

Testimony of
Hon. John N. Hostettler
before the
Senate Committee on Pensions and Labor
Hearing on SB 580 Illegal Immigration
Senate Chambers
February 4, 2009

Introduction

Thank you, Chairman Kruse and members of the committee. I want to especially thank Sen. Delph for his invitation to share one Hoosier's perspective on this important issue.

I will begin my testimony by offering some historical context for our discussion of this bill. Consider the following statement:

We have listened carefully to these moving voices, but we have also been faced with the reality of limitations on immigration. If it is a truism to say that the United States is a nation of immigrants, it is also a truism that it is one no longer, nor can it become a land of unlimited immigration. As important as immigration has been and remains to our country, it is no longer possible to say as George Washington did that we welcome all of the oppressed of the world, or as did the poet, Emma Lazarus, that we would take all of the huddle masses yearning to be free.

Many people today would characterize such a statement as just the latest example of the blatant xenophobia prevalent in the extremist elements of the anti-immigrant movement. The truth is these words reflected the views of The Select Commission on Immigration and Refugee Policy in its final report of 1981. The chairman of this commission was Father Theodore Hesburgh, then-president of the University of Notre Dame. For those who are unfamiliar with the political perspective of Father Hesburgh, the co-founder of the left-leaning People for the American Way would have likely scoffed at the notion he was anything approaching a xenophobe. However, the "reality of limitations on immigration" that Father Hesburgh and his fellow commissioners observed almost three decades ago has been replaced by the rhetoric that characterizes anyone who questions those words found beneath the feet of Lady Liberty as a bigot who must be shamed into silence. It is this rhetoric – and the neglect of the rule of law spawned by it – that has brought this chamber to consider legislation that would have been considered redundant had previous administrations in Washington, D.C. simply done their job. As a Hoosier, I

appreciate Sen. Delph and his likeminded colleagues who have not succumbed to the temptation to shout out, "It's not the states' job. Write your Congressman." Speaking as one who previously received many of those letters, I will soon tell you why even that exercise continues to be fruitless.

Employer Sanctions

In examining the profound impact of illegal migration across America's porous borders in 1981, the Hesburgh Commission observed:

As long as the possibility of employment exists, men and women seeking economic opportunities will continue to take great risks to come to the United States, and curbing illegal immigration will be extremely difficult.

Father Hesburgh and his colleagues concluded that the only way to "clos[e] the back door to...illegal migration" was the passage of legislation making it illegal for employers to hire undocumented workers.

After several attempts at comprehensive immigration reform, Congress finally passed the Immigration Reform and Control Act of 1986 or IRCA. Also known as Simpson-Mazzoli, named for the bi-partisan collaboration of Republican Senator Alan Simpson of Wyoming and Democrat Representative Ron Mazzoli of Kentucky, IRCA codified the recommendation of the Hesburgh Commission by prohibiting the hiring of persons unlawfully present in the United States. When President Ronald Reagan signed the landmark legislation into law he described illegal immigration as a "challenge to our sovereignty." He continued by highlighting the most important component of IRCA:

The employer sanctions program is the keystone and major element. It will remove the incentive for illegal immigration by eliminating the job opportunities which draw illegal aliens here.

The promise of closing the back door to illegal migration into the United States for those seeking a better job was not realized in practice after the enactment of IRCA. In 1994, the U. S. Commission on Immigration Reform returned to the issue of employer sanctions. The sentiment of the commission echoed that of the Hesburgh Commission before it, IRCA, and President Reagan's IRCA signing statement. Led by former Democrat Congresswoman the late Barbara Jordan from Texas, the Jordan Commission in its interim report of 1994 stated:

The Commission believes that reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration....A better system for verifying work authorization is central to the effective enforcement of employer sanctions.

Congress responded once more to the call of a bi-partisan commission to close the back door by reinforcing employer sanctions. In order to facilitate employers' desires to expeditiously determine the eligibility of applicants, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, established a Basic Pilot Program that entitled a limited number of states to access Social Security information. This process would attempt to match personal information supplied by the applicant with the applicant's Social Security Number (SSN) and foreign visitor data when applicable. The nature of the pilot program was limited to just those states provided for in federal statute. The number was originally five. In 2003, as Chairman of the Judiciary Committee's subcommittee on Immigration, Border Security, and Claims, I successfully amended legislation introduced by Representative Ken Calvert of California. While the legislation as introduced merely extended the Basic Pilot Program in its limited scope, my desire was to expand the program so that every employer in every state of the country, including Indiana, could be aided in their hiring. Congress eventually passed the Basic Pilot Program Extension and Expansion Act of 2003 and President Bush signed it into law in December 2003. The Basic Pilot Program eventually gave way to E-Verify, the current internet-based system that reflects the Jordan Commission's belief "that the most promising option for secure, non-discriminatory verification is a computerized registry using data provided by the Social Security Administration [SSA] and the INS [now DHS]."

While the legal framework necessary to close that back door to illegal immigration has been established on the federal level, enforcement of employer sanctions by successive administrations has been sorely lacking. As chairman of the immigration subcommittee, I inquired as to the number of sanctions that had been executed for 2004. You can imagine my discouragement when I was informed that a grand total of three (3) Notices of Intent to Fine had been issued by the Bush Administration in 2004. A Notice of Intent to Fine is a regulatory step used to inform a target business that they MAY experience a fine or they MAY escape the levy if certain actions are taken. One year later I repeated my inquiry in the hope that the executive branch could not do worse than the previous year. My hope was misplaced. I learned that only two (2) Notices of Intent to Fine were issued by the Bush Administration in 2005. Once again, these notices do not necessarily result in an actual fine. I never asked if the affected businesses were actually fined. I continue in the expectation that at some point the rule of law prevailed even in this relatively miniscule application.

With that background, I want to express my support for the provisions of Senate Bill No. 580 which supplement federal employer sanction authority. The provisions 1) allowing a person to inform the State Attorney General of a possible hire of an illegal alien, 2) requiring the AG to inform federal immigration law enforcement upon his determination that an unlawful hire has been made, 3) granting authority for business license revocation, and 4) making safe harbor/good faith exceptions for business that do all the right things will go far in your effort to positively respond to President Reagan's concern about this "challenge to our sovereignty."

If I may, I would like to touch on three other components of the legislation that will be helpful in stemming the tide of illegal migration across our borders.

Sanctuary Policy

Senate Bill No. 580 includes a provision that prohibits a governmental body in the state from enacting a "sanctuary policy." Sanctuary policy essentially precludes local law enforcement officials from communicating to federal immigration authorities that illegal aliens are present in the local jurisdiction. My first hearing as immigration subcommittee chairman dealt with the issue of sanctuary policy and was prompted by the report of a brutal rape of a 42-year-old mother of two in the borough of Queens, New York City. The New York Police Department, or NYPD, arrested five aliens in connection with that assault. According to records that the subcommittee received from the INS, four of those aliens entered the United States illegally. Three of those four had extensive arrest histories in New York City. The fifth alien, a lawful permanent resident, also had a criminal history prior to the December 19, 2002, attack. Despite the criminal histories of the four aliens, however, it did not appear from the records that the subcommittee received that the NYPD told the INS about these aliens until after the December 19 attack. New York's Executive Order or E.O. 124 barred line officers from communicating directly with the INS about criminal aliens.

Some will argue that a sanctuary policy is necessary for open communication between immigrant communities and local law enforcement. The fact is that the policy does exactly what it did in that park in Queens in December 2002. It shields criminal aliens from being summarily removed from the United States and in so doing makes it merely a matter of time until innocents become victims.

Fraudulent documents

The sections of the bill which deal with the manufacture, use, and distribution of fraudulent documentation are especially important in attempting to curb the impact of illegal migration into the United States. In hearing after hearing during my stint as immigration subcommittee chairman, it seemed the key to success for circumventing US immigration law was access to fraudulent documentation. Whether it was a copy of a utility bill that led to an issued driver's license, a counterfeited driver's license that translated into a bank account or a fraudulent birth certificate that contributed to a successful application for a job, documentation that looked authentic was much sought after by the illegal alien and the coyotes that brought them into the US.

Foreign Consular ID Cards

Returning to President Reagan's concern about the "challenge to our sovereignty" created by illegal immigration, it never ceased to amaze me that legal documentation issued by a foreign government – which conformed to no international standard in its issuance – was given so much credibility within the borders of the United States. I am speaking specifically about consular identification cards. Consular ID cards have been used in this

country for over one hundred years. However, their use until recently was limited to those rare occasions when visiting foreign nationals were somehow incapacitated and local US authorities needed to contact a consular officer to inform the country of origin of the situation. Today, these ID cards issued by foreign governments to, in most cases, their citizens present in the US, legally or not, are used as if they were as official as a passport. One of the most prevalent uses of consular ID cards has resulted in their acceptance for opening a bank account. Foreign nationals illegally in the US offer consular ID cards and receive a bank account with a US bank which has a branch or branches in the alien's native country. These banks receive revenue from sources previously unavailable due to the historic use of wire agencies to transmit funds earned by foreign workers illegally in the US. These funds do not stay in the US nor are they earned by individuals legally here.

You will recall that I said that in most cases foreign governments issue their consular ID cards to their citizens. You are probably asking yourself, "In most cases?" One of the most troubling testimonies that my subcommittee received was that of Steve McCraw, Assistant Director of The Office of Intelligence for the Federal Bureau of Investigation, or FBI, in June 2003. Mr. McCraw reminded members of the subcommittee that foreign nationals in the US legally use other documentation, such as a passport, to carry on lawful acts while visiting. That being the case, Mr. McCraw stated, "It is believed that consular ID cards are primarily being utilized by illegal aliens in the United States." While this information was helpful, the end of Mr. McCraw's testimony received the full attention of the subcommittee. After delineating the criminal considerations of the use of consular ID cards in the US, Mr. McCraw turned to the issue of terrorism. Much of Mr. McCraw's testimony concentrated on the Mexican consular ID card, or Matricula Consular, due to the fact that it is by far the most prominent such ID card in use in the US today. In assessing the potential contribution to the terrorist threat, Mr. McCraw stated:

These criminal threats are significant, but it is the terrorist threat presented by the Matricula Consular that is most worrisome. Federal officials have discovered individuals from many different countries in possession of the Matricula Consular card. Most of these individuals are citizens of other Central or South American countries. However, at least one individual of Middle Eastern descent has also been arrested in possession of the Matricula Consular card. The ability of foreign nationals to use the Matricula Consular to create a well-documented, but fictitious, identity in the United States provides an opportunity for terrorists to move freely within the United States without triggering name-based watch lists that are disseminated to local police officers. It also allows them to board planes without revealing their true identity. All of these threats are in addition to the transfer of terrorist funds,

Senate Bill No. 580's provision that makes the offering of a consular identification card for a public purpose may have ramifications that affect not only Indiana government operations but US national security as well.

Costs of illegal immigration

Due to the nature of the subject matter – we are discussing “illegal” migration after all – cost estimates of illegal aliens on state and local government vary. However, in testimony before the Subcommittee on Immigration of the Committee on the Judiciary of the United States House of Representatives delivered May 17, 2007, Robert Rector, Senior Research Fellow for Welfare and Family Issues at The Heritage Foundation stated that for Fiscal Year 2004 the fiscal impact at the state and local level resulted in the average low-skill immigrant household receiving \$16,016 in state and local benefits while paying \$5,263 in taxes. This amounted to over three dollars of benefits for each dollar of taxes paid. Additionally, the Federation for American Immigration Reform estimated that the cost to Indiana taxpayers for support of the illegal alien population in the state for 2005 was approximately \$259,000,000.

Conclusion

In a perfect world, federal immigration law in place for more than two decades would be aggressively enforced and Indiana Senate Bill No. 580 would possibly be unnecessary. You and I understand this is not a perfect world. However, it is my belief that Senate Bill 580 moves us further in that direction. Sen. Delph has crafted a bill that reflects the necessity for a supplemental approach to secure the country's borders and interior. Additionally, the legislation recognizes the preemptive nature of federal immigration law and narrowly tailors state law so as not to be struck down later on review. Senate Bill No. 580 is not only a valiant effort to positively impact the economic and physical security of the State of Indiana; it will strengthen the national sovereignty of the United States if passed very near its introduced form.

Thank you.