase and, because of the low skill level, the family members would be eligible for a variety of welfare—income transfer—and social service programs. In addition, the incentive for even more families to move north would increase under the realistic view that if amnesty is granted once, it will be granted again. Hence the case against amnesty.

But what about a more vigorous enforcement of immigration law? The trends have, if anything, been in the opposite direction. The number of permanent positions in the Immigration and Naturalization Service increased from 7,000 in 1960 to nearly 11,000 in 1979, a 60-percent increase. During the same period, however, the annual number of legal immigrants doubled from one-quarter of a million per year to one-half of a million. Non-immigrant admissions of aliens as tourists, students, et cetera, increased eightfold from 1.1 million to 9.3 million per year. And the number of apprehensions of illegal aliens increased 14-fold from 70,000 to about 1 million. Clearly a tremendous strain has been placed on INS resources.

To try to close the floodgates, INS has concentrated its resources on border enforcement at the expense of interior enforcement. However, there is a revolving door at the border in which large numbers of illegal aliens are apprehended one night, to be deported the next day, to try again on a subsequent night. Except for deportation, there are no penalties imposed on illegal aliens, even those who are flagrant repeat offenders. But apprehensions and deportations at the border impose relatively little cost on illegal aliens, particularly those from Mexico. The cat and mouse game along the

border increases apprehensions per million dollars of budget expenditure, but may have little deterrent effect.

What are the benefits of current policy? The benefits come in the form of the increase in income to the native population of the United States from a larger pool of low-skilled immigrant workers. An increase in the supply of low-skilled foreign workers depresses the wages and working conditions of low-skilled native workers, and this receives much public attention. What receives less public notice is that the increase in the number of low-skilled workers increases the productivity of complementary factors of production, that is, higher skilled workers and capital. Any factor of production is more productive the more of other factors with which it can work. A bulldozer on a road construction project is more productive if there are more workers to keep it running 24 hours a day, repair it when it breaks down, and redirect traffic away from the construction site. A scientist is more productive if there are assistants to clean the test tubes, run simple experiments, do bibliographic research, type manuscripts, et cetera.

The gains in income to skilled workers and capital from the migration of low-skilled workers are likely to exceed the losses to native low-skilled workers. This means that as a result of low-skilled illegal migration the income of the native U.S. population is increased.

Thus, I have outlined the policy dilemma. As a result of restrictions on immigration, there are a large number of people in the United States illegally, perhaps 3 to 6 million people. They are disproportionately unskilled young adult males from Mexico. Indeed, it is largely because of their illegal status that they do not bring their dependent family members. These workers are productive and they increase the income of the native U.S. population, although they increase inequality in the distribution of income in the native population.

On the other hand, if the illegal aliens brought their dependent family members with them, they would be eligible for a variety of welfare, social service, and educational programs. Since the workers are low skilled, their use of these benefits could exceed the increased income of the native population. That is, the increase in taxes needed to pay for these programs for the dependents of the illegal aliens might easily exceed the gains in income to the native population.

By legalizing the status of illegal aliens, they could bring their dependents to the United States and claim benefits from the variety of public programs that subsidize the poor, the young and the aged. And amnesty encourages further illegal immigration because of the realistic expectation that if offered once it will be offered repeatedly. Hence, amnesty is perceived as an unacceptable solution.

Strict enforcement of immigration law is also perceived as unacceptable. The costs of strict enforcement may be very high in terms of civil liberties and of resources devoted to enforcement activities. A greatly enhanced and better equipped staff of INS agents would be required to increase the effectiveness of interior enforcement as well as border enforcement, but would be more costly. Sanctions against employers who knowingly hire illegal aliens are frequently proposed, although for employer sanctions to be effective a national

identity system, or registration, of one sort or another would be required. It seems inappropriate to compel employers to enforce a law that the Federal authorities show little will to enforce.

Employer sanctions are the equivalent of an employment tax. This tax raises the relative cost of labor, particularly for low skilled, high turnover jobs. The imposition of such a tax may further worsen the job opportunities of low-skilled workers legally in the United States, particularly youths and minorities.

But perhaps the greatest cost of strict enforcement would be the loss of the income the native population gains from the work of illegal aliens.

From the short-run perspective, the current legislative stalemate may be optimal given that we do not want a legal system that sanctions a two-class society—one eligible for welfare and social service benefits and the other not. We can view amnesty and a stringent enforcement of immigration law as polar approaches to solving the problem, but for different reasons they are viewed as too costly. The consequence of current policy, however, is the presence of a large and apparently growing segment of the population that lives at the margin of or outside the law. As this population grows, and as increasing numbers of children of illegal aliens are born in the United States, and hence are U.S. citizens, the political and social pressures will also grow. A policy that looks optimal in the short run may thus not be so attractive in the long run.

This discussion suggests that as a society we need to more clearly delineate our priorities and policy options regarding illegal aliens. A partial solution to the dilemma is to restore a modest guest worker program. To discourage temporary workers from evolving into permanent workers outside the regular immigration system, entry would be permitted only for the guest workers and not for dependents, the contracts would be for a short maximum number of months—say 6 months—and only for jobs with clearly defined seasonal patterns. Returning to the home country would be required before a worker could receive a new contract, and a limit might be placed on the total number of contracts that a worker could receive.

To induce compliance, two types of penalties could be imposed on those who enter the country illegally, who violate the condition of a legal entry, or who violate the terms of their temporary worker contract. One penalty would be a probation period during which a legal entry as a guest worker, visitor, student or immigrant is barred. The other would be detention of the illegal worker for a period of several months prior to deportation.

Under current policy, there is some probability that an illegal alien will be apprehended. But the penalty if one is apprehended is very low, particularly for Mexican nationals apprehended at the border. There is no deterrent effect from apprehending individuals who violate the law if there is no penalty when apprehended. Hence, current policy regarding apprehended illegal aliens has little or no deterrent effect, particularly regarding Mexican nationals.

Detention may be the only mechanism for reducing the extent to which the border is treated as a revolving door. Pecuniary fines are inappropriate for the low-income illegal alien population because

they could not be collected. However, a fine in terms of time—detention—for several months would be costly to the alien and have a deterrent effect.

The major criticism of detention is usually expressed in terms of the high cost of incarcerating 1 million apprehended illegal aliens. But this exaggerates the problem. Because of the revolving door at the border, the number of illegal entries would fall. As a result, the same border enforcement resources would mean fewer apprehensions but would raise the probability that an attempted entry results in an apprehension, further discouraging illegal migration. Indeed, with the imposition of meaningful penalties, greater deterrence could be obtained even with fewer border enforcement resources. Finally, low-cost minimum security detention facilities could be constructed in rural areas near the Mexican border.

These policy recommendations will not end all illegal immigration. However, by providing both the opportunity and incentives for operating within a legal framework they offer a better hope than current policy, or the employer sanctions/amnesty features of the legislative initiatives of the past decade, of controlling illegal immigration.

Thank you for the opportunity to testify before the subcommittee.

Senator SIMPSON. Thank you very much, Dr. Chiswick.

Now, David North, please.

Nice to see you again, sir.

Mr. NORTH. Thank you, Mr. Chairman.

This body is again holding hearings on the question of illegal immigration and what to do about it, and again the committee faces an extremely difficult, painful problem made more so by a near total lack of data on the subject. Clearly we know enough to want to take some action, but more information would be extremely helpful. This administration and its predecessors of both parties have bemoaned the lack of data, but have done little to close the gap.

The Immigration Service, which is closest to the problem, has not been particularly helpful. INS literally has its hands on apprehended illegal aliens 1.2 million times a year, but it has not worked out a technique to estimate the number of people it apprehends as opposed to its excellent workload data on the number of times it arrests an illegal alien. Further, about 300 million times each year, persons enter the United States through INS facilities, and presumably something like 300 million times a year people leave the Nation through these same facilities, but INS cannot tell us much about those entering and can tell us nothing about those leaving.

My first suggestion today is that a strong, independent, highly credible organization, like the Bureau of Labor Statistics, be set up within the Immigration Service to collect and analyze data on these subjects. Perhaps the bill before the committee could be amended to authorize the creation of such a body.

My second suggestion relates to the proposed user fees for those going through the ports of entry. I like this part of the bill for two reasons: It will raise funds from people who use the facilities, which makes sense, and it can raise a lot of money quite legitimately and painlessly. Second, if handled right, these user fees can



provide us, almost automatically, with a great deal of information on the flows of persons in and out of the United States. For openers, it could give us a sense of the net flows of persons in and out of the United States. If we knew that there were, say, 300 million arrivals a year and only 299 million departures, then we would suspect that the flows through the ports produced a net increase in the population of 1 million. This would be in addition to the net flows, illicit ones, between the ports.

On the other hand, we might find there were more departures than arrivals through the ports because EWI's, at the southern border, avoid the ports on their way into the country, but use them on their way out. It should be noted that Prof. Daniel Vining of the University of Pennsylvania has done the pioneering work in this area, seeking to estimate the net immigration by air by a similar method. He counts the excess of the airborne arrivals over departures and then subtracts out the legal immigrants and refugees—by air—and the residual is the estimated illegal immigration by air.

Let me make some specific suggestions in this regard.

First, change in section 102(a)(3)(b) the word "aliens" to "persons" thus making the user fees apply to all users of the ports. To distinguish between citizens and aliens—when we are dealing with about 600 million events a year—is both labor-intensive and not very helpful.

Second, the statute should require that all persons entering and leaving the country should pay user fees. In this way, we could secure some of the net data noted above.

Third, set up a tollgate approach with a schedule of fees designed to create both revenue and solid information. The Immigration Service, like most Government agencies, is better at counting money than people. Let us set the fees so that a particular coin indicates a particular movement. Something like this: charge pedestrians leaving a nickel; pedestrians arriving pay a dime; autos leaving pay a quarter; cars arriving pay a dollar bill.

Change would be available, but the fee would have to be paid in the units noted. At the end of the day, INS could put the money in separate containers for nickels, dimes, quarters, and dollars and weigh them, which would produce pretty good estimates of the number of arrivals and departures, or they could run the money through coin counting machines. A similar arrangement should be made—with higher fees, of course—for those going through the international airports. The fees should be higher for two reasons: it costs more to inspect people at airports than at land ports, and those who can afford a plane ticket are usually better off than those who cross the border by foot or in cars.

I said that substantial sums could be raised in this way. If there are approximately 600 million entrances and exits each year, which seems about right based on earlier INS data on the subject, and we levied fees that averaged, say, 20 cents each, that would produce \$120 million a year, or more than 14 percent of the \$840 million the bill seeks in authorizations for the entire Immigration Service for fiscal year 1986.

There will be objections, of course. Border retailers, people who make their living because they have opened stores near the border,

will complain. The passage out of the country by citizens and aliens alike will be slowed slightly as they go through the tollgates and turnstiles. The introduction of this highly reasonable user fee will be attacked by some border State legislators, who will see it as more of a nuisance than still one more way to attack the deficit. These legislators are more likely to be from the northern than the southern border, where such fees are familiar. I should add in passing that local governments, in both Texas and Mexico, have long since discovered this revenue source. Further, an individual American, living in a white frame house near the bridge in Presidio, TX, has profited handsomely from his part-ownership of that bridge across the Rio Grande. Similarly, a Mexican national, a physician in Monterrey has the monopoly at Los Ebanos, another minor Rio Grande crossing, or at least did when I was last there. Should not the U.S. Government share in this source of income? Particularly when we can learn something significant at the same time.

Thank you for inviting me to testify.

Senator SIMPSON. Thank you very much. It is very helpful.

Now, Dr. Fuchs. Glad to see you, sir.

Dr. FUCHS. Mr. Chairman, I welcome the opportunity to testify on this bill and particularly on the proposed Legalization Commission.

On employer sanctions, I strongly endorse employer sanctions as the enforcement method most likely to be effective, humane and nondiscriminatory in curtailing future flows of undocumented aliens, although I wish we could begin the system with a more secure method of identifying those eligible for work. I endorse the grant of authority to the President to use counterfeit-resistant Social Security cards as an identifier, and the incorporation of stiffer penalties for violators of the law.

On temporary agricultural workers, I see no major danger of a large scale guest worker program in expediting the recruitment and hiring of seasonal agricultural labor, as long as strong labor certification procedures are retained. The bill is extremely generous to agricultural employers in providing them with a 3-year period in which they may continue to hire undocumented aliens on a phasedown schedule, and I urge Congress to resist any further lobbying by the growers for special privileges, lest the reputation of this legislation for balance and fairness be destroyed.

You have asked me to comment briefly on the Legalization Commission, which would be charged with instituting a legalization program upon deciding that measures to curtail the flow of illegal aliens are substantially effective. Mr. Chairman, the idea of the Legalization Commission represents a retreat from the much more straightforward and practical approach of simultaneity embodied in the Simpson-Mazzoli bill.

A legalization program simultaneous with the introduction of employer sanctions, or close to it, is desirable because it enhances overall enforcement by concentrating INS resources at the borders and ports of entry and on enforcing employer sanctions. It would be a mistake for the INS to expend resources in tracking aliens who have been in this country continuously for at least 5 years just when it needs to step up conventional enforcement to locate more recent entrants and to curtail future flows.

Enforcement will be aided by simultaneity because the sooner we begin a legalization program, the sooner we will have comprehensive information about the origins of illegal aliens, the routes they take in order to enter the country, their characteristics and impacts, and about patterns of smuggler use and visa abuse. Simultaneity is likely to lead to a more comprehensive, simple and cost-effective legalization program. It is in the interests of the United States, not just the aliens, to reduce substantially the exploitable underclass that lives and works among us and to put them into a position to upgrade their education and skills so that they will contribute much more to society than they do now.

Having said this, I still would like to make the Legalization Commission work, should Congress legislate it into existence. In trying to imagine how it might work under the best of circumstances, I became convinced that it is inherently a bad idea. It will complicate enforcement. It will contribute to a negative image for the INS. It will compromise the objective of a comprehensive legalization program. It will create a piece of Government machinery to make a judgment Congress has already made and can make again.

Let us imagine a best case scenario. The bill passes this year and employer sanctions are instituted in January 1986. More funds are appropriated to enhance enforcement. The President appoints the 16 Commissioners from the panel submitted by both Houses, and they are universally acclaimed as fair and high minded. Let us suppose that by January of 1988, a unanimous Commission decides that the new enforcement measures are substantially effective, that the legalization program should begin in April 1988, and that for the next 12 months, a majority of the illegal aliens who have been in the United States more or less continuously since January 1, 1980, apply for temporary resident status, with the prospect of applying for immigrant status 30 months later.

Under this best case, there would be a period of about 2½ years between passage of the bill and the institution of the legalization program. During that time, long-time illegal aliens who intend to apply for legalization will be picked up by the INS, including some who are respected in their communities. Deportation proceedings against them will be instituted; their lawyers will request and obtain delays; administrative review will become an even more burdensome resource issue for the INS than it is now; delays will stretch out easily into the legalization period and even beyond.

Human interest stories will receive captions such as "INS Tries to Deport Respected Alien, Father of Three," or "Houston Church Provides Sanctuary for Long Term Alien Seeking Legalization," or "Federal Judge Decides Alien Eligible for Legalization Despite Deportation Order."

The best case scenario is not a good one. And it does not take much imagination to portray a much less desirable scenario. The Commission may run into a serious difficulty in trying to determine criteria for assessing the substantial effectiveness of new enforcement measures. One obvious criterion—decreased apprehensions—would be unreliable. Apprehensions might go up as a result of economic circumstances in sending countries or as a result of more effective enforcement. If commissioners cannot use a statistical baseline, they will have to make a subjective judgment as to

what substantial effectiveness means. "Substantial" in this situation means "ample" or "considerable." I would hate to have them quote me because I have said on several occasions that employer sanctions will not be substantially effective for several years because it will take that long to put a universal and secure employment eligibility system in place. It is possible that even a Commission composed of persons who support legalization will have sharp differences of opinion over whether or not the new measures to curtail illegal immigration are substantially effective.

I have a few other suggestions to make. I believe the 1980 date should be moved to 1981. I believe there should only be one status—that of permanent resident alien—to achieve a comprehensive and simple one-time legalization program. Even then, only persons who meet the civic requirements and the qualifying exclusions, and who are able to demonstrate that they have lived and worked in the United States continuously for at least 4 years would be eligible. At least with a simultaneous approach, we would be in a much better position to begin our large task of thoroughgoing enforcement under a consistent, unambiguous immigration policy. We would have rid ourselves once and for all time of a de facto foreign labor recruitment policy made possible by the Texas proviso in the Immigration and Nationality Act, which exempts employers from any penalty for hiring illegal aliens and which has been an invitation to exploitation and corruption.

Mr. Chairman, if this Legalization Commission is created, I will do my best to help it become effective. But this is one Commission I do not think we need or should want. Thank you for asking me to speak my mind.

And congratulations to you for your persistence, fairness and openmindedness in dealing with this thorny issue of immigration.

As Father Hesburgh would say, God bless.

Senator SIMPSON. Thank you very much.

You indeed are candid, and your views about the Legalization Commission are very important, at least to me.

Let me kind of range through the panel with some questions, and again all of you say provocative things for our consideration. I appreciate the generous comments about legislators.

Dr. Teitelbaum, I appreciate your testimony on the subject of triggered legalization, and I understand your views and your reservations.

We want to assure more effective enforcement, but we do not want to impose impossible requirements.

How would you suggest that we make more specific the criteria that "substantial" control be achieved over illegal entry, unauthorized employment, and visa overstays?

Dr. TEITELBAUM. Well, Mr Chairman, as you may know, I am a demographer by profession, and I have an in-built preference for hard quantitative data and evidence. However, I must say that I do not expect that such a judgment could be made on the basis of such quantitative data.

The clandestine nature of the phenomenon with which we are dealing, means that it is essentially inaccessible to objective quantitative precise measurement. Moreover, I would associate myself

with Dr. North's comments about the quality of the data in general in this field, quite apart from data on illegal migration.

There are approaches that would allow some form of quantitative data to be collected but, as I will say in a moment, I think, ultimately, what one needs is the wisdom and judgment that goes into a decision in any court of law or in any legislative deliberation. One possible source of data would be the kinds of surveys that Dr. Chiswick and others have recently been applying to known employers of illegal aliens, known because their names and their firms appear on official INS apprehension forms. He may have a comment on this. I have not talked with him about his experience so far, but it might be possible for such a commission to engage in at least exploratory conversations, if not quantitative surveys with such employers, to detect such a change in trends in their employment practices.

One could also look at apprehension data, though I suspect they have serious problems of interpretation. They should always be compared to the level of enforcement effort being applied, as is the case for any law enforcement data. I would emphasize that the Commission, if there is indeed to be a commission, should do some of its own data collection, and should not depend solely upon other Government agencies for preparation of data. Ultimately I think it would be a matter of judicious and fair and objective judgments of the kind, as I said, that any court of law must make on the basis of apparently convincing and conflicting evidence on both sides of the argument, often quantitative in form.

I should add, Mr. Chairman, that I doubt if we can rely very much on data about illegal immigration to be collected during a legalization. If the legalization is as chaotic as I suspect it will be, we are dealing with large numbers of people in a short timeframe. Temporary personnel, and often non-government personnel will be doing the data collection. Given such circumstances, most users of quantitative data would not give much credence to such data. Also, I hope that no one will take offense, but there are problems in general in the quality of Immigration and Naturalization Service data as a whole. So one would have some reservations about the quality in that respect, too.

Senator SIMPSON. Indeed, that is so. I agree, and certainly Dr. Fuchs has agreed that the Legalization Commission must be composed of people, and I believe your phrase, Dr. Fuchs, was fair and high-minded persons, people of fairness.

Do you have any thoughts on persons, not names or attributes as to those who might be selected for the Legalization Commission?

Dr. FUCHS. Well, I tried to go through this exercise and think about this, how to make it work, and there are categories of persons. I am nervous about each category except one. The first category of persons would be academic types who know the field of immigration. That would not be a way to go. Not because they are not fair and high-minded, but because they would give intensely different interpretations to some of the data that they were looking at and disagree on the significance of the data.

Another type of person would be a person who was a representative of different interests in the society, different constituency groups. And I am very nervous about that. I think that appointing

persons to guard the interests of their particular group would be a great mistake. I come down to the U.S. Congress itself as a third category, and I ask myself, well, if I would appoint a commission of persons who voted for legalization from out of the U.S. Congress, with a chairperson from outside, a guardian of society type, such as President Ford, somebody like that, to give it a certain stature. Then, why not have Congress do it in the first place? If they have already done it and it was not, in my view, the legalization provision that did the very good Simpson-Mazzoli bill in; I believe strongly it was some other factors. You passed it twice. You held to an unpopular issue which is an extremely difficult one to get across, to explain why it is in the best interest of the United States, and not just a giveaway or benefits program.

It is extremely difficult to articulate that, but you did it, and you persuaded enough of your colleagues over in the Senate, and when it was challenged in the House, even though an election was coming up, it still won by a 38-vote margin on the amendment to kill legalization. You did it before and you can do it again. If you want to have a commission composed of persons who voted for it from both Houses, that would be the best way to do it. But, as I say, I do not see the need for that.

Senator SIMPSON. Knowing you as I do, Dr. Fuchs, you are pained by that idea. You see no necessity for it.

Dr. FUCHS. I do not. The only plausible explanation for it—there are two. One is that we cannot get the votes for the bill without it, and I do not agree with that, unless there is some new assessment that I have not seen, and the second is that it sends the very clear signal that this is a one-time program. And I am for that. I am for a one-time legalization, and I think that the best way to make sure that we have a one-time program is to do all of the things necessary to bring about effective appropriate enforcement, and I see legalization, as did the Select Commission, as essential to that enforcement effort. And I do not see postponement as necessary to accomplish any useful function. I see the Commission as another piece of Government machinery that, in this case, will actually delay and complicate the objective.

Senator SIMPSON. Thank you.

Dr. CHISWICK, do you believe that the per capita income of those citizens and legal aliens who are resident in the United States will increase or decrease if those low-skilled illegal workers are included in the total of those who are resident in the United States?

Dr. CHISWICK. The income on a per capita basis, if you included illegal aliens, would be lower. The per capita income of the native population would be higher as a consequence of the illegal immigrant. But this does not necessarily mean that legalization would have beneficial effects. After a period of time legalization would grant the low-skill aliens and their dependent family members access to the income transfer system, and that is likely to have the effect of lowering the per capita income after taxes and transfers for the legal resident population or the native population.

Senator SIMPSON. You also state in your testimony a proposal to detain, even for a good period of time, illegal aliens who have been apprehended while entering in violation of the law.

Now, that is not a politically popular proposal, but other groups have mentioned that type of detentent, sometimes publicly, sometimes privately.

How would you make that proposal politically palatable? That puzzles me as to how that would ever be done.

Dr. CHISWICK. I do not find it so politically unpalatable. I have difficulty understanding those who do not find sympathy with it. I think we have to explain to people that we do have a problem, and that if we want to have security over our borders, control over who comes in and who does not, then we have to introduce a policy that has teeth in it. Current policy is a waste of resources. We are expending certain resources at the border, and most of those resources have no deterrent effect. What I am suggesting is a policy that would have a meaningful impact on reducing the flow of illegal aliens and as a result the number of people that would be apprehended would be much lower than what most might at first glance think.

As was mentioned by David North, the apprehension data show 1,200,000 apprehensions per year. The number of different individuals, as noted, is probably much less than that, and that is with no penalties if you are apprehended at the border. All studies in the economics of crime show penalties have a very significant effect in reducing violations. Where you do not have penalties, even if you have apprehensions, you have a great deal more violation of the law.

What I am suggesting is that a number of people that would in fact have to be detained is probably not all that large once it becomes recognized that if you are apprehended you will be detained. If you are apprehended a second time, your detention will be longer. If you are apprehended in the interior, the detention will be even longer. I am not talking about long periods of detention. Since most of the illegal aliens who cross the border are interested in seasonal or short-term employment, even a detention of 2 or 3 months could have a significant deterrent effect. These are not hardened criminals, so we would not need a maximum security facility, and that is why I use the term "detention."

Senator SIMPSON. Let us bounce over to David North. I might review that question and ask your response, Mr. North, with your background as a political scientist and a numbers man, shall we say, on the subject of how do we make more specific the criteria that substantial control can be achieved over illegal entry and visa overstays, any thoughts on that? What are your thoughts?

Mr. NORTH. I have two sets of problems, one of which is the period in between the passage of the law and the decision, even if the decision is made soon by a legalization commission. I worry about what happens in the labor market during that interim time, because there is a provision, as I read the bill, that continued employment of an illegal alien is not contrary to the law, but that a new hire would be, and that would seem to put the current employer of an illegal alien in a remarkable position, vis-a-vis that worker, "stick with me and you will be safer than if you move on and work for another employer," he could say.

I find that an anomaly, and if it is going to go on for a couple of years, I find that troublesome. As to the decisionmaking, I would

suggest that if, in fact, the Congress does, despite the advice of this panel, go ahead with this Commission, that some thought be made as to creating a series of events that could be recorded so that you could get some handle on whether or not something had in fact been done in a substantial way to enforce employer sanctions.

It is a lot easier to create a set of ground rules, events, forms, reporting systems, beforehand than try to figure out what in fact has happened later.

At one point I had a conversation with INS after Operation Jobs, and they were trying to figure out what they had done. I said there is not much you can tell from this, but had you talked to me 3 months ago we might have devised a system so we had something to measure at the end of it, so I would suggest if you are really serious about that, you think of some techniques of setting up a system to give you answers.

Senator SIMPSON. I am interested in your thoughts about the establishment of an equivalent to the Bureau of Labor Statistics within the INS to analyze this immigration data. I think that is fascinating. I think that will be worthy of some further study, and I would hope that we might do something about that.

One of the objections that we have heard with regard to user fees is that they would result in the long lines and at the border entry and departure points.

How do you respond to that concern?

Mr. NORTH. I think a delay at the toll booth, a turnstile in the New York subway system, or on a turnplank, such as the one at the Delaware Memorial Bridge, where you have automatic gates, when you simply throw in a coin and away you go, I think the delay is absolutely minimal. You will have to slow down the car to some extent to be admitted into Mexico and Canada. You slow down slower before entering the United States. I do not think the delay would be significant.

Senator SIMPSON. Do you have any estimates of your own regarding the approximate sum of money that user fees might bring annually at the rates that you suggest?

Mr. NORTH. I did not work the nickel, dime, quarter, dollar, but I think you might suspect something like 20 cents on average.

Senator SIMPSON. Have you thought about the type of cost estimate that might be involved in collecting that? Do you see that as significant?

Mr. NORTH. I would see that as 2 or 3 percent. The decision has already been made that it is a car arriving in the United States, and it has been admitted to the United States by the inspector, and then, as the person leaves, they put in the necessary coins, and that is all there is to it.

Senator SIMPSON. And any thoughts about the cost?

Mr. NORTH. I am not thinking so much in terms of spending money, but that would be a good idea on this subject. I am thinking of trying to give a unit of Government the same kind of prestige that the Bureau of Labor Statistics has had over these years.

Senator SIMPSON. Well, again, you usually leave us with some very interesting concepts, and some of them we have pursued, indeed, and I appreciate that.



Back to Dr. Fuchs. Some observers of this scene of illegal immigration feel or seem to indicate that immigration reform is really no longer, if it ever was, a burning issue with the American public, and that, therefore, the enthusiasm to pass a comprehensive immigration reform legislation is not there. It no longer present the same degree and intensity. Is that observation accurate, in your opinion, and what might that mean for future immigration legislation and the future of the country without any further attempts to control illegal immigration?

Dr. FUCHS. Well—it has somewhat less salience now than it did in 1980, when we first knocked our heads together and worked so hard on this, because of the fact that we do not have a Marcel Puro, and we do not have a very large number of refugees, the 200,000 of 1980, and so I would guess that with unemployment not as severe and with inflation down, that there is not as intense opposition by most folks who think of immigrants as coming into a fixed pie situation and taking some away from them. Generally, I would imagine also that due to the work largely of this committee, and of the other body, that there is much more awareness of a more thoughtful kind, more knowledge about the need to plan for intelligent immigration control. The country is clearly committed to a policy of lawful immigration at reasonable levels, and it is doing all right with it, and feels very good about it, but I think the country is, as poll after poll shows, is clearly committed and has been now for decades, even before the Select Commission to have a policy that can be reasonably enforced. There is something utterly demeaning about not having such a policy.

So I think that you are on solid ground in thinking that the country will respond to your approach, which is generally thoughtful and balanced. I think the main point, however, is not follow public opinion polls. The main point is to get the thing in order. Take employer sanctions, for example. You did not win on the issue of getting a universal and secure employee eligibility system, but the possibility in the bill. You have the principle of employer sanctions in the bill, and you won Senate support for it for the first time. So it seems to me you are at the next step to move ahead, and I hope, however, you go back to what I think should be some of the stronger features of the Simpson-Mazzoli bill. I think the main thing is for you, as a legislator, to do what you have been doing to keep your eye not on the immediate public opinion poll, but what is good for the United States 10 years down the road. That is what you are paid to do, and you have done it. Not everybody has done it on this issue, although I agree with Mike Teitelbaum that partly because of the groundwork that has been laid, and partly because of the leadership given to it in both Houses, there has been a generally high minded approach in both bodies, and I think, looking ahead, we want to say to our kids and our grandchildren 10 or 15 years from now, we have a policy that is enforceable. We have done whatever we could do to have a fair, humane, nondiscriminatory enforcement system, and to maintain ourselves as a country that has a tradition of asylum and of immigration, and we will continue to maintain those traditions, because we are a wealthy and powerful country that benefits from having people come to us that

espouse freedom and opportunity. You have done those things. The country responds to that question.

On the details you are going to get public opinion polls that go against you, as on legalization, but you have got to take the gutsy action and say I have to vote for what I think is right.

Senator SIMPSON. I am certainly glad I do not have to spend my time on this issue dabbling in public opinion polls. I would have thrown it in long ago, because there is a total lack of definition in that game. They do not understand some of the phrases, but then they do understand what Simpson-Mazzoli means. That is like throwing an antipersonnel fragmentation device into a chamber. And if you ask them about employer sanctions and verifications and they say yes, and if you toss in a name like Simpson-Mazzoli, they say no. That is a ritual I have watched played out. I want to get a response from Dr. Teitelbaum.

You mentioned the European experience. Would you please share that briefly with us, the European experience with programs of employer sanctions.

Dr. TEITELBAUM. Mr. Chairman, to my knowledge, virtually every Western European country, with the exception of Great Britain, has legislation that makes it unlawful to knowingly hire a person unlawfully in the country. In some countries it is taken more seriously than others. The countries with the most emphasis on the issue are West Germany and France. The European experience, insofar as I have ever heard from anyone including those who do not like employer sanctions in those countries, is that they have a substantial effect in restraining the influx of the illegal immigrants. They may also have the effect in some cases of redirecting such migration into other directions; for example, toward other countries, or into other avenues such as claims for political asylum. But in terms of their direct effects, they are deemed to be very substantial. In my discussions with government officials from France and West Germany, in particular, none could imagine enforcing their immigration laws without the statutes that are currently on their books making unlawful the knowing employment of unlawful residents.

At the same time they have problems with some aspects of enforcement, and they are quite openly willing to say so. Their concerns are about communication among various Government agencies, about the adequacy of the enforcement effort, and about the small fines sometimes levied by the Judiciary against those who are convicted of violations of such laws, which those violators—as in the case of drug enforcement—see simply as a cost of doing business, figuring it into their prices and their wage structures. In all countries I know of, the reaction to such concerns has been to increase the fines and enforcement efforts for employer sanctions. These European officials were a bit bemused, I must say, by the reports of what the West German and French view of employer sanctions was as quoted or cited from the GAO report. Many of them said:

Well, the GAO did not talk to me, and I do not know who they talked to. We do have concerns, but the notion that we would therefore not want to have what you call employer sanctions (what we call our labor law) is impossible.

The only other thing I would say is that if you actually read the GAO report, I think it is actually quite an interesting and well-done job. It goes into some detail in each of the countries it covers, and it reports these points of view that I have just described. Unfortunately, what often happens in advocacy politics is that part of a single sentence of that report is abstracted out; the quota is terminated in midsentence, so that the explanation of why there is a concern about the effectiveness of employer sanctions is not recorded by the advocate.

In most of the countries, the governments have been increasingly concerned with alien workers, especially illegal ones. Growing unemployment and increasing numbers of aliens have heightened the public's sensitivity to matters involving aliens and have induced governmental actions to control alien workers—although each country had laws penalizing employers of illegal aliens, such laws were not an effective deterrent to stemming illegal employment—for primarily two reasons. First, employers either were able to evade responsibility for illegal employment or, once apprehended, were penalized too little to deter such acts. Second, the laws generally were not being effectively enforced because of strict legal constraints on investigations, noncommunications between Government agencies, lack of enforcement resolve, and lack of personnel.

In France and Germany new laws went into effect on January 1, 1982, to increase the effectiveness of their employer sanctions. And in Switzerland, a public referendum later this year will decide whether to implement new immigration legislation.

I think it is only fair to ask anybody who cites the GAO report to quote the full statement from which they are citing, which explains that the concern is derived from the level of enforcement effort and judicial decisions.

Senator SIMPSON. Is discrimination ever mentioned in those foreign countries?

Dr. TEITELBAUM. Not that I have ever heard. There may be such concerns. I have never heard them.

Senator SIMPSON. It has not been expressed concerning employer sanctions in those European countries?

Dr. TEITELBAUM. Not to my knowledge.

Senator SIMPSON. Let me ask you, since you have given me some good provocative stuff to grapple with, and it is important that I do hear your view on the Legalization Commission and discrimination, and Dr. Chiswick has presented some very interesting views. Let me ask each of you other than Dr. Chiswick what you feel about that proposal of his, and it certainly is one that comes seldom publicly, and he has put it out on the table, that when apprehending illegal aliens that they be fined and detained, as a deterrence to illegal migration. It is not something that is new, some of those comments, as I say. It is politically harsh, unrealistic, perhaps, but let me ask each of you what you think of Dr. Chiswick's proposal on detention and whether that would be a deterrence to illegal migration.

Dr. Fuchs.

Dr. FUCHS. I am trying to think about different kinds of illegal aliens who are apprehended. My colleagues have been talking most about border apprehensions this morning, as if that is the entire

problem, and we know that it is not, and we have got to think about—there are three areas to think about. The first is to say effectiveness, and that is what he is pushing, is the effectiveness, and I would have to think about that a lot more, but one thinks about the border as a situation which you do not want a lot of detention.

I have been down in the detention facilities. We do not want to build larger facilities and more of them. We have, I know, a situation in El Paso where sometimes people will come in just to get out of the winter. So I am not sure detention is the answer in terms of effectiveness.

Fining; a lot of those folks do not have anything to fine them. The last time I was in the El Paso Detention Center there were people from 28 foreign countries. Some of them could pay fines, but most of them could not. So I am not sure about that. Involuntary departure at the border is a very efficient, practical method for the INS, and I would want to hear people who are more expert about that.

Another category of concern would be the political one, not the deterrent effect. It may be true if you pick up a Dutch woman who is a legal secretary out of status, or a Filipino dental technician, it may be something that they will pay the fine, and so on, and go back, and it may be that the word will get around in those countries, and that might have some deterrent effect.

The problem there will be that that Dutch legal secretary will have a great many friends at the office, and I am not sure that the political cost of this would be worth putting her in a detention center. This has been proposed before and not studied in detail, and perhaps we were wrong not to go into any further detail, but we found on the political side there was much resistance to it. It does not have much of a political possibility. If my Congress people tell me it will not fly, there is no point in trying to go into it in much detail.

Senator SIMPSON. Dr. Teitelbaum, do you have any thought on that?

Dr. TEITELBAUM. Well, I think Barry Chiswick puts his finger on an important problem with enforcement, that indeed it is a revolving door at the border and elsewhere. The expenses of revolving the door are higher if there is interior apprehension and deportation from a long distance; the cost of air travel alone becomes considerably higher than going back to Juarez and simply walking back the next day or the next evening.

As to detention, I have some concerns about it. One of them is a point that Dr. Fuchs raised, which I will not repeat. There is also a question of cost, which could be considerable depending on the numbers that we are talking about, and the numbers are not going to be trivial.

A third problem is that of identifying the repeaters. Barry Chiswick has suggested that there should be an escalating scale, based on repeat apprehensions. My experience, limited as it is, is that it is awfully hard to identify people who are engaging in clandestine activities. They do not carry with them good forms of identification. One could use fingerprints, I suppose, but then one gets into a much more elaborate identification problem. One could ask them if

they have ever been arrested before, but then one could not attach much validity to the response.

Another problem I would foresee: I can already hear the description of detention facilities as concentration camps. I can hear it in the audience or in the atmosphere. It is bound to be used by opponents of such a policy. It is a good emotive term, and would cause a goodly number of Members of the Congress to look again at this type of proposal. Nonetheless, I would say he is putting his finger on an important problem about relying upon direct enforcement. If there is no penalty for apprehension, except the cost of coming across again, and if the cost for coming across is zero because the smuggler has guaranteed successful entry as part of his fee, which is often the case, then I think there is a problem of a revolving door. Thus I believe this proposal or other proposals to provide some deterrence for that kind of repeat activity would warrant attention by the subcommittee.

Senator SIMPSON. David, do you have any comments on it?

Mr. NORTH. Yes, I do.

I would like to add a footnote about what Michael said about employer sanctions in Europe. As you might know, we, the German Marshall Fund, are paying some attention to this, and within a few months we will have two or maybe three people who have been to Europe and Canada paying attention to employer sanctions, and we will know more about it than we do now.

Furthermore, a member of your staff may go to Europe looking at the same issue.

On the question of deterrence, I am glad that Barry Chiswick raised this issue. I think there is a lot to be said for it. I think that we should be thinking in terms of systems. We should be thinking in terms of the current system as being sort of automatic and not particularly designed to inconvenience anybody, and I think that is wrong. I think there should be an uncertainty in what happens to those who violate our immigration law. I do not think we could conceivably work out a system whereby everybody who has been caught the second time goes to jail, or whatever, for 3 or 4 months, but I think there should be a sort of reverse lottery going on here, in which everybody who is arrested a second time faces up to sometime in detention, and some unknown portion of them wind up doing so, and that is publicized on Mexican television, and various other media, and other countries that send us illegal aliens, so there should be a thought process, not only that deterrence is probably useful as it is in any law enforcement situation, but it should be structured in such a way to make it dramatic, uncertain, and see to it that for every one person who is detained for a while that thousands or tens of thousands know about it.

I also think we should start thinking about a differential treatment of different kinds of people. If we catch somebody at the Chula Vista who is crossing illegally, and that person is an old person by Mexican standards, we probably should turn them back at the crossing point.

If, on the other hand, they are young and healthy, we might take them some 30 miles to the east and inconvenience them by taking them across at Tecate. Further, on occasion, when we find people who have come from the United States from the middle of Mexico

we should try—we should start a form of interior repatriation so a person is taken by bus near where that person lives. Perhaps that could be a choice: 30 days in an American jail, or you could go home at our expense. I hate turning people automatically across the border night after night. It is not a very good idea, and I think some variations on that theme should be created.

Furthermore, I think we should try to use some of the other laws that are there on some of the subjects. If we occasionally stop some southbound undocumented individual who had worked, who did have some earnings, who had not paid any income taxes, if we collected income taxes from them when they leave, this would make the price of violating the cost of violating the immigration laws higher.

Dr. FUCHS. Assuming that deterrence works in this way; fines, and mixed methods of sending aliens back, and perhaps detention; assuming it would be cost effective, and the foreign policy problems that raised would not be very great; assuming all that, I think it is clear that we must have employer sanctions in order to have some equity and balance in the way we approach the business of enforcing our immigration law, and this proposal comes from Barry, from Dr. Chiswick, who has been an opponent of employer sanctions. Here you have a situation where we would be escalating the penalty on the alien, and still have an exemption for the employer who hires the alien, and that is wrong.

Senator SIMPSON. Well, all of that exercise is again to point out that there are some very fascinating ways to present to the subcommittee what we should do about illegal immigration. And it was my thought, and the thought of the Select Commission, we ought to try the most humane one first, which is to reduce the magnet of jobs. It may be a noble, naive approach, but it seems to me the most sensible humanitarian approach at this time. Because, as I see it, if we do not get that done, then we will go into other methods which are not even expressed as being evil or racist, or anything. They are expressed out of frustration and historical patterns of other countries, and it is just my thought that we ought to try the most humane one first, because certainly there are others that range from this to thoughtful proposals, and some indeed that are extraordinary proposals.

We shall, anyway, be forming the legislation based upon these hearings, and further refinements of it. I have some other questions that I want to ask you and I will do that in writing with regard to guest worker programs. Certainly no one here is interested in the return of the bracero program, and we do have a very special situation, where either we do something with the existing program to provide the proper agricultural assistance in certain geographical areas of the country, or else we continue to see them use a pool of illegal labor that they will find somewhere, and I assure you they will. They have expressed that to me with great clarity, out of business necessity, or maybe we are so dependent on the illegals in certain areas that if we do not use them, we will go broke. I think we might find that out, too. But in the long-term interest of the United States, I find few people looking as far as 10 years down the line. They are not even looking 5 years down the line, but 6 months down the line, and that is one of the serious

problems of the issue. I will submit those, and particularly some more to you, Dr. Chiswick. I like your thoughts on legalization, and your views on those who have roots here, I thank you very much for being here. Again, you have been most helpful and most thoughtful, and in provocative ways. I do not know how you refresh yourself as well as you do, and I thank you all very much, and we will now recess until 2:30 p.m. and pick up again at that time. Thank you.

[Whereupon, at 12:30 p.m., the subcommittee recessed, to reconvene at 2:30 p.m., the same day.]

#### AFTERNOON SESSION

Senator SIMPSON. The hearing will come to order again and we will go into the second portion of our hearing today with a panel consisting of various members of various groups in America:

Raul Yzaguirre, president of the National Council of La Raza; Joe Trevino, executive director of the League of United Latin American Citizens or LULAC; Arnoldo Torres, vice president of the National Hispanic Leadership Conference; Richard Fajardo, Acting Associate Counsel of the Mexican American Legal Defense and Educational Fund or MALDEF.

I appreciate your being here. We always appreciate the testimony you present to us and your serious way of addressing what you indeed see to be the concerns that confront the people you represent, and you have always had access to this subcommittee and it is always so because I think it is very critical that you be heard on immigration reform, indeed so.

With that, I welcome you to the subcommittee proceedings and we will proceed in accordance with the agenda.

Mr. Yzaguirre.

**PANEL CONSISTING OF RAUL YZAGUIRRE, PRESIDENT, NATIONAL COUNCIL OF LA RAZA; JOE TREVINO, EXECUTIVE DIRECTOR, LEAGUE OF UNITED LATIN AMERICAN CITIZENS (LULAC); ARNOLDO TORRES, VICE PRESIDENT, NATIONAL HISPANIC LEADERSHIP CONFERENCE; AND RICHARD FAJARDO, ACTING ASSOCIATE COUNSEL, MEXICAN AMERICAN LEGAL DEFENSE AND EDUCATIONAL FUND (MALDEF)**

Mr. YZAGUIRRE. Thank you, Mr. Chairman. I understand our time is limited so, with your indulgence, I would like to ask the committee to make our testimony and the attachments part of the record, and instead I will briefly summarize my comments.

Senator SIMPSON. Thank you. I appreciate that and it is so ordered.

Mr. YZAGUIRRE. Mr. Chairman, in my testimony and here I want to reiterate what we said before on many other occasions that we appreciate your leadership on the committee on this issue. We appreciate the help that we have gotten from your chief counsel, Mr. Dick Day.

We have had differences in the past over means, but, our organization, has been very clear on the goals and we share those goals with you and we applaud you for your interest and also for disassociating yourself from a variety of rather racist and biggoted state-

Senator SIMPSON. Thank you very much. I do try to listen intently to what you say because it is important and I have done that for all the years that I have been dealing with the issue. I must say that I do not handle that well at all times because the injection of racism has never come from me, it comes from you, Arnoldo, it comes continually from you, the issue of racism, and that is offensive to me. And it does not come from any other source but you and perhaps that is why you have been discredited in the process. I wanted to say that. It is painful and hard and tough, but it is in my craw, and I have said it.

We will come back and you can have your shot, a good shot, as long as you want.

Now, if we can, Mr. Yzaguirre, you make a thoughtful presentation of your case, as always, and I appreciate that. As I hear it, the Council of La Raza opposes sanctions altogether, employer sanctions. I hear that. It favors immediate legalization. I hear that. It opposes any changes in guest worker provisions, opposes a ceiling on legal immigration, opposes any restrictions on asylum applicants even though we are not dealing with those two latter ones in this legislation.

I think I am clearly on record supporting the need for legalization. In fact, I have carried the ball on that one. It seems to me that at some point, I guess it comes back to the issue in all legislation, you take the castor oil with the candy, somewhere. We all learn that in legislation. I take my lumps in everything I deal with. Things I desperately wanted in legislation I watch disappear. You learn how to swallow because people do not watch how you are when you win around here, they want to see how you are when you lose; whether you buckle up your guts and then continue on after you have been slapped in the chops.

But in virtually every immigration case that is decided in the U.S. Supreme Court, the Supreme Court points out what an impossible burden, an absolutely impossible burden we place on enforcement officials by allowing what is best described as a "goofy" situation to continue in the United States where it is illegal for an alien to take a job but not illegal for the employer to hire the person. That continues, and that is the law of the United States of America and let us all get that right on the table first because that is what has got us in this Gordian knot. It is legal to hire an illegal but it is illegal for the illegal to work. I do not say that to be cute, I say it to be real. That is the law of the United States.

Now, how are we going to expect any sort of sensible, humane enforcement either at the borders or internally that is effective and sensible as long as that situation continues?

Mr. YZAGUIRRE. I think the essence of your comments, Senator, is that we perhaps are not interested in immigration reform. And I want to make it very clear that we are very, very interested in it and we will work with you as hard as we can for immigration reform.

What we favor is labor law enforcement. There are very clear studies that show that those firms that are apt to hire undocumented workers and abuse them are the same kind of employers that will violate minimum wage and hour laws, OSHA legislation and a variety of other protections that we have for workers. We



Senator SIMPSON. Thank you very much, and we will go to some questions now. I think I may bounce around, but I may come back in the form of the agenda.

To Roger Conner, I am interested in your testimony discussion about the Texas proviso, that it was never intended to protect the employer who knowingly hires an illegal alien but that, according to, I believe, the testimony of Senator Kilgore in 1952, it was intended to protect only the inadvertent, unknowing hiring of an illegal alien.

Could you elaborate a little bit on what you think the significance of that may be and what relevance it may have in today's circumstances, realizing that people continue to testify before me, that all we need to do is enforce existing laws. And then I say the existing law says it is legal to hire an illegal, but it is illegal for an illegal to work. But how that can be anything good to administer as a lawyer or a law enforcement official, I would like to have your thoughts.

Mr. CONNER. We went back and looked, Mr. Chairman, at the history of the Texas proviso in part because of some recent court cases where employers who have hired illegal aliens have been successfully prosecuted under that section of the law, and that sort of perked up our interest in going back. And these court cases made it clear that while the employment of an illegal immigrant per se may be exempted by the Texas proviso, that when the employer goes beyond mere employment, does something to encourage the person to be concealed, to come, to stay, things that employers are doing regularly today, without the sanction, the courts have made it clear that is not protected by the Texas proviso.

There now have been a number of such successful prosecutions where the courts have rather emphatically said the Texas proviso should be interpreted as narrowly as the courts can for the reason you said.

So we tracked back the legislative history and there was, in fact, a great squabbling over this Texas proviso on the floor, and the Senator who introduced the language of the Texas proviso defended it, as we say, by saying this is only to protect the unwitting employment of illegal aliens. The legislative history is by no means absolutely clear on this point because, unfortunately, there was an effort to amend the Texas proviso, the language that says the "normal incidents of employment shall not be deemed to constitute harboring." Some well-meaning people probably should have left well enough alone, but they lost that vote and thus the legislative history is scrambled.

But looking at that legislative history, the courts have said it is clear that an employer who does anything more than mere employment by shielding, hiding under a table, saying on a loudspeaker here comes the INS, assisting in any way in bringing the illegals into the country, a host of things that, as we believe many employers are now regularly doing, appear to be, according to these court cases, violations of the statute. And it is certainly consistent with our view of the legislative history that such actions would be violations of the statute.

So there is probably a narrower exception in the Texas proviso than has been widely believed by employers.