

Homeland Security: Enacting Sensible Immigration Reform

An address given to the Los Angeles World Affairs Council
On March 22, 2007 by

**The Honorable Michael Chertoff,
Secretary, Department of Homeland Security**

This afternoon I had the privilege of attending and actually participating in a ceremony here at the Convention Center in Los Angeles in which over 4,500 people took the oath as new American citizens. That's always a very stirring ceremony. I've been to a number of naturalizations and I always come away with a renewed appreciation of the kind of nation we are and how much immigration remains a vital source of our energy. Earlier this month in Washington I had a somewhat different but equally moving experience, administering the oath of citizenship to a number of veterans of the war in Iraq at Walter Reed. These were people who risked their lives to save our country before they were even sworn in as full American citizens. So, when I look at immigration I see a kind of virtuous cycle. America is a remarkable country; we tend to attract remarkable people, and as we do we become even more remarkable.

The fact of the matter is that immigration is good for America. But I'm not here tonight to just talk about my experience this afternoon or to extol the virtues of immigration as a matter of general principle. I want to talk about a very real challenge that is associated with immigration and that is the challenge of illegal migration and the ways in which we have to respond to it.

Let me begin by asking what I consider to be the two central issues that we face with respect to the immigration debate. First, how do we welcome immigration as the lifeblood of our country but at the same time honor our obligations to protect our sovereignty and to protect our security? And, second, how do we deal with the complicated issue of illegal migration in a way that honors the integrity and sacrifice and the patience of those who waited their turn to come here according to law? The answer to these questions can be summed up in the phrase "sensible immigration reform," and that's what I want to discuss this evening.

No nation can be sovereign if it does not control its borders. And after September 11, I would add that no nation can be secure from terrorism without getting serious about border protection. There cannot be a sensible immigration reform without first a plan to protect our borders and that's why last year, under the leadership of President Bush, we launched our Secure Border Initiative. That initiative, which is a blend of manpower, tactical infrastructure, and high-technology, is aimed at getting real tactical control of the thousands of miles of border that we have. Since launching that initiative we have, for the first time, a change in momentum, an unmistakable progress in increasing enforcement, gaining control of the border and deterring illegal migrants from entering the country.

One of the things we have done is we increased the troops on the ground, adding new Border Patrol agents. We are going to double the number of the Border Patrol by the time the president leaves office, and in the meantime we enlisted National Guard support under Operation Jump Start. Does it work? Well, in a major piece last month in the *New York Times* a man named

Eduardo Valenzuela summed up the results from his own rather singular perspective. According to the article, Mr. Valenzuela had been crossing the border illegally from Mexico into Yuma, Arizona for over a decade. He said to the newspaper reporter, and I quote, “You used to see a Border Patrol agent every ten kilometers; now you see four of them when there was one.” And in yesterday’s *Los Angeles Times* another man Jesus José Vasquez, who had spent two full days with 200 other people trying to cross the border illegally into Tucson, had this to say after he finally gave up: “The Border Patrol is everywhere.” That is testimony from the very people who we’re trying to deter from crossing the border.

In Arizona and Texas I had the opportunity to see firsthand some of the work that has been done, including the building of fences and other infrastructure, including high technology, along the border. This laying down of fencing and ground-based radar, the use of helicopters, all of this is designed to give the Border Patrol something they have never had on a sustained basis—the ability to detect those who cross illegally, intercept them and remove them.

Now, let’s talk about removal because the fact of the matter is that without removing people who enter the country illegally, simply catching them doesn’t do very much good. We used to have a program called “catch and release,” and let me explain what that was. When you apprehend, let’s say, a Mexican who crossed illegally, you can simply go to a port of entry and return him to the other side of the border. But when you catch someone who comes from a third country where he has to be returned by air, it takes a certain amount of time to process that person before he can be deported. What that meant was for non-Mexicans over the past several years, because there were not enough bed space to detain them, they were caught and then they were released with a notice to appear before a judge. Well, you guess what the answer was. This was very debilitating for a couple of reasons. First of all, it basically made a lot of the efforts of the Border Patrol a waste of time, making it a revolving door. The second thing is, it created a perverse incentive for non-Mexicans to try to sneak into the country. The antidotal word was all you have to do is get across the border, then turn yourself in because they will process you and release you again. And that’s why we saw over a period of years a sustained increase in the percentage of non-Mexicans that we were catching coming across the border.

So, what did we do? Last year, I pledged at the end of fiscal year 2006, which was October of 2006, we would end “catch and release” at the border and we would move to catch, detain and return. I’m delighted to say that we not only reached that goal, we beat the goal, we got it done over the summer. Since August anyone who is here illegally and is deportable is held until he is detained at the border. We ended this charade in which non-Mexican aliens had a ticket into the country if they could simply make it across that borderline.

Did this policy change make a difference? You bet. There’s been a dramatic decline in apprehensions across the board since we began Operation Jump Start after the president announced it in May of last year, and since we put “catch, detain and return” into effect. If we do a comparison, for the last three quarters to the same time period in the prior year, before we began the Secured Border Initiative, we see undeniable signs of progress. In the third quarter of 2006 we had a 13 percent decrease in apprehensions along the southern border as compared to that same period in the prior year. It became 38 percent in the fourth quarter, and 25 percent again in the first quarter of this fiscal year. Even more striking we saw a 48 percent decline in apprehensions of non-Mexicans in the third quarter of last year, a 68 percent decline in the final quarter, and a 58 percent decline the first quarter of this year, meaning that just as catch and return had increased the percentage of non-Mexicans that were crossing the border, putting into effect catch, detain and return decreased by a much faster rate that same percentage.

The answer is that deterrence works if you're tough and if you're firm and if you're consistent. We have seen these declines not in just one or two border areas, but across the board. What's the good news here? Not that we've won the victory, it's not that the problem is licked, but that we have changed the playing field and we have reversed the momentum. What that should tell us is we have to keep this progress going. That's why the president requested a billion dollars more for this coming fiscal year, so that we can continue to build fencing and infrastructure and technology along the border. That's why we've requested funding for 3,000 additional border patrol agents and almost 1,000 additional beds. So, that's what we've been doing at the border itself to begin to reverse the issue of illegal migration.

But we also know something else. We know the vast majority of people who are crossing the border, and many put their lives at risk, are pulled by a very powerful engine—the American economy, which is seeking workers to do jobs that Americans will not do. And that is a powerful enough force to cause people to risk their lives and the lives of their own children crossing a desert in order to find work at, often, very low wages. So, in order to address this issue and in order to allow our enforcement efforts to focus, not on the vast majority of economic migrants, but on the people who really are dangerous and criminal, we need to find some way to address this.

We have to start enforcing the laws on worksite regulation and the hiring of illegal migrants inside this country. Back in the 1990s and the first couple of years of 2000 there were hundreds of worksite enforcement cases, but those were cases which generally resulted in fines that were miniscule—they were corporate parking tickets—and the net effect was basically to make hiring the illegal migrants a cost of doing business. That doesn't work. So we reversed the policy and we decided that instead of going for parking tickets we were going to go to criminal felonies. In 2006, Immigration Customs Enforcement charged 760 individuals or entities on felony criminal charges and also brought 3,600 administrative arrests. That is seven times the number of arrests completed by the old INS before the Department of Homeland Security was formed. You see it in the newspapers and you see it on the news. We are doing vigorous, nationwide, tough enforcement against those companies who are systematically violating the laws against hiring illegal workers and are building a business based on flagrant violation of those laws. I want to add a word about some of the images that you see. It is the job of our ICE agents to be on the frontlines, enforcing our immigration laws and that is often difficult, dangerous and sometimes almost impossible. Sometimes they get negative headlines simply because they're doing what they have to do to make sure they secure an area and protect themselves and everybody against a person who chooses to resist an arrest through an act of violence. Should agents show sensitivity and compassion? Of course they should and they do to the fullest extent possible. But agents have to do their job, and the job that they have to do is to enforce the laws that are on the books. As long as those laws are on the books, we will enforce those laws. I'm proud of the job the agents do and the progress they are making in showing the American public that we are serious in upholding the rule of law as it relates to immigration.

Let me go to how we create an avenue to satisfy economic growth and labor needs even as we're enforcing the law to make sure that that avenue has to be one that is regulated and visible. One way is that we have to continue to make sure that we are applying the border measures and the interior enforcement measures which make the promise of the rule of law a reality. That means continuing to add border patrol agents, continuing to add technology, tougher criminal sanctions for those who dodge checkpoints and fail to obey DHA officers, supporting our ICE agents and supporting catch, detain and return, by making sure that the courts don't allow litigation to overwhelm our immigration system so that we spend years litigating to remove someone who is

clearly here illegally in the country. We have to make sure that we can detain people pending removal, particularly when they're dangerous, and we have to make sure that worksite enforcement rules are kept simple and strong. Part of that is making it mandatory for employers to use the electronic employment verification system. This is a system which in its current iteration allows would-be employers to confirm that new hires are U.S. citizens or work-authorized hires. It is a verification tool that is fast, accurate, and easy to use. But we need to enhance it further by giving access to Social Security data that would help employers identify those people who come in with seemingly legitimate credentials that are really the product of identify theft—a crime which victimizes not only the immigration system but innocent Americans.

Toughness is not enough, though. We have to find a solution that answers this economic community and also has respect for the humanitarian dilemma in which we find ourselves with 11 to 12 million aliens, many of whom have set down considerable roots in the community. It is impossible—putting to one side whether it's humane—to track down and remove twelve million people from this country, it would be unbelievably expensive. There would be a real economic consequence if we were to suddenly remove those 12 million people from the economy.

That leads to just two conclusions to complete the picture of a strategy on illegal immigration. First, to fulfill the requirements of our economy we need a lawful orderly mechanism to allow farm workers to come to do that kind of work—the kind of work Americans won't do. This has to be regulated, so we know who's coming in, and we can decide if people are fit to come in, and it has to be visible, but it has to be efficient. This will have the consequence of reducing pressure on our border agents, aiding the economy, and again focusing enforcement efforts on the people that we really don't want in under any circumstances—drug dealers, criminals and terrorists.

The second conclusion I draw is that it is not in the national interest to sustain circumstance where 12 million people are living in the shadows of this country. It is bad for the rule of law, it is bad for those people who can be easily victimized, and that's why the president has consistently supported sound and long-overdue immigration reform legislation that specifically includes a temporary guest worker program and a plan to confront the problem of those who are here effectively but also humanely. Under a temporary guest worker program we could build flexibility into the system by adjusting the number of guest workers who come in based on our economic needs. That puts the national interest first, where it ought to be.

And for those workers who are already in the country and have set down roots, although here illegally, a workable solution should confront them with a clear-cut choice. Either they can continue to work illegally, hide from the law, and risk being detected, apprehended and sent back to their country of origin through stepped up enforcement, or they can come out of the shadows, pay their debt to society in exchange for a legal work visa and possibly an opportunity to obtain a green card through an otherwise generally applicable program. That means creating a system to bring them out, register them, get them secured identification, make sure we set the terms and conditions of their being able to be here and also making sure that as a condition they pay the debt to society that they owe for having broken the law. I venture to say that any solution to the problem of the 12 million people here should require them, in the long run at least, to demonstrate a working knowledge of English so that they can begin the process of being fully integrated into our society once they have achieved full reconciliation with the law.

Any new proposal of this kind—there are a lot of proposals floating around—has to be tough and fair. There cannot be amnesty. The rule of law demands that those who broke the rule pay some kind of a price. There can't be special privileges for law breakers. There can't be a special path

that gives them the jump on all the people, like those I swore in today, who waited patiently to get their green cards and come to this country.

On the other hand, when the illegal undocumented workers have made their peace with the law and they've gotten at the back of the line with everybody else to wait their turn, then they can come out of the shadows and have a work right in this country that is secure and that respects their dignity as human beings. Then they can be on equal footing with others.

Before I conclude I'd like to share with you some of my own thoughts from the standpoint of being the head of the department that would be charged with administering any temporary worker plan about some of the principles that ought to guide this kind of program.

First, we need to have clear and consistent application standards that will protect applicants, guide those who have to review and grant the applications, and defend against the possibility of fraud and abuse. The lesson from every effort to reform immigration laws is this: the more confusing and complicated the process is, the more different kinds of determinations that have to be made, the more different kinds of evidence that have to be evaluated, the less likely applicants will seek to enter the program and the more likely the system will be abused and riddled with fraud and will become discredited.

Second, we should carefully design judicial review of application decisions, particularly when someone's application is rejected, to ensure that the process of reviewing applications was fair and objective but also does not become the source of never-ending court litigation. As a result of the Immigration and Reform Act of 1986, judicial review provisions have jammed the federal court system with a huge backlog of legalization cases. Some of this litigation continues today 20 years later. Excessive litigation, I guarantee you, will break the back of any immigration system.

Third, DHS as an agency needs to have flexibility as it implements and manages any temporary worker program and any program for currently undocumented workers. We need to have the timely resources to put together regulations, develop and implement any necessary contractual procurements, hire and train staff, and plan for what will be a substantially increased work load.

Let me sum up by saying this: what I'm talking about is a common sense immigration policy for America. This problem has been around for 30 years, it is not going away by itself. We have to be tough, we have to be humane and we have to have a plan that is workable in the approach that we take to deal with this vexing issue. If we get it right we can put together a policy that enhances our security, strengthens our economy, and ensures our sovereignty while continuing to honor two cardinal principles—the rule of law and our heritage as a nation of immigrants. I believe, I hope, and I think it's certainly necessary, that this year we can make sensible immigration reform the law of the land. If we do it, we're going to be a stronger, safer and better country.

www.lawac.org

**Speeches are edited for readability and grammar, not content.
This is a "first draft" transcript. A more fully edited version will be posted
online around the end of the season (September).
The Los Angeles World Affairs Council is a non-profit, non-partisan
organization.**