

# Journal of Civil Rights and Economic Development

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Volume 19  
Issue 1 *Volume 19, Fall 2004, Issue 1*

Article 8

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October 2004

## Keynote Address: Changing the Face of Immigration: A Year in Transition

Stewart Verdery

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### Recommended Citation

Verdery, Stewart (2004) "Keynote Address: Changing the Face of Immigration: A Year in Transition," *Journal of Civil Rights and Economic Development*. Vol. 19 : Iss. 1 , Article 8.  
Available at: <https://scholarship.law.stjohns.edu/jcred/vol19/iss1/8>

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# KEYNOTE ADDRESS: CHANGING THE FACE OF IMMIGRATION: A YEAR IN TRANSITION

STEWART VERDERY\*

Professor Ward, I appreciate the introduction. I am sorry to hear about your colleague's family situation, but it is totally understandable that he is not here, and I do appreciate the welcome. I was hoping for one as warm as what Alex Rodriguez received earlier this week, but I did not hit 45 home runs last year, so I will take what I can get.

As you mentioned these immigration issues we are dealing with at the Department of Homeland Security are incredibly important, incredibly complicated, and at times divisive. But with the security mandate we have now from Congress and the American people in terms of Homeland Security, there are things that have to be fixed, and we are well along the way to doing that. This is a long, long process to fix our immigration proceedings while continuing the proud tradition our country has as a welcoming nation for temporary travelers, people coming to Disneyland or to cut a deal if they are a corporate client; for students; or for family reasons, people coming here for reunification or to visit. We are doing our best at the Department of Homeland Security to meet those dueling missions of enforcement and facilitation. I have the opportunity to work with very good public servants, such as Frank Moss here to my right at the State Department.

On Monday the department has its one-year anniversary.<sup>1</sup> You will probably see a lot of stuff in the press about that, and it is clear, that after a year, we are like many marriages. Our

\* These remarks are an actual transcript of the author's comments at the St. John's Journal of Legal Commentary Symposium on Feb. 27, 2004.

<sup>1</sup> See *Homeland Security*, CITY NEWS SERVICE (Los Angeles), Mar. 8, 2004 (noting one year anniversary of Department of Homeland Security occurring on March 8, 2004).

department was combined 22 agencies and we spent a year of feuding, fighting, figuring out what our roles are, sometimes wondering what we have gotten ourselves into. But I can say after a year, we have a good sense of accomplishment as well as a lot of new gray hairs. It has been a very busy year with the department, and while the border and transportation issues are not the only ones the department faces, they are obviously some of the most critical ones. Especially, when you look at what happened on 9/11 with the hijackers coming in, why they were here, why they were not detected, you can see the problems we are trying to solve. My job as Assistant Secretary is to look at what we are doing today in terms of our border enforcement and transportation and cargo security, to protect those borders, to facilitate trade and travel, and to create policies. By policies I mean theories backed up by budgets and legal authority -- that improve upon them. We are trying to find the proverbial needle in a haystack, whether it is a terrorist or his weapons, which takes a lot of luck, but as they say luck is the residue of design.

The other night I was sitting around in my living room about midnight, actually looking over some immigration initiatives we are working on, and I had the TV on in the background, and on comes the famous Seinfeld theme song. It was one of my favorite Seinfeld episodes, where Jerry and George are creating the sitcom about nothing, and if any of you have ever seen the episode, it is probably one of the best ones. I am sitting there, laughing away, and all of a sudden the commercial comes on and I say, I better go back to work. I return to the memo that is about a really serious immigration topic, and I think that this is kind of the opposite. That is about nothing; this is about everything. We know that one mistake allowing a terrorist to come into the country and be joined up with a weapon could kill ten people, it could kill a thousand people, it could kill a million people. Those of you in this area know that too well. Even an event that had relatively few casualties could throw our economy into chaos and tempt us to curtail the civil liberties that have served us so well for 200 years. Thus, it is a serious business and while I try to mix humor into these kinds of speeches, this is a serious, serious occupation, and luckily we have great partners at our new department with the State Department, with the White House, with the Department of Commerce and Transportation,

and particularly with our overseas partners and with the private sector. All these people play a role.

I remember where I was though on September 11. I had been out of work for a week with my wife having a second child, and had just gotten back to work, when I heard about the attacks on the Trade Center and we did not quite know what was going on. I was sitting at my desk on the third floor of the U.S. Capitol. It was a nice day about 75 degrees, we had the windows open and the breeze was coming up the mall, and all of a there was a big boom. About ten seconds later, looking out the window towards National Airport, you could see smoke coming up from the Pentagon. It was only about three hours later when we learned that the woman who actually had my job as General Counsel to Senator Nickles, Barbara Olsen, had been on the plane that hit the Pentagon. So a vow was made there by all of us in Congress and the administration and others that we would not lose sight of this mission to protect America from these kinds of attacks.

It is clear the terrorists attacked the Trade Centers and the Pentagon as symbols of America representing our economic and military powers that threaten the type of world that they would like to create. I feel like I have a great opportunity to help fix the problems that allowed this to happen. Just by coincidence, last night I was staying downtown in Manhattan, was not really paying attention where the cabbie was taking me, all of a sudden he is there and I look out and I am standing right across from the World Trade Center at the Hilton Millennium Hotel. I go up to my room on the fourteenth floor, it is looking out over this giant pit. This is the first time I had been back to New York since 9/11, and really, as you sit down to your work, it gives you a good incentive to work hard.

I will not go through the job description in too much detail. I think that my bio was in the material that was handed out. It is a little confusing as to who does what at the department, so I will just take a second, but the Border and Transportation Security Directorate is brand new with the department, and under us are four large agencies, two of which are immigration-related.<sup>2</sup> The

<sup>2</sup> *Fiscal 2005 Budget: Border and Transportation Security, Address Before the Committee on House Select Homeland Security Subcommittee on Infrastructure and Border Security*, FEDERAL DOCUMENT CLEARING HOUSE CONGRESSIONAL TESTIMONY,

Bureau of Customs and Border Protection consists of all the inspectors that you deal with at a port of entry.<sup>3</sup> The Bureau of Immigration and Customs Enforcement (“ICE”)<sup>4</sup> includes our investigative agents, as well as Victor Cerda, the chief legal officer for ICE who is here today. The Transportation Security Administration is all those friendly screeners you deal with at the airport, at least we hope they are friendly.<sup>5</sup> The Federal Law Enforcement Training Center, which is not as big, but is the one that train everybody. It is especially critical that they not only get the right training both to detect terrorists and criminals, but also to do it in a fair and legal way.<sup>6</sup> My office, the BTS Office of Policy is designed to come up with policies and to coordinate policies coming out of these bureaus that help fulfill our missions.<sup>7</sup> I work with these agencies directly and while we obviously spend a lot of time on cargo security and transportation security issues, such as the screeners, port security, air cargo and this and that, it is clear that the most difficult batch of issues we face are the immigration issues.

I know I am the wrap-up of this event, but the old joke in the Senate was everything has been said but not everyone has said it. So by going last, I know that a lot of these issues were covered today, whether it is US-VISIT<sup>8</sup> or NSEERS.<sup>9</sup> I will try not to

(Mar. 17, 2004) (statement of Asa Hutchinson discussing establishment of Directorate and “legacy agencies” which compose it).

<sup>3</sup> See *The Future is Now*, U.S. DEPT. OF JUST’S U.S. CUSTOMS TODAY, Feb. 23, 2003 (discussing duties of Bureau of Customs and Border Protection).

<sup>4</sup> See John Biemer, *Custom Agents Moving West: Homeland Security Unit Relocating to Oakbrook Terrace*, CHI. TRIB., Feb. 17, 2004, at C2 (explaining how “ICE” is charged with securing nation’s borders and guarding its transportation infrastructure).

<sup>5</sup> See Anthony Ramirez, *Metro Briefing New Jersey: Newark: Airport Terminal Evacuated*, N.Y. TIMES, Feb. 20, 2004, at B4 (stating how Transportation Security Administration oversees baggage screening at airports).

<sup>6</sup> See generally Kevin Johnson, *Recruits Flood Federal ‘Boot Camp’*, U.S. TODAY, Sept. 23, 2002, at 3A (exhibiting training program of Federal Law Enforcement Training Center).

<sup>7</sup> See generally Evan P. Shultz, *Man at the Gate: John Ashcroft is Still the One Who Controls Immigration*, LEGAL TIMES, May 19, 2003, at 66 (discussing closure of INS when Bureau of Citizenship and Immigration Services, Directorate for Border and Transportation Security, and Bureau of Border Security were formed).

<sup>8</sup> See Frank James, *Growing Pains Mark Anniversary for Agency; Homeland Security Has Come a Long Way Since Last March 1. The Department is Lauded for Enhanced Security, But Critics See Shortcomings*, CHI. TRIB., Mar. 1, 2004, at CN12 (explaining US-VISIT program “which collects and compares biometric data of visa-holding visitors” to U.S. in attempt to block “undesirable” visitors from entering).

<sup>9</sup> See Martin Mbugua, *A Crackdown on Visa Frauds*, DAILY NEWS (New York), Dec. 23, 2003, at 26 (stating that National Security Entry Exit Registration System “requires male visitors from designated countries to register with authorities on a regular basis”).

rehash old ground, but as an introductory remark, I was meeting with a delegation from Australia earlier this week to talk about common experiences with homeland security, and we were talking about immigration enforcement and how to process people coming to our respective countries. They were telling me about these great systems they have, and I said, "Guys you have it easy. You are an island." You know we do not have such luck here. We have 7,500 miles of border with Canada and Mexico,<sup>10</sup> unique relationships with each, a largely unguarded border with Canada,<sup>11</sup> a heavily guarded border with Mexico that nonetheless has a million people crossing it illegally every year.<sup>12</sup> In addition, we have 9,500 miles of shoreline,<sup>13</sup> 361 seaports<sup>14</sup> and about 450 million visitors.<sup>15</sup>

So I want to talk a little bit today about on immigration policy, where we were two years ago with 9/11, where we are today, and where we are headed. It is clear that some of the weaknesses we had two years ago have been fixed. Others are in the process of being fixed, but there are significant hurdles that remain and some of these programs are very familiar to you, NSEERS, SEVIS, and US-VISIT. I am guessing there is probably some skepticism out in the crowd about some of these programs, but I hope that after listening to my remarks and having some interaction, you will understand why the success of these programs is absolutely critical to our security, our economy, and our civil liberties.

I am actually very impressed that you are here on a Friday afternoon. I appreciate you being here; hopefully this will be educational to you.

As we sat down to work in this new department, especially on immigration matters, it is clear that there was a lot of necessary improvement. Our policies had been somewhat of a Jekyll and Hyde mix of enforcement, facilitation, and amnesty. The

<sup>10</sup> See Frank James, *'Eyes, Ears' of U.S. Face Challenge; Busy Agency Must Watch Vulnerable Airspace, Borders*, CHI. TRIB., Feb. 1, 2004, at C18 (noting U.S. has 7,478 miles of shared border with Canada and Mexico).

<sup>11</sup> Clifford Krauss, *On Border Ire, Canada Says: Blame U.S.*, N.Y. TIMES, Nov. 8, 2002 (indicating the implications of the unguarded border with Canada).

<sup>12</sup> See *Public Testimony Before 9/11 Panel*, N.Y. TIMES, Mar. 23, 2004 (detailing the border situation with Mexico).

<sup>13</sup> See *id.* (noting the extent of United States shoreline).

<sup>14</sup> See *id.* (indicating the number of seaports).

<sup>15</sup> See *id.* (detailing the annual amount of visitors coming to the United States).

American people and Congress had lost confidence in the ability of the former INS to either enforce immigration laws or to provide the benefits that millions deserve.<sup>16</sup> So we have gone to great lengths to evaluate the legacy programs we inherited, to look at their purposes, to enhance the national security aspects of them, but also to protect civil rights. Our core mission is not just to protect our assets, the buildings, the power plants and all these things, it is also to protect our way of life and our freedoms that we deserve. One of the key things I would point out is the extent by which we go to encourage deliberation on the civil liberties aspects of things. We have an Officer for Civil Rights and Civil Liberties, Dan Sutherland, a fellow graduate of the great law school of University of Virginia. His office is not someplace that at the last minute we go and say, Dan, what do you think of this; please tell us we are not doing anything wrong. Dan and his team are integrally involved in things as we are coming up with on the drawing board. In fact we have actually turned over many of our issues to him on the first glance to come up with initiatives. I am going to talk about the proposals we are working on to fix some of the criticisms after the detentions of people after 9/11 in a few minutes, but we have gone the extra mile to get that input on the civil liberties concerns. We also have a Chief Privacy Officer, Nuala O'Connor Kelly, and while she is not engaged as much on the immigration side of these issues, she is very integral to our work as we come up with databases of people such as international travelers and the like.

First is visa policy, the first step for most travelers when they come to the country. Until 2001, it was often done by mail, believe it or not, with no interviews.<sup>17</sup> But the percentage of visa applicants who are acquiring visitor visas has been increasing the last couple years.<sup>18</sup> In August of last year the State Department instituted a new rule that basically says you must have a personal interview where the exceptions to this are few and far between, except for diplomats.<sup>19</sup> We have also come up with much more stringent inter-agency security checks for certain types of applicants to try to fix some of the problems that

<sup>16</sup> *See id.* (maintaining the loss of confidence in official immigration policy).

<sup>17</sup> *See id.* (detailing immigration policy prior to 2001).

<sup>18</sup> *See id.* (noting the increase in visa applications).

<sup>19</sup> *See id.* (indicating the changes in immigration policy).

we saw with the hijackers. We know that at least two of the hijackers on 9/11 came in on legitimate student visas, but overstayed the terms of their visas and used that time to plan, to plot, and to kill over 2,000 people.<sup>20</sup> Congress and the President then decided that we had to clean up the student system to make sure we had the integrity and security of systems for admitting foreign students. We developed an online registration system whereby these students could be entered and universities could confirm their acceptance, attendance, and compliance with student visas.<sup>21</sup> This system is called SEVIS.<sup>22</sup> Over 800,000 students and exchange visitors are registered amongst 8,000 schools,<sup>23</sup> and the logistics of this program are immense because they cover every school, from the Harvards and Yales of the world to Fred's Beauty Salon. There are schools all over the map, and they all qualify as long as they are legitimate schools. We had to come up with computer systems that could handle this and we faced a real crunch last fall when 600,000 people were coming back to school and coming into ports of entry, requiring clearance to get to their schools.<sup>24</sup> We set up an urgent response team, the SEVIS Response Team, or the SRT. They took over 8,000 calls. These are people who are at the port of entry and have some problem with their documents. We were able to get all of them through, but in the process we found over 200 students who were bogus, such as folks that the school never heard of, those who had been thrown out, and those with fictitious identities. These are the kind of folks that have to be

<sup>20</sup> See *INS Releases Legal Status of Alleged Hijackers*, CNN.com, Oct.11, 2001 at <http://www.cnn.com/2001/US/10/11/inv.ins.hijackers/> (stating that three out of four hijackers overstayed their nonimmigrant visas).

<sup>21</sup> See David Treyster, Note, *Foreign Students v. National Security: Will Denying Education Prevent Terrorism?*, 22 N.Y.L. SCH. J. INT'L & COMP. L. 497, 501-02 (2003) (describing SEVIS as "an internet-based system that allows graduate and undergraduate institutions to electronically file information about the status of their foreign students directly to the INS").

<sup>22</sup> See N.Y. TIMES, *supra* note 13 (detailing the SEVIS program generally).

<sup>23</sup> See generally Adrian Arroyo, Comment, *The USA PATRIOT Act and the Enhanced Border Security and Visa Entry Reform Act: Negatively Impacting Academic Institutions by Deterring Foreign Students from Studying in the United States*, 16 TRANSNAT'L LAW. 411, 423 (2003) (noting that schools must function as a "public educational institution by federal, state, or local government" and must be "accredited by a nationally recognized accrediting agency" in order for INS to approve the student's application).

<sup>24</sup> See George Lardner Jr., *Views Differ on System for Tracking Foreign Students*, WASH. POST, Apr. 3, 2003, at A8 (estimating number of incoming foreign students to be between 300,000 and 1.5 million).



found if we are going to keep the proud tradition of international travel and immigration flowing in this country.

US-VISIT, I could go on for hours on US-VISIT.<sup>25</sup> I know you have already heard about this, but you have to remember that it was about 25 years ago when we stopped keeping track of international visitors.<sup>26</sup> Before that we asked them to register periodically with authorities and 25 years ago we stopped doing that. You can see what happened, September 11. Not entirely because of this problem, but it was definitely a symptom of a larger system that had little idea what people were doing when they got here, and especially when they were leaving. After the first World Trade Center bombing in 1993,<sup>27</sup> Congress had mandated the deployment of an entry/exit system in the 1996 Immigration Act.<sup>28</sup> Without an exit system, and with a minimal, unreliable entry system, we really have no idea who is overstaying, what they are doing. Amazingly we have relied on a paper-based system that literally requires people to hand key information. These forms, the I-94 forms you know about, are actually sent to a building in Kentucky where somebody sits there and types in the information. This is not 21<sup>st</sup> Century government conduct and we are going to fix it. The other thing: without an entry/exit system, we were left us with no idea when criminals were coming and going across the border with multiple identities using different aliases without detection. Of course the entry/exit system mandated by Congress in 1996 did not happen.<sup>29</sup> Congress pushed back the deadline, pushed it back

<sup>25</sup> See Department of Homeland Security, US-VISIT, available at [http://www.dhs.gov/interweb/assetlibrary/Pamphlet\\_BW\\_Web.pdf](http://www.dhs.gov/interweb/assetlibrary/Pamphlet_BW_Web.pdf) (last visited Mar. 22, 2004) (noting that US-VISIT is a Department of Homeland Security program designed to keep United States borders safe by verifying identity and visa status of incoming visitors).

<sup>26</sup> See Heidee Stoller et al., *Developments in Law and Policy: The Costs of Post-9/11 National Security Strategy*, 22 YALE L. & POL'Y REV. 197, 217 (2004) (observing that enforcement of exit-entry programs stopped in the 1980s due to fiscal concerns).

<sup>27</sup> See David C. Marshall, Comment, *Political Asylum: Time for a Change – The Potential Effectiveness of Reforms to Prevent Terrorist Attacks in America*, 99 DICK. L. REV. 1017, 1024 (1995) (stating that on February 26, 1993, the World Trade Center was bombed when a Ryder truck van containing explosives detonated in the parking garage).

<sup>28</sup> See generally Kanul M. Parker, *Official Imaginations: Globalization, Difference, and State-Sponsored Immigration Discourses*, 76 OR. L. REV. 691, 699 (1997) (describing plan for increased border security through physical measures and introduction of machine readable identification cards).

<sup>29</sup> See Catherine Etheridge Otto, Comment, *Tracking Immigrants in the United States: Proposed and Perceived Needs to Protect the Borders of the United States*, 28 N.C. J. INT'L L. & COM. REG. 477, 497–98 (2002) (explaining Data Management Improvement

again in 1998, pushed it back again in 2000, and the deadlines we have now in that Act are still what exists.<sup>30</sup> We had to have entry/exit systems at airports and seaports by the end of last year, at the largest land ports by the end of this year, and everywhere else by the end of next year.<sup>31</sup> This system is working. We renamed it US-VISIT, good branding thing for anyone who is gone to business school, because entry/exit is not quite as friendly as calling it US-VISIT.

We upped the ante by putting in the biometric component by the end of last year and the biometric really is significant. It ties the travel documents to the person. It provides the international cooperation on biometric standards, and also perhaps most importantly allows us to begin to check people as an individual. We are checking against our watch lists and criminal databases to find that individual person so that we can rely less on stereotypes, like nationality. This is the way we are headed in the future, individualized checks. After incredible amount of quick policy work and acquiring equipment and operational crash courses, US-VISIT was rolled out at all of our airports and seaports on January 5.<sup>32</sup> You probably already heard about this, you provide two fingerprints and take a quick picture. It takes about eight seconds for the system to check if you are on the watch list or in our criminal databases. It is only taking seconds to add to our process and has not caused any significant increases in our ports of entry time.

We have now processed over a million and a half passengers through the entry portion of US-VISIT and we found over 100 verified watch list hits. I will just give you two examples because they occurred at local New York airports. On February 19, 2004,

Act of 2000 which requires INS to develop a completely integrated automated entry-exit collection system).

<sup>30</sup> See generally JoAnne D. Spotts, *U.S. Immigration Policy on the Southwest Border from Reagan Through Clinton, 1981-2001*, 16 GEO. IMMIGR. L.J. 604, 615 (2002) (discussing changes in immigration law in 1996 regarding United States borders).

<sup>31</sup> See Priscilla J. Krebs, *New Program Tracks Foreign Travelers*, MICH. EMP. L. LETTER, Jan., 2004 (discussing the U.S. Visit Procedures, noting exit procedures will be operational at as many as 10 major airports and one seaport by early 2004 and phased in at the remaining major airports and seaports in early 2004. Entry and exit enhancements at land borders will be phased in throughout 2005 and 2006).

<sup>32</sup> See Rondi Adamson, *Counting On Safer Skies On One Finger* (print), CHRISTIAN SCIENCE MONTHLY, Jan. 20, 2004, at 11 (noting the January implementation of US-VISIT has not brought out the best in everyone, citing a Brazilian official's insistence that Americans in turn be fingerprinted when entering Brazil).

a native of Trinidad and Tobago appeared at primary inspection, attempted to enter the U.S. and was not wanted for any crimes under our traditional biographic criminal data systems. The biometric check under US-VISIT uncovered a prior conviction for having sex with a minor in 2000, registration as a sex offender, and removal from the United States as an aggravated felon. He also lived and worked illegally in the United States. The system caught him; he has been removed, and has a ten-year ban on ever coming back. On January 10, 2004, a citizen from El Salvador was intercepted at JFK Airport. US-VISIT determined he had been previously convicted of a DUI hit and run death under a different identity. He had been able to enter under a fraudulent identity from the country several times, including a visit as recently as December 12 of last year. This criminal could not fool the biometric component of US-VISIT.

The success of the initial phase though has only really wet our appetite. There is so much more to do. It has been designed to roll out in increments, where these other increments are very serious and very difficult, but we are going to do it. We are on track to meet the deadline for the land border deployment this year. We are going to continue testing exit procedures to figure out when people are leaving and we also have to begin to collect biometrics from travelers in the Visa Waiver program,<sup>33</sup> who are currently exempt from the program.

The NSEERS program, I know has caused a lot of concern in terms of stereotyping people from certain countries.<sup>34</sup> NSEERS is going to be subsumed into US-VISIT as we come up with an effective exit procedure where everyone is going to have to check in and check out. It will not just be the people from the NSEERS countries. We also have shown a lot of flexibility for at least the initial year of NSEERS under Department of Justice. Originally, people had to re-register after thirty days and then again annually. We took a hard look at the security benefits of these

<sup>33</sup> See Paul Rothman, *Biometrics at the Border*, ACCESS CONTROL & SEC. SYS. INTEGRATION, Jul. 2002, at 8 (stating the recently passed Enhanced Border Security and Visa Entry Reform Act of 2002 mandates the use of biometric identifiers in the passports of participants of the visa waiver program).

<sup>34</sup> See *U.S. to End Registration Program*, WASH. POST., Dec. 2, 2003, at A11 (acknowledging Asa Hutchinson's statement that the decision to end the program was not influenced by the sharp criticism by civil rights organizations and advocacy groups for people targeted).

re-registrations and got rid of them. Hopefully that has really made a difference for people. We felt that this program was not well received in the community of the registrants and was not providing security benefits, but was actually taxing our officers quite a bit who had to do the interviews. So we took the flexibility and we used it to get rid of this part of NSEERS.

I want to talk for just a minute about the President's Temporary Workers Initiative<sup>35</sup> because it is key to both our economic growth and also to our border enforcement. On January 7, my birthday, the President announced his Temporary Worker Initiative – because of that I did not even get to go home to have my birthday dinner. I was there working on talking points on the Temporary Worker Initiative and appreciate the President's support. There are three big components to this initiative, as you will see when this is debated in Congress. We have to protect the homeland by controlling borders, we have to provide incentives for returns of people to their home country, and we have to have enforcement. The three are inseparable. You cannot have an adequate program without all three.

The trick of the enforcement side is that we have to be able to convince people to go through the ports of entry. If it is easier for somebody to sneak across the border to get a job than to go through a port of entry and be enrolled in US-VISIT and to get his or her employment card, the system is not going to work. We have to have that ability to convince people to use the system legitimately. Otherwise the system is not going to work. Temporary workers will be able to establish their identities by getting legal documents under a worker program, and we have to work extremely hard to make sure these documents are secure.<sup>36</sup> The last time we did this in 1986, there was so much fraud in the system that the program essentially collapsed from its own

<sup>35</sup> *President Bush Proposes New Temporary Worker Program*, available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>, (last visited Oct. 18, 2004) (transcript of January 7, 2004 remarks by the President on Immigration Policy, proposing a new temporary worker program that will match willing foreign workers with willing American employers, when no Americans can be found to fill the jobs).

<sup>36</sup> *See id.* (noting the requirements of participation in this program, including having a job or job offer in the United States, and stating that participants who do not remain employed, who do not follow the rules of the program, or who break the law will not be eligible for continued participation and will be required to return to their home).

weight.<sup>37</sup> We are going to come up with a temporary worker program for uniform documentation that is tamper-proof and fraud-proof. Second we have to continue to link participation in this program with agreements of countries, especially Mexico, to break the cycle of alien smuggling. We have to make sure that they are enforcing their side of the border to break up the smuggling rings. Also, they need to allow us efforts such as repatriation, so that the people who continue to break our laws by coming across the border between ports of entry can be returned to the home country. The proposal does have an incentive for people to return to their home country: that is why it is different from amnesty. The legal status granted by this program is three years.<sup>38</sup> It would be renewable, but it does have an end, and people will be expected, if they sign up for the program, to eventually return to their home country. One of the ways it is going to do that is to give them the ability to have portability of their investments, like Social Security benefits, back to Mexico. Lastly, on enforcement, this is now contained within ICE, we have to have effective employer enforcement. Otherwise employers will feel free to continue to hire illegal aliens. We are going to ask for more money to do the enforcement in the workplace and to make sure that ICE has the budget to make sure we have an effective deterrent to enforce both this program and other immigration programs that are based on employment.

On the detention issue, which I know has gotten a lot of press, especially in *New York Times*, we are working extremely hard to avoid a situation that happened after 9/11 in terms of what are the rules of the road for detaining people of interest. I am not going try to define that here today, but after 9/11, basically people were detained until the FBI gave the former INS

<sup>37</sup> The Immigration Control and Reform Act of 1986, Pub. L. No. 99-603, §101, 100 Stat. 3359, 3360-3374 (1986) (codified at 8 U.S.C. section 1324a(a)(i)) (amended by Pub. L. No. 101-649, 104 Stat. 4978, 5053, (1990)) (introducing several major revisions in immigration law, such as employer sanctions for anyone knowingly employing illegal aliens, prohibitions on discrimination based on national origin or citizenship, and a provision granting legal status to certain aliens).

<sup>38</sup> See Michelle Mittelstadt, *Mexican ID Cards' Face Value Questioned With Varying Policies On Whether to Accept Consulates' Matricula Cards, State and Local Jurisdictions Look to Washington for Guidance*, DALLAS MORNING NEWS, Mar. 14, 2004, at 1H (explaining Under the Bush plan, illegal immigrants who come forward and identify themselves would get visas allowing them to stay here legally for three years).

clearance that they were not involved in terrorism. Both our Inspector General and the Department of Justice Inspector General have looked hard at this. They have found that the practice was legal but not appropriate. We are working very hard to come up with better guidelines so that the relationship between ICE and FBI works better. We are going to come up with procedures, which are actually in the final process of being promulgated, in terms of the length of detainees' confinement, the process to clear people of involvement, the removal process, and the conditions of confinement, including access to legal counsel. Undersecretary, Asa Hutchinson, testified about this a couple months ago.<sup>39</sup> We are in the process of coming up with these guidelines. We are committed to revising our detention practices to ensure they are both strong and fair. This comprehensive guidance to the field for ICE will ensure that aliens are informed of charges in a timely manner, make sure that the procedures for localizing the so-called notices to appear are proper, and provide our procedures for robust post-order custody reviews. We are operating under a passionate enforcement regime. We need to make sure that we do our job, but that we also understand that each person who is detained or questioned or picked up for immigration violations is a human being who should be treated with respect, with the rights that they deserve. We have to be able to end up with a situation where we can find the one percent of people who are here to do us harm while making sure the 99 percent of visitors who are here for legitimate reasons can continue to go on with their business.

I was doing a little bit of personal reading the other day. I am reading the Stephen Ambrose book about the Lewis and Clark expedition, and while I was reading, I realized that it was 200 years ago right now that Lewis and Clark actually set off on their expedition.<sup>40</sup> I believe it was 200 years ago yesterday that they

<sup>39</sup> See generally Richard A. Serrano, *A Swift, Secretive Dragnet After Attacks; Arrests: Authorities Cast Their Net Largely Out of Public View, Changing the Lives of Thousands of People But Charging No One in the 9/11 Carnage*, L.A. TIMES, Sept. 10, 2002, at 1 (quoting a caseworker for detainees acknowledging their frustration about the length of time they were being held as far back as September, 2002).

<sup>40</sup> See Marylynn Pitz, *Lewis & Clark: 200 Years Later It's Still One Wonderful Road Trip*, PITT. POST GAZ., available at <http://www.postgazette.com/localnews/20030713lewismain0713p1.asp> (Jul. 13, 2003) (discussing the begging of the group's first sustained westward push on May 21, 1804, and noting that two-hundred years ago, exploration in the 19th century quickly presented itself in "all its primitive splendor").

were off looking for a mythical water passage to the Pacific Ocean. That they did not find it, but they were able to settle the west, push the bounds of science, and prove a need to unify our continent. Those of us working on homeland security are in a similar boat. We are not going to find a mythical 100 percent homeland security solution. Sometimes, like Lewis and Clark, it feels like we are paddling upstream. It is clear that homeland security is not a destination but a journey, and like Lewis and Clark, we are inspired by a president with a vision. Lastly, like that expedition we are going to succeed, and we are going to succeed while respecting people's rights. I appreciate the chance to close out the conference. Thank you.