

# ACHIEVING IMMIGRATION POLICY GOALS

## INTRODUCTION

Restoring credibility and setting priorities—themes at the center of the Commission’s policy recommendations on illegal and legal immigration, respectively—will not come to pass unless the government is structured to deliver on these policies. An effective immigration system requires both credible policy and sound management. Good management cannot overcome bad policy. Poor structures, lack of professionalism, poor planning, and failure to set priorities will foil even the best policies.

Until relatively recently, the agencies responsible for implementing immigration policy were underfunded, understaffed, and neglected. During the past few years, however, massive increases in resources and personnel, combined with significant political attention to immigration issues, have provided new opportunities to address longstanding problems. A recent General Accounting Office report documented improvements—including, for example, a more strategic approach to the formulation of immigration enforcement programs—but concluded that management problems remain. Further change is required if the overall U.S. immigration system is to function smoothly and effectively, anticipating and addressing, rather than reacting to, problems.

## STRUCTURAL REFORM

*The Commission recommends fundamental restructuring of responsibilities within the federal government to support more effective management of the core functions of the immigration system: border and interior enforcement;*

***The Commission recommends fundamental restructuring of responsibilities within the federal government to support more effective management of the core functions of the immigration system: border and interior enforcement, enforcement of immigration-related employment standards, adjudication of immigration and naturalization applications, and appeals of administrative decisions.***

*enforcement of immigration-related employment standards; adjudication of immigration and naturalization applications; and appeals of administrative decisions.* The immigration system is one of the most complicated in the federal government bureaucracy. In some cases, one agency has multiple, and sometimes conflicting, operational responsibilities. In other cases, multiple agencies have responsibility for elements of the same functions. Both situations create problems.

*Mission overload.* Some of the agencies that implement the immigration laws have so many responsibilities that they have proved unable to manage all of them effectively. Between congressional mandates and administrative determinations, these agencies must give equal weight to more priorities than any one agency can handle. Such a system is set up for failure, and, with such failure, further loss of public confidence in the immigration system.

No one agency is likely to have the capacity to accomplish all of the goals of immigration policy equally well. Immigration law enforcement requires staffing, training, resources, and a work culture that differs from what is required for effective adjudication of benefits or labor standards regulation of U.S. businesses. While some argue that enforcement and benefits are complementary functions, we agree with the Commission for the Study of International Migration and Cooperative Economic Development [Asencio Commission, after its Chair] that placing incompatible service and enforcement functions within one agency creates problems: competition for resources; lack of coordination and cooperation; and personnel practices that both encourage transfer between enforcement and service positions and create confusion regarding mission and responsibilities. Combining responsibility for enforcement and benefits also blurs the distinction between illegal migration and legal admissions. As a matter of public policy, it is important to maintain a bright line between these two forms of entry. We believe the Asencio Commission was correct in contending that separating enforcement and benefits functions

will lead to cost efficiencies, more effective enforcement, and improved service to the public.

*Diffusion of responsibilities among agencies.* Responsibility for many immigration functions are spread across numerous agencies within single departments or between departments. This fragmentation of responsibility is most clear in relationship to the adjudication of applications for admission as a legal permanent resident: responsibility for making decisions on skill-based immigrant and LDA applications is dispersed among the Department of Labor, the Department of Justice's Immigration and Naturalization Service and the Department of State. Responsibility for investigating employer compliance with immigration-related labor standards is shared by INS and DOL. Additionally, the United States Information Agency has responsibility for determining who will enter with a J visa, under which some exchange visitors work in this country. USIA also must sign off on requests for waivers of the two-year home residency required of some J visa holders before they can adjust their status to other nonimmigrant or immigrant categories.

A second area in which responsibility is diffused and activities are redundant is worksite enforcement. Both INS and DOL conduct investigations to determine if employers have violated the employment eligibility verification requirement. Sanctions may be imposed by INS against employers who knowingly hire unauthorized workers. The DOJ Office of Special Counsel has related responsibilities in determining if employers are engaging in immigration-related unfair employment practices.

Fragmentation of responsibility leads to conflicting messages from the various agencies, unnecessary delays in adjudication, and, when more than one agency must adjudicate the same request, redundancies in actual implementation.

<b>Current U.S. Immigration System</b>				
<b>FUNCTION</b> AGENCY	<b>IMMIGRATION ENFORCEMENT</b>	<b>IMMIGRATION BENEFITS</b>	<b>LABOR STANDARDS</b>	<b>APPEALS</b>
<b>DEPARTMENT OF JUSTICE</b>				
Immigration & Naturalization Service	✓	✓	✓	✓
Executive Office for Immigration Review				✓
<b>DEPARTMENT OF STATE</b>				
Consular Affairs		✓		
Bureau for Population, Refugees & Migration		✓		
Board of Appellate Review*				✓
<b>DEPARTMENT OF LABOR</b>				
Employment Standards Administration			✓	
Employment Training Administration		✓		
Board of Alien Labor Certification Appeals				✓

\*For a limited set of nationality- and citizenship-related matters.

The Commission considered a range of ways to reorganize roles and responsibilities, including proposals to establish a Cabinet-level Department of Immigration Affairs or an independent agency along the lines of the Environmental Protection Agency. We believe a new department or independent agency is neither practical nor desirable, particularly in the context of current interest in streamlining government operations, not creating sizeable, new entities.

After examining the full range of options, the Commission con-

<b>Proposed U.S. Immigration System</b>				
FUNCTION AGENCY	IMMIGRATION ENFORCEMENT	IMMIGRATION BENEFITS	LABOR STANDARDS	APPEALS
DEPARTMENT OF JUSTICE Bureau for Immigration Enforcement	✓			
DEPARTMENT OF STATE Undersecretary for Citizenship, Immigration, and Refugee Admissions		✓		
DEPARTMENT OF LABOR Employment Standards Administration			✓	
AGENCY FOR IMMIGRATION REVIEW				✓

cludes that a clear division of responsibility among existing federal agencies, with appropriate consolidation of functions, will improve management of the federal immigration system. As discussed below, *the Commission recommends a restructuring of the immigration's four principal operations as follows:*<sup>4</sup>

- 1. Immigration enforcement at the border and in the interior of the U.S in a new Bureau for Immigration Enforcement at the Department of Justice;***
- 2. Adjudication of eligibility for immigration-related applications (immigrant, limited duration admission, asylum, refugee, and naturalization) in the Department of State under the jurisdiction of a new Undersecretary for Citizenship, Immigration, and Refugee Admissions;***

***The Commission recommends a restructuring of the immigration system:***

- 1. Immigration enforcement at the border and in the interior of the U.S at the Department of Justice;***
- 2. Adjudication of eligibility for immigration-related applications in the Department of State;***
- 3. Enforcement of immigration-related employment standards in the Department of Labor; and***
- 4. Appeals of administrative decisions in an independent review agency.***

**Proposed Restructuring of the Immigration System**

<p>DEPARTMENT OF JUSTICE</p> <p>BUREAU FOR IMMIGRATION ENFORCEMENT</p> <p>Immigration enforcement at the border and in the interior of the United States</p>	<p>DEPARTMENT OF STATE</p> <p>UNDERSECRETARY FOR CITIZENSHIP, IMMIGRATION, AND REFUGEE ADMISSIONS</p> <p>Adjudication of eligibility for immigration-related applications</p>	<p>DEPARTMENT OF LABOR</p> <p>EMPLOYMENT STANDARDS ADMINISTRATION</p> <p>Enforcement of immigration-related employment standards</p>	<p>INDEPENDENT AGENCY</p> <p>AGENCY FOR IMMIGRATION REVIEW</p> <p>Administrative review of all authorized immigration-related appeals</p>
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3. *Enforcement of immigration-related employment standards in the Department of Labor; and*
4. *Appeals of administrative decisions, including exclusion, deportation, and removal hearings, in an independent agency, the Agency for Immigration Review.*

The Commission believes this streamlining and reconfiguring of responsibilities will help ensure: coherence and consistency in immigration-related law enforcement; a supportive environment for adjudication of applications for immigration, refugee, and citizenship services; rigorous enforcement of immigration-related labor standards to protect U.S. workers; and fair and impartial review of immigration decisions.

### **Bureau for Immigration Enforcement (DOJ)**

*The Commission recommends placing all responsibility for enforcing United States immigration laws to deter future illegal entry and **remove illegal aliens in a Bureau for Immigration Enforcement in the Department of Justice.*** The Commission believes that the importance and complexity of the enforcement function within the U.S. immigration system necessitate the establishment of a higher-level, single-focus agency within the DOJ. The Commission further recommends that the newly configured agency have the prominence and visibility that the Federal Bureau of Investigation [FBI] currently enjoys within the DOJ structure. The Director of the Bureau for Immigration Enforcement would be appointed for a set term (e.g., five years). The agency would be responsible for planning, implementing, managing and evaluating all U.S. immigration enforcement activities both within the United States and overseas.

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<sup>1</sup> See Appendix for Commissioner Leiden's concurring statement.

The new agency's responsibilities would include many functions currently performed by the INS: inspections and admissions at air, land, and sea ports of entry and at pre-inspection facilities overseas; border management and control between ports of entry; apprehension and prosecution and removal of illegal residents and workers; oversight of pre- and post-trial/hearing release; identification and prosecution of document fraud; identification, deterrence, and prosecution of alien smuggling gangs; and other domestic and overseas deterrence activities.

The Commission believes that the current U.S. immigration system structure diffuses and confuses potential for a more concerted focus on central functions and activities. Enforcement objectives sometimes conflict with service goals and *vice versa*. Often, both compete for limited operational resources and for the time and attention of those responsible for planning, administering, and managing these programs.

The Commission is particularly concerned that although the current removal system produces more than 100,000 final removal orders each year, the system does not have the corresponding capability to remove the individuals subject to those orders. The Commission believes that it is critical to the credibility of the removal sector of the enforcement system that the agency be held accountable for setting realistic numerical priorities and producing specific outcomes. Upper-level management must be responsible for effecting an integrated system such that the agency apprehends, detains, and proceeds against those aliens it prioritizes for removal, and ultimately removes all those being issued final orders of removal.

To establish such an integrated system, the Commission recommends that the new enforcement agency have a more traditional law enforcement model structure and that it focus on police activities, pre- and post-trial probation services, and prosecution. Agency person-

nel should be upgraded to receive pay and benefits commensurate with those provided to other Department of Justice law enforcement agents. At present INS personnel performing the same functions as FBI or Drug Enforcement Agency [DEA] personnel are often at a lower-pay grade.

The police function would be carried out by *uniformed services*, such as Inspectors and Border Patrol Agents, and *investigators* who would conduct investigations and collect intelligence at the border and in the interior to deter smuggling, facilitate removals, and accomplish other similar goals. The Commission suggests turning over most detention responsibility to the U.S. Marshals Service and/or the Bureau of Prisons.

As in other law enforcement operations, particularly those in which more people are put into proceedings than can either be accommodated in detention or actually removed, there is a need for *pre- and post-trial/hearing screening* and/or *supervised release* on probation or bond. In the immigration context, these could be available, for example, to asylum-seekers who are deemed by an Asylum Officer to have demonstrated a credible fear of persecution, to those who have accepted voluntary departure and posted bond, or to those unlikely (because of close family members or other strong community ties) to abscond pending completion of their hearings or sentences.

To ensure a high expectation of individuals actually being removed from the U.S. within a certain time, the Commission believes that Trial Attorneys should have greater discretion to set priorities for apprehension and prosecution and to determine which cases are pursued for removal proceedings.

The Commission recommends the following distribution of responsibilities within the Bureau for Immigration Enforcement.

**Uniformed enforcement officers.** The Commission recommends merger of the INS Inspectors, Border Patrol, and detention officers into one unit, the Immigration Uniformed Service Branch. Its officers would be trained for duties at land, sea, and air ports of entry, between land ports on the border, and in the interior where uniformed officers are needed for enforcement. The unit would be accountable for both the facilitation of legal traffic at the ports of entry and the enforcement against illegal entry. It also would be responsible for moving detainees from apprehension sites to detention facilities and to hearing sites, as well as for escort duty during removals. After appropriate training, most of the officers performing these various functions could be transferred interchangeably, and opportunity for job mobility would exist across lines not now possible. As stated above, grade level and pay should be upgraded as needed to be commensurate with the law enforcement activities the officers will perform.

Unlike the current practice in which the Border Patrol reports to Sector Chiefs and Inspectors report to District Directors, all uniformed officers within a particular geographic area would be under the authority of a single, integrated immigration enforcement manager.

**Investigators.** The Commission believes investigations will be a key part of the new agency's responsibility. Investigators are the main agents responsible for identifying and apprehending people who are illegally residing or working in the United States, for deterring smuggling operations, for building a case against those who are not deterred, and for identifying, apprehending, and carrying out the removal of aliens with final orders of removal.

Only some 2,900 employees, out of an INS staff of more than 25,000, work on these many investigative tasks. A similar number work in INS Detention and Deportation. Most of these Deportation Officers

could—given additional on-the-job training and supervision conduct investigations. Deportation Officers now deal almost exclusively with docket control and management paperwork that could be done by lower level support staff, freeing the Deportation Officers for field work.

INS Investigators primarily work the front end of the removals process: identifying and arresting those who are illegally residing or working in the U.S. Little attention is given to the removal process as a whole, for ensuring availability of adequate detention space, allocating ample Trial Attorney and Immigration Judge time, effecting transfer to airports, and achieving physical removal. The system is bogged down with increasing numbers of aliens who are apprehended, charged with an immigration violation, put into proceedings, released due to lack of detention space or other prerequisites for effective timely processing, never appear at their hearings, or are never deported after a final order of removal is issued. The failure of careful planning and integration of the process means many of those who are apprehended are never removed. According to some observers, the INS' compartmentalized program planning, budgeting, and implementation procedures blunt attempts to integrate these functions more fully into a seamless and effective process.

“Removal Officers” in the new Bureau for Immigration Enforcement, who would integrate the functions of Investigators and Deportation Officers in apprehensions and removals, would enable the immigration system to deliver better on its commitment to actually remove those who are issued final orders. Managers would then have the flexibility to shift resources among various investigations activities as needed to produce a smooth-flowing process that ensures timely removal. As discussed above, grade and pay should be commensurate with the often dangerous law enforcement duties performed by investigators.

**Intelligence.** The Bureau for Immigration Enforcement will require an Intelligence Division to provide strategic assessments, training and expertise on fraud, information about smuggling networks, and tactical support to uniformed officers or investigators. It would act as a liaison with other federal law enforcement agencies and share information and intelligence. The Intelligence division would be one of the smallest in the agency with an anticipated staff of about 100 employees.

**Assets Forfeiture Unit.** As with the other DOJ enforcement agencies, the Bureau would have an Assets Forfeiture Unit. Statutory authority for Assets Forfeiture activities is a useful addition to the range of strategies and sanctions available to the U.S. law enforcement community. Augmented authorities in the 1996 immigration legislation increased both its usefulness and the potential for misuse or abuse. In order to be aggressive in using these new authorities and equally aggressive and proactive in ensuring against misuse/abuse, DOJ agencies established assets forfeiture units under the general guidance of the DOJ Assets Forfeiture Unit. Each agency, including FBI, DEA, and INS, has its own unit. These units, usually highly-placed within the agency, are the focal points for agency-wide asset-related policy implementation, field staff training, and field operations monitoring. They assist the agency's field staff in case development, monitor use of assets forfeiture funds, and oversee use of these sanctions to guard against abuse.

**Pre- and post-trial "Probation" Officers.** "Probation" functions are not now performed consistently or effectively in the immigration system, but the Commission believes these functions are essential to more strategic use of detention space. District Directors and Immigration Judges determine the release (either on personal recognizance or on bond) of apprehended aliens from detention. Often, release relates more to lack of detention space than to the likelihood that aliens will appear at their proceedings or assessment of aliens' danger to the community. Some aliens are given the option to

depart voluntarily, but there is little tracking of whether they actually leave the country. As it is unlikely that all potentially deportable aliens could or should be detained awaiting removal, the Commission believes more attention should be given to supervised release programs and to sophisticated methods for tracking the whereabouts of those not detained.

Pilot programs, such as the Vera Institute Appearance Assistance Program discussed above, could be expanded into more areas if successful. INS requested this three-year project in the New York area. It studies reporting requirements and the effectiveness of community sponsors in supervising the release of aliens who meet certain criteria regarding community ties, relief from removal, and public safety. The program aims to free up valuable detention space for aliens without legal remedies who are likely to abscond, while keeping those who might receive relief out of detention.

**Trial Attorneys/Prosecutors.** INS has nearly 800 staff involved in immigration-related legal proceedings, such as offering legal opinions and advice and representing the government's interests in proceedings before Immigration Judges and on appeal.

The Commission believes that the Trial Attorneys, who, in effect, are the Government's immigration prosecutors, should be vested with, *and should utilize*, an important tool possessed by their criminal counterparts: prosecutorial discretion. Under the current system, the Trial Attorneys do not as a practice use discretion in determining which cases to pursue. The INS does not sufficiently prioritize or target cases; instead it acts as if it had the means to prosecute each and every case effectively. Cases go forward, even when an alien will, or is likely to, prevail on an application for relief or when there is no realistic belief that the alien will ever be removed from the country. Discretion exercised at the beginning of the process and at every step would target the use of scarce resources better and contribute to a more effective and credible system. Central office lead-

ership would be required to set appropriate priorities and provide guidance to the Trial Attorneys as to the proper use of discretion.

Greater sharing of information between the Trial Attorneys, aliens, and their counsels would facilitate smoother and more expeditious movement through the system and fewer Freedom of Information Act requests. Greater use of stipulations and pretrial conferences (with sanctions resulting when attorneys are not prepared), would narrow the disputed issues needing court resolution and time.

**Field Offices.** The new enforcement agency would implement its programs through a series of field offices structured to address comprehensively the immigration enforcement challenges of the particular locality. As the location of these offices should be driven by enforcement priorities, they would likely be located in different places than current district offices. Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices. The field office inspections officers at ports of entry would both facilitate the admission of legal limited duration admissions and immigrants and the identification of illegal entrants. Border Patrol stations along the border and at checkpoints along major interior transportation corridors would facilitate enforcement activities. Appropriate field offices also would investigate and prosecute cases and contribute to detection and destruction of smuggling rings.

Current INS Regional Offices could be retained for administrative and managerial oversight of these dispersed and diverse field offices. Most existing district offices and suboffices could be incorporated into the new agency; they also could supervise and administer the Border Patrol. [Until the mid-1950s, Border Patrol units worked out of and reported to INS District Offices.] The INS overseas enforcement presence could be retained and expanded by the new enforcement agency.

## **Citizenship, Immigration, and Refugee Admissions (DOS)**

*The Commission recommends that all citizenship and immigration benefits adjudications be consolidated in the Department of State, and that an Undersecretary for Citizenship, Immigration, and Refugee Admissions be created to manage these activities.* At present, three separate agencies—the INS, the Department of State, and the Department of Labor—play broad roles adjudicating applications for legal immigration, limited duration admission, refugee admission, asylum, and/or citizenship. In addition, the Department of Health and Human Services plays an ancillary role in setting requirements regarding health standards for new arrivals, and the United States Information Agency has a major role in exchange visitor programs.

The Commission believes a more streamlined and accountable adjudication process, involving fewer agencies but greater safeguards, would result in faster and better determinations of these benefits. Consolidation of responsibility in one department would permit a reengineering of the adjudication process to make it more efficient and timely.

In considering which department should be responsible for adjudicating citizenship and immigration benefits, the Commission considered each agency's current role and overall mission. Immigration has been a stepchild in each of the major departments with current responsibilities. The Department of State's primary role is the conduct of foreign relations, and immigration issues have been subsumed within its consular functions of protection and welfare of American citizens abroad. The Department of Justice tends to view immigration as an enforcement matter, and it is not well suited to oversee an agency that also adjudicates applications for benefits. The Department of Labor is concerned primarily with the labor market impact of immigration. The Department of Health and

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Human Services plays an important role in setting and implementing domestic refugee policy, but it has a very narrow, largely health-related involvement in overall immigration policy.

Recognizing the drawbacks inherent in choosing any of these locations, the Commission nevertheless concluded that the Department of State has the greatest capacity to undertake the additional work entailed in a consolidated system.

Taking responsibility for immigration and citizenship services out of the Department of Justice sends the right message, that legal immigration and naturalization are not principally law enforcement problems; they are opportunities for the nation as long as the services are properly regulated. Further, the Department of Justice does not have the capacity internationally to take on the many duties of the Department of State. The Department of State, however, already has a domestic presence and an adjudicatory capability. It issues one-half million immigrant visas and six million nonimmigrant visas each year. DOS also provides a full range of citizenship services both domestically (issuance of almost six million passports annually) and abroad (e.g., citizenship determinations and registration of births of U.S. citizens overseas). Indeed, DOS has devoted a major share of its personnel and its capital and operating resources to these adjudicatory functions at embassies and consulates in more than two hundred countries and in passport offices in fifteen U.S. cities. In addition, the National Visa Center in New Hampshire processes and forwards to overseas posts three-quarters of a million immigrant cases.

Consolidating responsibility requires some changes in the way the Department of State administers its immigration responsibilities, which we believe would strengthen the adjudication function. This increase in domestic responsibilities may raise concern over possible decrease in attention and focus on the Department of State's tradi-

tional mandate in foreign affairs, as well as more practical caution regarding the well-known difficulties in managing the domestic aspects of immigration. Some observers also may be concerned that DOS might not give sufficient consideration to the domestic impact of immigration. To counter this perception (and some underlying reality), the Department of State would need to develop mechanisms for consultation with domestic groups representing a broad range of views and interests regarding immigration.

The Department of State also will need to change its historic position on review of consular decisions. At present, decisions made at INS and the Department of Labor on many immigrant and LDA applications may be appealed, but no appeal is available on consular decisions. The Commission believes that immigrant and certain limited duration admission visas with a U.S. petitioner should be subject to independent administrative review [see below]. The Department of State also would have to prepare its own bureaucracy to take on these new functions. A need for a renewed emphasis on training for the management of large and interrelated offices and processes will be matched by the need for superior personnel management and leadership. These highly-regarded management skills would be an ideal attraction for those Foreign Service officers who shy away from consular assignments abroad, perceiving them as unwanted digressions from the classic diplomatic career path.

The new organization would be responsible for naturalization and determination of citizenship, adjudication of all immigrant and limited duration admission petitions, work authorizations and other related permits, and adjustments of status. It also would have responsibility for refugee status determinations abroad and asylum claims at home. Overseas citizenship services would continue to be provided by consular officers abroad and in Washington. Policy and program development for all immigration activities would be incorporated into the new organization, which also would have

enhanced capacity to detect, deter, and combat fraud and abuse among those applying for benefits.

With consolidation, the Department of State would have sole responsibility for processing immigrants—from the filing of the petition in the United States and subsequent visa issuance abroad, to the production of the green card and work authorization in the U.S., and ultimately, to naturalization. Issuance of a passport to the newly-naturalized citizen would complete this almost seamless process of immigration benefits adjudications. Consolidation of these steps would permit greater operational flexibility (e.g., one-stop adjudication of petitions and forwarding to posts abroad, streamlined processing for work-related visas), greater flexibility in use of personnel (e.g., the examination function could span visa petitions and passports), and, as discussed below, greatly enhanced antifraud capabilities.

The consolidation of these functions in DOS would, of course, be a major undertaking for a relatively small department already charged with absorbing the United States Information Agency and the Arms Control and Disarmament Agency. The Department of State must be given the resources to fulfill such new responsibilities. The approximately five thousand INS and Department of Labor staff currently involved in immigration applications adjudications would likely be transferred to DOS. Many employees would remain in or near their present locations and their functions would not appreciably change.

This recommendation envisions creation of an Undersecretary who would have direct access to the Secretary of State and who would be responsible for domestic and overseas immigration, citizenship, and refugee functions.

Within the Office of the Undersecretary would be a unit responsible both for formulating and assessing immigration policy as well as

reviewing and commenting on the immigration-related effects of foreign policy decisions. This policy capacity would be new for the Department of State, but it is in keeping with the important role that migration now plays in international relations.

The Undersecretary would have three principal operating bureaus:

**A Bureau of Immigration Affairs [IA]** would focus on the immigration process, as noted above, as well as on LDA processing. IA's expanded responsibilities would be based on those currently assigned to the Visa Office and the National Visa Center. In addition to its existing overseas work, the Bureau of Immigration Affairs would be responsible for domestic adjudication/examination functions, including work authorization, adjustment of status, domestic interviewing, and the issuance of appropriate documentation (e.g., green cards). The Bureau of Immigration Affairs also would staff immigration information and adjudication offices in areas with immigrant concentrations. Related INS legal and regulatory staffs in Washington also would transfer to the IA Bureau, as would DOL functions regarding employment-based entry. In short, the IA Bureau would assess—in the U.S. and abroad—applications for all immigration-related benefits now performed by INS, DOL, DOS, and USIA.

Importantly, the employment verification system outlined in previous Commission recommendations also would be under the Department of State's control, although it would likely contract out the actual operation of that system. Another important part of its domestic presence would be the staffing of immigration information offices in areas of major immigrant concentrations.

**A Bureau of Refugee Admissions and Asylum Affairs** would assure an appropriate level of independence from routine immigration issues and processes. It would combine the present Bureau for Population, Refugees and Migration [PRM] responsibilities for over-

seas refugee admissions, the refugee and asylum offices of the INS, and the DOS asylum office in the Bureau of Democracy, Human Rights and Labor.<sup>2</sup> This would integrate the key governmental players in one of our most important and historic international activities. In this vein, the direct line of authority to the Secretary of State through the new Undersecretary underlines the key policy advantage for global refugee issues.

**A Bureau of Citizenship and Passport Affairs** would be responsible for naturalization, other determinations of citizenship, and issuance of passports. Local offices performing some citizenship functions, such as overseas travel information, passport and naturalization applications, testing and interviews, could be located at the new or expanded immigration offices noted below.

Overseas citizen services would continue to be handled within the new consolidated organization, utilizing the DOS substantial domestic and overseas staff. These services include: responding to inquiries as to the welfare or whereabouts of U.S. citizens; assisting when U.S. citizens die, are arrested, or experience other emergencies abroad; providing notarial services; and making citizenship determinations and issuing passports abroad. In some countries experiencing instability, an increasingly important activity is organizing Americans living or working in those areas into networks for efficient communication of information and warnings.

**Quality Assurance Offices** would oversee records management, monitoring procedures, fraud investigations, and internal review. At present, monitoring of the quality of decisions made on applica-

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<sup>2</sup> The Commission makes no recommendation regarding the management or organization of the overseas refugee and humanitarian assistance programs operated by PRM and the USAID Bureau for Humanitarian Response. These functions could remain within the Undersecretary for Global Affairs or be brought under the new Undersecretary for Citizenship, Immigration, and Refugee Admissions.

tions for immigration and citizenship benefits receives insufficient attention. INS enforcement officials now have the responsibility to investigate allegations of fraud in immigration and naturalization benefits programs, but monitoring the adjudications process is a low priority in an office that is also responsible for identifying and removing criminal aliens, breaking up smuggling and counterfeiting rings, and performing similar police work. A staff responsible for and dedicated to ensuring the quality of decisions taken on applications for immigration and citizenship should address some of the weaknesses, such as those recently identified in the naturalization process.

Some adjudication decisions now are reviewed by a separate administrative unit within the agency conferring benefits; others are not. The Commission believes that quality decisions require some form of supervisory review for applicants who believe their cases have been wrongly decided. This type of review helps an agency monitor consistency and identify problems in adjudication and offers a means of correcting errors. At present, DOS has procedures for some internal supervisory review of consular decisions, but it has had no need for procedures to review refusals of applications at earlier stages of adjudication. With expanded responsibilities, DOS will need to develop a comprehensive internal review process that ensures that errors are corrected with minimal disruption to the applicant and the agency.

Quality assurance requires good records. The accrued personal records of each immigrant must be accurate, up-to-date, and retrievable at each adjudicative stage: (1) petition/immigrant visa; (2) alien resident/green card; (3) naturalization; and (4) passport. The creation and maintenance of the alien filing system ("A" files) should be reviewed to assure its maximum utility in the adjudicative flow noted above. The absolute need for good immigration records cannot be overstated.

Standardized and flexible records management and the consolidation of domestic and overseas adjudication functions will greatly enhance antifraud capabilities. At present, fraud often is not discovered until after a government agency has given the case one or more approvals and the alien appears for his or her visa. The resources are not now in place for adequate review of questionable petitions, and communications between overseas posts and domestic agencies are not adequate. Even when they receive information from overseas posts about likely fraud, the domestic agencies generally do not follow up with further investigation. Consolidation within the Department of State would overcome poor coordination and communication and permit more antifraud efforts at the beginning of the process, where they are most effective. A fraudulent entry prevented, a work permit not issued to an unauthorized person, or an ineligible alien prevented from naturalization—these are far more preferable to trying to rescind a benefit granted in error.

With respect to the domestic field structure for implementing these programs, The Regional Service Centers and National Visa Center would continue to be the location of most adjudication. The physical plants are excellent and the locally-hired staffs are trained and in place. At this time, information is passed from the RSCs to the NVC when the applicant for admission is overseas. Eventually, however, the functions of the Service Centers and the Visa Center might be consolidated. Overseas interviews would continue to take place at embassies and consulates.

A range of other interviews would take place domestically. The Department of State already operates fifteen passport offices throughout the United States, many in areas of high immigrant settlement. These offices, however, are not set up for high volume interviewing. New offices, designed specifically with immigrant services in mind, would be needed. Ideally, to avoid long lines and waits for service, there would be smaller offices in more locations than the current INS district offices. The Commission recommends against locating

these offices with the enforcement offices discussed above. Asking individuals requesting benefits or information to go to an enforcement agency sends the wrong message about the U.S. view of legal immigration.

## **Immigration-Related Employment Standards (DOL)**

*The Commission recommends that all responsibility for enforcement of immigration-related standards for employers be consolidated in the Department of Labor.* These activities include enforcing compliance with requirements to verify work authorization and attestations made regarding conditions for legal hire of temporary and permanent foreign workers. The Commission believes that as this is an issue of labor standards, the Department of Labor is the best equipped federal agency to regulate and investigate *employer compliance* with standards intended to protect U.S. workers. The hiring of unauthorized workers and the failure of employers to comply with the commitments they make (e.g., to pay prevailing wages, to have recruited U.S. workers) in obtaining legal permission to hire temporary and permanent foreign workers are violations of such labor standards. Responsibility for enforcing compliance with these requirements currently lies within both INS and DOL. Under consolidation, the DOL Employment Standards Administration's [ESA], Wage and Hour Division [WH] and Office of Federal Contract Compliance Programs [OFCCP] would perform these functions in conjunction with their other worksite labor standards activities.

These increased immigration-related responsibilities would require increased DOL staff and resources. In addition to performing all worksite inspections, DOL would assume new employer sanctions responsibilities. Specifically, the Commission makes the following recommendations regarding the DOL role in regulating the worksite to ensure the protection of U.S. workers.

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 in the Department  
 of Labor.*

**Sanctions against employers who fail to verify work authorization.** Among its provisions that address the problem of unauthorized immigration, the Immigration Reform and Control Act of 1986 made it unlawful for an employer knowingly to hire any alien not authorized to work in the U.S. IRCA requires all employers to check the identity and work eligibility documents of all workers hired. Upon hiring, employees must sign an I-9 Form certifying eligibility to work and that the documents they present to the employer are genuine. The employer then signs the form, indicates which documents were presented, and attests that they appear to be genuine and to relate to the individual who was hired. IRCA established penalties both for employers failing to comply with this process and for employers knowingly hiring unauthorized aliens. Pilot testing of a more rigorous verification process recommended in the Commission's 1994 report and adopted in large part in the immigrant legislation passed in 1996 addresses verification problems arising from the widespread use of fraudulent documents by illegal aliens.

The Commission believes all worksite investigations to ascertain employers' compliance with employment eligibility verification requirements should be conducted by the Department of Labor. Although DOL already conducts many of these investigations, under this recommendation, DOL also would assess penalties if employers fail to verify the employment eligibility of persons being hired. DOL would not be required to prove that an employer knowingly hired an illegal worker, just that the employer hired a worker without verification of his or her authorization to work. With implementation of the Commission's proposal for a more effective verification process, this function will be critical to deterring the employment of unauthorized workers.

At present, INS has the principal responsibility for employers sanctions enforcement, including: investigations and prosecution of "knowing hires" of illegal aliens and paperwork violations; worksite

raids that apprehend and remove illegal aliens; and development and maintenance of employee eligibility verification programs designed to help employers determine which individuals are authorized to work in the United States. DOL also reviews employer compliance with the employer sanctions verification processes in the course of its on-site visits to workplaces and as part of regular labor standards enforcement activities. DOL Wage and Hour and OFCCP personnel inspect the I-9 Forms on file and notify INS of the results of such inspections. DOL also is authorized to issue warning notices to employers when deficiencies are found in an employer's verification process. In practice, however, DOL has rarely issued such warnings.

Although INS and DOL jointly enforce the employer sanctions provisions, INS has the primary responsibility, including assessing civil penalties and initiating legal action. A Memorandum of Understanding between DOL and INS retains for INS the responsibility for promulgating employer sanctions program policy.

Consolidating verification enforcement at DOL gives responsibility to an agency with extensive experience regulating business compliance with labor standards, an expertise largely lacking at INS. It also permits a relatively high level of enforcement activity, as DOL completes far more employer visits than INS. The number of employer sanctions cases completed by INS has decreased sharply from 14,311 in 1990 to 5,211 in FY 1996, of which 90 percent were cases in which the agency had some reason to believe a violation occurred.<sup>3</sup> Over the past several years, the number of Wage and Hour on-site investigations also has decreased substantially but is still well above the INS level. The DOL reduction results largely from

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<sup>3</sup> The lowered activity, nevertheless, represents more targeted and effective enforcement. The number of arrests during this same period increased more than 50 percent. In 1,024 cases the employers were fined; warnings were issued in 669 cases; \$4,853,288 was collected in fines; and 13,848 undocumented workers were arrested.

a greatly expanded use of expedited investigations in the form of employer self-audits and conciliations in place of on-site investigations. For example, Wage and Hour conducted more than 42,000 on-site investigations and corresponding I-9 inspections in FY 1990, but less than 23,000 in FY 1996. OFCCP conducts some 4,000 on-site inspections each year. In FY 1996, approximately 70 percent of Wage and Hour investigations were complaint-driven; the remaining 30 percent were directed or targeted. Wage and Hour devotes the equivalent of twenty-one full-time employees to I-9 inspections, OFCCP the equivalent of eight.

The Commission recognizes DOL concern that from the beginning its assumption of an employer sanctions enforcement role created a potential conflict with its broader mission of protecting the wages and working conditions of workers. Its inspectors worry that workers' fears that such employer sanction actions might result in INS apprehension and deportation could have a "chilling effect" on those workers who might—and should—come forward to report workplace abuses. For this reason, DOL has been extremely wary of crossing the hard-to-distinguish line where sanctions-related activities might effectively frustrate its ability to protect deserving workers.

The Commission believes that DOL participation in verifying that only authorized workers are hired should be seen as integral to its mission of protecting U.S. workers. DOL has an essential interest in reducing illegal migration as those employers who hire illegal aliens are more likely to violate the minimum labor standards that DOL is charged with enforcing. A reduction in levels of illegal migration could well be the most effective tool available to enhance protections for legally authorized workers. The primary responsibility of DOL is protecting American workers, and transfer of employer sanctions enforcement to DOL represents the best option for raising the level of enforcement to a point that presents a real deterrent to the employment of undocumented workers.

Enforcement of skill-based immigrant and limited duration **admissions requirements**. In our 1995 report to Congress, the Commission urged adoption of streamlined procedures for the admission of skilled foreign workers whom U.S. businesses wish to hire. We continue to believe that an expedited process is needed for the admission of both temporary and permanent foreign workers, as discussed earlier in this report, as long as adequate safeguards are in place to protect the wages and working conditions of U.S. workers. To prevent abuse of an expedited system, an effective postadmissions enforcement scheme is necessary.

Upon adoption of an expedited process for the admission of both immigrant and temporary workers, DOL should be given responsibility and resources for enhanced monitoring of employers' fulfillment of the attestation terms they filed to bring in workers. As discussed above, decisions on who will be admitted under the various skill-based admission categories would be made by the Department of State.

DOL's other worksite enforcement responsibilities place it in the best position to monitor employers' compliance with the attestations submitted in the admissions process. DOL investigators are experienced in examining employment records and interviewing employees. Penalties should be established for violations of the conditions to which the employer has attested, including payment of the appropriate wages and benefits, terms and conditions of employment, or any misrepresentation or material omissions in the attestation. Such penalties should include both the assessment of administrative fines as well as barring egregious or repeat violators from petitioning for the admission of permanent or temporary workers.

When DOL has concluded that an employer is an egregious or repeat violator, and any subsequent administrative appeal has been decided, it would notify the DOS Bureau of Immigration Affairs of such findings, with a recommendation about barring the employer

from petitioning for the admission of foreign workers for temporary or permanent employment. The Bureau of Immigration Affairs would then determine if such a debarment is to be made and would notify the employer of its decision. The employer would have the option of appealing such a decision.

***The Commission recommends that administrative review of all immigration-related decisions be consolidated and be considered by a newly-created independent agency, the Agency for Immigration Review, within the Executive Branch.***

### **Agency for Immigration Review**

*The Commission recommends that administrative review of all immigration-related decisions be consolidated and be considered by a newly-created independent agency, the Agency for Immigration Review, within the Executive Branch.*

The Commission believes that a system of formal administrative review of immigration-related decisions—following internal supervisory review within the initial adjudicating agency—is indispensable to the integrity and operation of the immigration system. Such review guards against incorrect and arbitrary decisions and promotes fairness, accountability, legal integrity, uniform legal interpretations, and consistency in the application of the law in individual cases and across the system as a whole.

Experience teaches that the review function works best when it is well insulated from the initial adjudicatory function and when it is conducted by decisionmakers entrusted with the highest degree of independence. Not only is independence in decisionmaking the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review.

To the extent that administrative review of immigration-related decisions is authorized under current law, such review is conducted by several Boards and units located in the Departments of Justice, Labor, and State. For example, within the Department of Justice, the Executive Office for Immigration Review, a separate agency es-

established by regulation in 1983, oversees the system of immigration courts, as well as the Board of Immigration Appeals [BIA]. The BIA, a fifteen-member panel appointed by the Attorney General, has nationwide jurisdiction over a wide range of cases, including decisions of Immigration Judges in exclusion, deportation, and removal proceedings, and requests for relief made in those proceedings. In addition, the BIA adjudicates appeals in several other categories of cases, such as bond determinations, fines, rescission of adjustment of status, and certain family-based visa petitions.

Supplementing their normal hearing docket, Immigration Judges now conduct the final review of the “credible fear” of persecution determinations made in the admission/inspection process, as well as determinations that an alien seeking admission is not currently a lawful permanent resident, refugee, or asylee as he or she claims.

The Office of the Chief Administrative Hearing Officer [OCAHO] also is housed in EOIR and is responsible for administering the hearing process issues arising under the employer sanctions, anti-discrimination, and document fraud provisions of the Immigration and Nationality Act.

Within the Immigration and Naturalization Service there is an Administrative Appeals Office [AAO], whose component parts include the Administrative Appeals Unit [AAU] and the Legalization Appeals Unit [LAU]. Unlike the BIA, the AAO does not have a decisionmaking board. Rather, the Chief of the Unit reviews and signs off on decisions prepared by individual examiners. AAO has appellate jurisdiction over petitions and applications in no fewer than thirty-nine subject areas, among which are decisions relating to the breaching of bonds, employment-based visa petitions, adjustment of status for Indochinese refugees, petitions for Amerasian children, fiancé(e)s, orphans, temporary workers, permission to reapply for admission after deportation or exclusion, reentry permit waivers for certain grounds of excludability, certification of schools

for acceptance of foreign students, applications for refugee travel documents, claims to acquisition of citizenship abroad, applications to preserve residence abroad for naturalization purposes, various applications for certain certificates of naturalization, and applications for temporary or permanent resident status under the regular legalization, Special Agricultural Worker or Replenishment Agricultural Worker programs, and corresponding waivers of inadmissibility.

Appeals of denials of naturalization applications, however, are not considered by the AAO. Instead, review of such decisions occurs at the INS district office level and is conducted by an officer of equal or higher grade as the initial adjudicator. (If the initial decision denying the naturalization application is sustained, the alien may challenge the decision in federal district court, the court having jurisdiction over the ultimate swearing-in of successful naturalization applicants.)

In the Office of the Legal Adviser in the Department of State, there is a Board of Appellate Review [BAR] vested with jurisdiction to hear, in part, appeals of determinations of loss of nationality or expatriation, and denials, revocations, restrictions, or invalidations of passports.

In the Department of Labor, the Board of Alien Labor Certification Appeals [BALCA], created by regulation in 1987, hears appeals of denials of applications for labor certification.

When considering the appellate review function in its totality, it becomes apparent that responsibility for reviewing enforcement-related decisions rests primarily with the individual components of EOIR, while responsibility for reviewing benefit adjudication decisions is spread across several offices and agencies including the BIA, AAO, INS district offices, BALCA, and, for a more limited set of

nationality- and citizenship-related issues, the BAR at DOS. Further, Immigration Judges and the BIA have the authority to provide certain forms of relief during deportation, exclusion, and removal hearings that can result in lawful permanent resident status for aliens.

Inasmuch as the underlying benefits and enforcement functions performed by the immigration system are themselves dispersed among several Departments, it is not surprising to find that formal administrative review of decisions made in the context of performing those functions is likewise dispersed. However, in light of our recommendations that responsibility for the enforcement of the immigration laws be placed with a new Bureau for Immigration Enforcement in the Department of Justice and that all citizenship and immigration benefits adjudications be removed from the Department of Justice and instead be consolidated in the Department of State, we find that a corresponding change in the placement of responsibility for the review function is in order.

Even with the assignment of the benefits adjudication function to DOS and the enforcement function to DOJ, interrelationships will exist between eligibility for benefits and enforcement actions. Indeed, eligibility for an immigration benefit may be an avenue to relief from deportation, exclusion, or removal while certain immigration violations may present barriers to attaining legal status. For example, favorable disposition of a petition or application by the benefits agency may collaterally resolve a deportation or removal issue. Aliens in enforcement proceedings may be eligible for certain forms of relief involving the same types of legal questions arising in the context of benefits adjudication outside of proceedings—or aliens in proceedings may be foreclosed from eligibility for a benefit applied for outside of proceedings. Ultimately, however, there is a need for a uniform administrative interpretation of what the law is and how it should be applied, regardless of whether the questions arise when adjudicating an application for a benefit or resolving an

enforcement action. These considerations lead us to conclude that administrative review of all presently reviewable immigration-related decisions should be consolidated.

In deciding where the review function could best be performed, the Commission considered a number of options, including separate reviewing bodies for enforcement actions within DOJ and for benefit determinations within DOS, placing responsibility for review entirely with EOIR, and creation of an Article I Immigration Court.

Placing the review function in its entirety with EOIR was an attractive option, particularly given EOIR's success in both insulating the review function and achieving independence of decisionmaking since its inception in 1983. At the same time, EOIR remains located in the Department of Justice, ultimately and predominantly a law enforcement agency. Further, existing procedures permit the Attorney General to reverse or modify any decision reached by the BIA. The Commission, as well as other commentators, find this practice troubling because, at a minimum, it compromises the appearance of independent decisionmaking, injects into a quasi-judicial appellate process the possibility of intervention by the highest ranking law enforcement official in the land, and, generally, can undermine the BIA's autonomy and stature. In the end, the Commission decided the EOIR option was unworkable because of the inherent difficulty of a reviewing agency in one Department rendering decisions in cases initially decided by another Department.

Instead, the Commission was persuaded by the arguments that the review function should be completely independent of the underlying enforcement and benefits adjudication functions and that the reviewing officials should not be beholden to the head of any Department. Although the desired independence could be attained by establishing an Article I Immigration Court, such a court would be part of the Judicial, rather than the Executive Branch. The overall operation of the immigration system requires flexibility and coordi-

nation of function, including the review function, by the various agencies in the Executive Branch. Given this reality, the Commission concluded that the review function should be conducted by a newly-created independent reviewing agency in the Executive Branch. To ensure that the new reviewing agency is independent and will exist permanently across Administrations, we believe it should be statutorily created. It would incorporate the activities now performed by several existing review bodies and offices, including the DOJ Executive Office for Immigration Review, the INS Administrative Appeals Office and district offices (naturalization), the DOL Board of Alien Labor Certification Appeals, and the limited set of nationality and citizenship-related matters presently considered by the DOS Board of Appellate Review. The Agency for Immigration Review also would have additional responsibilities.

Creating any decisional system or tribunal requires attention to several guiding principles. First, no system can work effectively if the personnel who form the base of the decisional pyramid are insufficient in number or deficient in skills and integrity to do the job. Second, the base of any such structure cannot be expanded either in number of its personnel or in extent of its jurisdiction beyond the capacity of the next level above to review and decide the outcome. This must be achieved within a reasonable period and with a reasonable expenditure of resources. Finally, the apex of any decisional pyramid should be relatively small. With these considerations in mind, the Commission proposes the following organization for the new independent Agency for Immigration Review.

This new reviewing agency would be headed by a Director, a presidential appointee, who would coordinate the overall work of the agency, but who would have no say in the substantive decisions reached on cases considered by any division or component within the agency. There would be a trial division headed by a Chief Immigration Judge, appointed by the Director. The Chief Judge would oversee a corps of Immigration Judges sitting in immigration

courts located around the country.<sup>4</sup> The Immigration Judges would hear every type of case presently falling within the jurisdiction of the now sitting Immigration Judges.

The new reviewing agency also would consider appeals of decisions by the benefits adjudication agency, using staff with legal training. Although the benefits adjudication agency will handle a wide range of applications—from tourist visas to naturalization and the issuance of passports—not all determinations will be appealable, as is the case under current law. We envision that those matters that are appealable under current law would remain appealable. The only difference is that the appeal would be lodged with and considered by the new independent Agency for Immigration Review rather than by the various reviewing offices and Boards presently located among the several Departments.

The administrative appeals division also would consider appeals from certain visa denials and visa revocations by consular officers. Under current law, such decisions are not subject to formal administrative or judicial review.

When a visa is denied, important interests are at stake. To be sure, the visa applicant is adversely affected—but more importantly at stake are the interests of the United States citizens, lawful permanent residents, employers, and businesses who have petitioned the admission of the applicant or who otherwise have an interest in having the applicant present in the United States. Given the lack of formal administrative and judicial review of consular decisions, these individuals are left with little or no recourse.

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<sup>4</sup> Admittedly, currently sitting Immigration Judges perform the classic review function only to a very limited degree—for the most part they serve as initial decisionmakers in cases where aliens are placed in proceedings. Notwithstanding this circumstance, however, experience teaches that Immigration Judges should find their home in the same agency as the appellate reviewing Board, not the enforcement agency that is initiating the proceedings against the alien.

The Commission believes that consular decisions denying or revoking visas in specified visa categories, including, all immigrant visas and those LDA categories where there is a petitioner in the United States who is seeking the admission of the visa applicant, should be subject to formal administrative review. The visa applicant would have no right to appeal an adverse determination. Instead, standing to appeal a visa denial or revocation would lie only with United States petitioners, whether U.S. citizens, lawful permanent residents, or employers.

An appellate Board would sit over the trial and administrative appeals divisions of the new independent Agency for Immigration Review. This appellate Board would be the highest administrative tribunal in the land on questions and interpretations of immigration law. It would designate selected decisions as precedents for publication and distribution to the public at large. Its decisions would be binding on all officers of the Executive Branch. To ensure the greatest degree of independence, decisions by the Board would be subject to reversal or modification only as a result of judicial review by the federal courts or through congressional action. Neither the Director of the reviewing agency nor any other agency or Department head could alter, modify, or reverse a decision by the appellate Board.

The appellate Board would be headed a Chairman. Both the Chair and Vice Chair would be appointed by the President for staggered terms of at least ten years. The appellate Board would have as many Members, who would be appointed by the Chair, as needed to decide appeals in a timely manner. It would consider appeals from the categories of cases presently falling within the BIA's jurisdiction, subject to the above-noted modifications. In addition, the appellate Board could entertain appeals from decisions of the administrative appeals division in cases in which a novel or significant

legal issue were presented, or in any other case in which it was deemed necessary or appropriate.

The Office of the Chief Administrative Hearing Officer, presently housed in EOIR, would operate as a separate component in the Agency for Immigration Review and would perform the same work as is presently being conducted. Of course, the precise organizational arrangements and divisional jurisdictions could be subject to future modification following a comprehensive review by the Agency for Immigration Review of the types and volume of cases received. However, to meet the challenges presented by consolidation of all immigration-related appeals in one place, and to perform its critical mission of correctly and expeditiously resolving appeals, the new reviewing agency must be given sufficient resources and staffing.

*The Commission urges the federal government to make needed reforms to improve management of the immigration system.*

## MANAGEMENT REFORM

*The Commission urges the federal government to make needed reforms to improve management of the immigration system.* While the Commission-recommended structural changes will help improve implementation of U.S. policy, certain management reforms must also be adopted if the agencies responsible for immigration matters are to be effective in performing their functions. Structural reforms will not by themselves solve some of the management problems that have persisted across Administrations in the immigration agencies.

More specifically, the Commission recommends:

- **Setting more manageable and fully-funded priorities.** The Commission urges Congress and the Executive Branch to establish and then appropriately fund a more manageable set of immigration-related priorities. By this we mean establishing fewer objectives, but also setting more integrated

priorities, more realistically-achievable short-term and long-term goals, and greater numerical specificity on expected annual outcomes to which agencies should be held accountable.

The processes by which both Congress and the Executive Branch plan and allocate resources constrain the development of a more manageable set of priorities. Currently, most immigration priorities result from Legislative/Executive interaction through a multiyear budget process. Government budgeting cycles are lengthy and complex. Agencies must work simultaneously with the budgets and reporting cycles of four fiscal years.<sup>5</sup> Congressional action, meanwhile, consists of the doubly bifurcated processes of authorization, followed by separate appropriations in the House of Representatives and the Senate, and then by resolution in conference.

Executive Branch departments seldom identify adequately how much money they need to accomplish the entirety of a specified goal. Nor do they do a good job of scaling back or increasing objectives depending on the resources appropriated. Within the Legislative Branch, there is little coordination among congressional committees to ensure a congruence of agreed-upon priority expectations and resources actually allocated to do the job. Consequently, transparency and accountability are not built into the system. For example, Congress is not held accountable for adding new priorities without appropriating resources to accomplish all of the specified tasks. Federal agencies are neither directly nor easily held accountable for their performance in achieving or not achieving agreed-upon results.

The Commission urges Congress and the Executive Branch to refrain from overpromising what the federal government

can accomplish in implementing immigration policy. For example, rather than defining the removal of all deportable and inadmissible aliens as the priority for removal, a goal that is presently not achievable, the federal government could define removal priorities in terms of specified numbers and categories of aliens (e.g., criminal aliens) and in terms of certain strategies. For example, a “last in, first out” strategy would remove everyone who newly enters the removal system before removing persons whose cases have been pending in backlogs for some time. This priority-setting process worked well in reforming the asylum process and could be replicated in other areas.

Priority setting must be accompanied by sufficient resources to undertake the top objectives. In the case of removals, it should include resources for Investigations, Trial Attorneys, Immigration Judges, the BIA Detention and Deportation Officers, Department of State liaisons with host countries, and such needs as vehicles, equipment, training, and support. The priority should identify the problem completely and clearly and map out which part of that problem will be solved in which of several years of the priority. And then Congress should agree and the Executive Branch should be held accountable.

■ **Developing more fully the capacity for policy development, planning, monitoring, and evaluation.** In general,

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<sup>5</sup> For example, for the second quarter [January-March] of FY 1997, federal agencies were:

- For FY 1996, completing '96 year-end statistics and reports;
- For FY 1997, continuing work on implementing '97 goals and priorities;
- For FY 1998, finalizing the President's February FY 1998 Budget Submission to the Congress and explaining/defending it at congressional committee hearings;
- For FY 1999, developing the '99 budget initiatives, priorities, and strategies to be submitted to OMB under the “Spring Plan” planning process.

the current immigration system suffers from an inability to develop, sustain, and clearly articulate long-term and short-term policymaking except in times of crisis. Often this has led to bad policymaking, poorly developed programs, inadequate policy coordination across departmental lines, and almost nonexistent program assessment and evaluation of outcomes. None of the main Executive Branch departments has developed a broad-based immigration policymaking capacity.

The most developed policymaking and coordination unit in the immigration system exists in the INS Office of Policy and Planning [OPP]. However, a majority of its eighty-five people and its \$5 million personnel budget are related to statistics and other nonpolicymaking activities. Moreover, while it is important for the principal agency responsible for immigration enforcement to have its own policy and planning capability, OPP is not necessarily well positioned to advise the Department of Justice about immigration-related policy issues affecting other DOJ agencies. Further, under the Commission's proposed restructuring, it would make no sense for the agency responsible for enforcement to have lead responsibility for formulating policies related to legal immigration and naturalization or enforcement of immigration-related labor standards.

Each department with immigration-related responsibilities needs to perform a wide range of policy functions, including, but not limited to, long-range and strategic policy planning, interagency policy integration, policy review, policy coordination, priority setting, data collection and analysis, budget formulation, decisionmaking, and accountability. The Domestic Policy Council and the National Security Council, both situated in the White House can also play an important role in coordinating policy development across departments.

Informed policymaking requires systematic review of current policies and programs (which themselves should be informed by reliable and timely statistical information), development of a range of options, and analysis of the advantages and disadvantages (including costs and timeframes) of each. Further, immigration policy affects, and is affected by, a wide range of other issues of interest to the departments. For example, the DOL overall labor policy is affected by immigration as the foreign-born represent a large proportion of the growth in the labor force. As a proportion of the unskilled workforce, immigrants represent an even larger proportion and potential impact. Similarly, international migration and the foreign policy and national security interests of the United States are strongly connected.

The immigration-related policymaking capacities at the departmental level in Justice, State, and Labor tend to be *ad hoc* and understaffed. For example, the Office of the Deputy Attorney General [DAG] has two and one-half to three attorneys working on immigration-related policy and program coordination. These staff serve as a clearinghouse through which immigration-related concerns and policy matters pass from the responsible agencies (e.g., INS, EOIR, Office of Special Counsel for Immigration-Related Unfair Employment Practices, Office of Immigration Litigation) through the DAG to the Attorney General. Given the wide range of policy issues requiring department-level attention, these staff have an all but unmanageable policy portfolio. Much of their time is spent on routine oversight punctuated by crisis management, with little time left for long-range policy development or planning. The Commission believes more sustained and timely attention to immigration policy issues within and across departments will help improve both the formulation and implementation of programs.

Interagency coordination of immigration policymaking also is particularly important. The Domestic Policy Council [DPC] already plays such a role. The Commission recommends strengthening the DPC's capacity to provide policy guidance, particularly when immigration matters affect or are affected by other domestic interests. Designation of a senior focal point for immigration policy in the DPC would enhance its ability to coordinate policy development. This role would be complementary to the enhanced role the Commission recommended for the National Security Council with regard to refugee issues. The DPC and the NSC would coordinate closely when migration issues relate to U.S. foreign policy and national security interests.

More specifically, the DPC should be mandated and staffed to: oversee federal immigration policy development across departmental and agency lines; monitor the execution and impact of new legislation, policies and programs; resolve differences within the Executive Branch, focusing on those that impede the capacity of the federal government to deliver a single, coherent message about immigration policy and priorities; serve as a forum for discussion of new ideas; coordinate liaison with and the input of advocates and other nongovernmental agencies concerned with federal immigration decisionmaking; and relay the resulting recommendations to Congress and the President.

- **Improving systems of accountability.** The Commission believes strongly that staff who are responsible for immigration programs should be held accountable for the results of their activities. Systems should be developed to reward or sanction managers and staff on the basis of their performance. This requires the development of performance measures that relate to expected outcomes. For example, the Commission earlier recommended rewarding Border Pa-

trol staff for their effectiveness in deterring illegal migration rather than their prowess at apprehending illegal aliens. Similarly, managers responsible for adjudication of benefits should be rewarded if they lessen processing time for the approval of applications and, simultaneously, improve their detection of fraudulent cases. By contrast, managers who fail to meet recognized operating standards should be held accountable and be sanctioned for their noncompliance. Systems to reward innovation or sanction managers and staff on the basis of their performance also need to be developed. Too often, staff who try new approaches not only are not rewarded for their initiative, they are sanctioned by their colleagues and supervisors.

- **Recruiting and training managers.** The Commission believes improvements must be made in the recruitment and training of managers. As immigration-related agencies grow and mandated responsibilities increase or evolve, closer attention should be paid to improving the skills and managerial capacity of immigration staff at all levels to ensure more efficient and effective use of resources allocated.

Since 1993, the immigration system has been undergoing a tremendous infusion of new resources and, since 1996, significantly augmented statutory mandates. Either change would seriously burden even the best-run agencies of the federal government. Such infusions of new resources to INS and to several other agencies burden agency administrative and management systems. INS has not added a sufficient number of experienced, proven managers to help the agency address the many challenges it faces.

Agencies must be able to rapidly recruit, select, train, deploy, and then support new staff—and they must sustain

this expansionist capacity over several fiscal years. Most of the new staff added are entry-level, necessitating on-the-job training, mentoring, and close supervision before they can be considered fully functional in their jobs.

As new staff are added, new supervisors are needed—and they too need supervisory and management training to be successful. Supervisors usually are drawn from the ranks of the operational staff, and with increased operational responsibilities, they often are unable to be freed soon enough or long enough to attend supervisory training in a timely fashion.

In addition, major changes in the immigration statutes passed in 1996 necessitate the redrafting and repromulgation of hundreds of sections of law and regulations, hundreds of new or revised forms, and training and retraining of staff just to implement these profound changes. Agencies should consider new ways in which staff are trained to do their work: e.g., training in management by objectives, in accountability, in managerial and supervisory skills. For some agencies, the skill levels—and agency cultures—are not yet adequate to be successful in fulfilling present and expected future increased managerial and supervisory responsibilities. Both additional supervisors and new skills are urgently needed.

The infusion of new skills and culture can come from two sources: (1) in-house training and retraining of existing staff; and (2) the addition—from outside the agencies themselves—of new middle- and upper-level management staff possessing those skills and the ability to apply them quickly to the immigration settings. These two sources need not be mutually exclusive; some of both may be required.

One promising recent development is the INS' new "competency-based" assessment process for Border Patrol officer promotions to supervisor. The Border Patrol is the single immigration agency receiving the greatest number of new staff over the coming next several years. The objective is to test Border Patrol officers to predict more accurately their potential for success as future supervisors. According to INS, the main focus of the system is assessment of "thinking skills . . . the way supervisors and managers must think and react on a daily basis."<sup>6</sup> More than 1,000 Border Patrol officers have been tested, another 1,000 will be by the end of summer 1997, and testing of all remaining eligible Border Patrol Officers will be completed by the end of 1997.

- **Strengthening customer service orientation.** The Commission urges increased attention to instilling a customer-service ethic in staff, particularly those responsible for adjudication of applications for benefits. Repeatedly, but most recurrently regarding INS, the public complains of a lack of service from both their dollar and from the personnel charged with serving them. The horror stories are too common. Most individuals coming into contact with the immigration system have paid a fee—whether indirectly (such as at airports and the inspections users fees tacked onto their ticket prices) or directly (such as through the submission of a fee with their application for a benefit). They expect and should receive service that is customer-friendly and timely. Appli-

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<sup>6</sup> The system is based on four assessments:

1. *Decisionmaking Situational Assessment*, measures thinking skills such as reasoning, decisionmaking, and problemsolving;
2. *In-basket Job Simulation*, measures administrative skills, such as planning/organizing and managing/organizing information;
3. *Managerial Writing Skills Exercise*, measures written communication skills; and
4. *Past Achievement Record*, measures personal qualities, such as leadership and flexibility.

cants should be treated courteously, records should be located with ease, and accurate information should be provided in a professional manner.

The absence of a separate career track for benefits adjudicators hampers efforts to attract and retain the best federal employees to these tasks. The structural reforms we recommend should help address this problem. Currently, many of those promoted into management positions within INS moved along the enforcement career track. Its higher-paid designations frequently make them eligible for such promotions before those who spend their careers in benefits adjudication. Benefits adjudication personnel should have a career track that promotes the best performers into positions of management and leadership and provides all employees with appropriate incentives as well as models worth emulating.

The primary currency of service is information—information that should be both accurate and timely. Daily, in many locations throughout the U.S., people seeking forms, information, status checks, and interview appointments, and reporting a change of address, requesting a copy of a form in their file, or requesting or extending employment authorization create long lines around local INS offices.

Immigration customers should not have to stand hours in a line to get information. Immigration processes should be reengineered to ensure that information is easily available at several locations and through several electronic means and, when given, is accurate. Several ways to improve access to forms and information, many electronic, already are in development. Forms increasingly are available on Information Kiosks located in high volume immigration centers; soon they will be available over the Internet. The website devel-

oped by the Department of State's Bureau of Consular Affairs makes available pertinent information on conditions throughout the world.

Customer-service personnel should be both initially well-trained and periodically tested to ensure they remain current with the latest changes and interpretations of policy. In addition, there should be a formal quality assurance program. For customer service representatives working on the lines at district field offices or answering questions on the telephone, quality assurance of their work should include the possibility for supervisors to monitor the correctness and manner of delivery of the service given.

- **Using fees for immigration services more effectively.** The Commission supports the imposition of users fees, but emphasizes that: (1) the fees should reflect true costs; (2) the agencies collecting the fees should retain and use them to cover the costs of those services for which the fees are levied; (3) those paying fees should expect timely and courteous service; and (4) agencies should have maximum flexibility to expand or contract their response expeditiously as applications increase or decrease.

The current situation has a number of weaknesses. First, some programs are now undercharging (or not charging) fees while others reportedly are overcharging. INS is now reviewing its fees to determine where adjustments should be made. Second, some fees go into the General Treasury while others are held by the agencies collecting them and used for the function for which they were collected. Third, agencies do not have effective systems for accurately anticipating the volume of applications, forecasting their fee receipts, and requesting appropriate levels of funding from fee accounts to meet demand. Fourth, when there is an

unforeseeable increase in the number of applications, there is a significant lag time before an agency is able to use the increased fee revenue to expand its service capacity. For example, it took several months to develop a reprogramming request and then obtain permission for a reprogramming of funds when naturalization and section 245(i) adjustment applications increased significantly. This delay resulted in a growing backlog of persons awaiting service. Providing more flexibility would require agreement from the congressional appropriations committees that they need not approve the reprogramming of fees when the need for additional resources is related solely to an increase in the volume of applications.

## IMPROVED DATA AND ANALYSIS

*The Commission reiterates its 1994 recommendations<sup>7</sup> regarding the need for improvements in immigration data collection, coordination, analysis, and dissemination.* Although progress has been made, much more needs to be done. Reliable and timely data are crucial to the effective enforcement of immigration law. They are the basis for the effective implementation of ongoing and new programs. And, ultimately, they are the only means of assessing results achieved and reaching the conclusions necessary for responsible policymaking.

Data problems throughout the immigration system have long been evident. The Panel on Immigration Statistics of the National Research Council concluded in 1985 that the “story” about immigrant data was “one of neglect.”<sup>8</sup> Despite increases in congressional funding and some notable improvements at the INS, the available data remain incomplete—a problem that exists to some degree in each agency involved in the immigration system.

<sup>7</sup> U.S. Commission on Immigration Reform. 1994. *U.S. Immigration Policy: Restoring Credibility*. Washington, DC. 179-86.

***The Commission reiterates its 1994 recommendations regarding the need for improvements in immigration data collection, coordination, analysis, and dissemination.***

The Commission believes there is a pressing need for improvements in immigration data collection, standardization, intra- and inter-agency linkages, timely dissemination, rigorous analysis, and use in policymaking. The Commission urges the federal government to support continuing research and evaluation on all aspects of immigration. Further, the Commission urges the Congress to insist upon the organizational structures needed to create and maintain high-quality statistical data.

The statistical function must be given high priority and sufficient institutional control and authority. Quality data do not evolve as a by-product of disjointed administrative data-gathering responsibilities. Quality data ultimately require a statistical system that can satisfy policy-relevant and management information needs through an integrated, centrally-coordinated approach.<sup>9</sup>

In recent years Congress has addressed the statistical problem by requiring improvements in specific arenas—primarily through automation—and by appropriating increased funding. These steps are encouraging and the Administration appears to have embarked successfully on some programs for automated data collection. The INS already has established separate systems for data collection and retrieval for its core enforcement and benefits functions.<sup>10</sup> Under the Commission's proposals it is essential that the statistical systems under DOJ enforcement and DOS benefits retain an automated and integrated design. However, statistical systems cannot be improved simply by automating data collection.

As the Panel on Immigrant Statistics concluded, it would be naive

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<sup>8</sup> Levine, D. B.; Hill, K.; Warren, R. (eds.). 1985. *Immigration Statistics: A Story of Neglect*. Washington, DC: National Academy Press.

<sup>9</sup> Norwood, J. L. 1995. *Organizing to Count: Change in the Federal Statistical System*. Washington, DC: The Urban Institute Press.

<sup>10</sup> However, there still remain more than one dozen separate data collection systems that often suffer from various internal deficiencies and remain to be integrated into larger core systems.

to assume that automation will solve the problems that have been evident for too long a time in statistical operations.<sup>11</sup> The Panel cited an agency-wide lack of understanding and commitment to high-quality data and the need for the development and acceptance of appropriate standards as the primary causes of today's inadequate state of affairs. It is necessary to change priorities from data collection solely for individual division administrative purposes to the production of data for integrated enforcement, benefits, quality control, and analytic uses.

Congress also has been critical of the way in which data has been disseminated. In the context of congressional debate, sporadic release of data has the potential for politicizing statistics. Regular and scheduled release of statistics, preferably monthly, can go a long way toward depoliticizing data and focusing attention on unbiased analysis. The Department of Labor's Bureau of Labor Statistics, with an autonomous and scheduled release of data, offers one model for the dissemination of data with no relation to the policy calendar.

The Commission believes each agency with immigration responsibilities should have a statistical office charged with final authority over data coordination, agency-wide definitions and systems integration, quality monitoring, research and analysis, and regular dissemination. Data collection and analysis must be a priority and be reflected in the statistical branch's organizational placement. Only sufficiently high placement and authority can ensure that its mission is successfully discharged.

Interagency cooperation and coordination of agencies that produce or use immigration data can enhance the data's timeliness and value significantly. Cooperation also can lead to significant gains in the

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<sup>11</sup> Levine, D. B.; Hill, K.; Warren, R. (eds.). 1985. *Immigration Statistics: A Story of Neglect*. Washington, DC: National Academy Press. See also: Morris, M.D. 1985. *Immigration—The Beleaguered Bureaucracy*. Washington, DC: Brookings Institution.

use of scarce resources—be they funding, staff, time, or public tolerance. Such coordination must insure monitoring of progress, adherence to standards, common definitions, timeliness in publication, and full disclosure of methods, methodology, procedures, and problems. Only then will significant improvements occur.

Consideration should be given to the creation of a *permanent* taskforce on immigration statistics that would coordinate interagency efforts to improve all aspects of the statistical system. Various *ad hoc* and temporary governmental working groups have tackled a part of, or the whole of, the data collection system.<sup>12</sup> A formally-charged taskforce would craft the basis for interagency agreements and possible statutory and regulatory changes. To be effective, the taskforce would require appropriate institutional support. It would marshal interagency collaboration on data whenever feasible, especially on definitional issues and on what information is collected. The taskforce should conduct an exhaustive review of the data collected in each agency, identify overlap or potential interagency data linkages, evaluate technical and computer needs, propose standard definitions, and make recommendations.

### **Information Needs**

Little can be done to make significant advances in our understanding of immigration without improvements in data and targeted research. Policymaking is particularly hampered by lack of knowledge from detailed surveys and longitudinal studies in three areas: the experiences and impacts of immigrants; the experiences and impacts of foreign students and foreign workers admitted for limited duration stays; and the patterns and impacts of unlawful mi-

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<sup>12</sup> The INS has convened an Interagency Working Group on Immigration Statistics that has reviewed various data problems. It has had a significant impact on Administration funding for an immigration component in the Current Population Survey, the preeminent U.S. source of data on national trends and on the U.S. labor force. It also made significant contributions to ultimate Administration support for the New Immigrant Survey.

gration. There is a seemingly inexhaustible range of options for collecting data and, especially, topic areas needing research.<sup>13</sup> Examples of pressing analytic data needs are discussed below.

## **Legal Permanent Admissions**

The gap between questions about legal immigration and the data needed for answers is greater than in almost any other area of public policy. It is not now possible to address fully pressing policy questions about the changing skill makeup of newly admitted immigrants over time, the transitions between temporary and permanent residence status, the effects of today's immigration on future demand through family reunification, and the success and impact of immigrants in the U.S. economy.

To answer such questions, policymakers have a crucial need for both data on detailed classes of admission and the capacity to track changes over time. Recently, the Administration funded the collection of data on immigrants in the monthly Current Population Survey. However, these and other survey data neither collect detailed information about status nor distinguish between legal and illegal foreign residents, much less between the various temporary or permanent admission statuses.

The INS yearly admissions data are the most immediate source of information on immigrant entry class. Yet, the data serve primarily as a minimalist administrative count of individuals. Identifying family units would make it possible to evaluate admissions as they really are: the immigration not of individuals but of families. The quality and type of data gathered on labor force status depends on definitions that do not conform with modern concepts. Including information about immigrant sponsors would go far to increase our

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<sup>13</sup> Edmonston, B. (ed.). 1996. *Statistics on U.S. Immigration: An Assessment of Data Needs for Future Research*. Washington, DC: National Academy Press.

ability to make reliable forecasts about the numbers and skill composition of tomorrow's immigrants.

The New Immigrant Survey discussed in the introduction to this report demonstrates the policy value of expanded data on new admissions. For the first time we have an accurate picture of education and English ability, as well as the capability for studying transitions from temporary to permanent status, the characteristics of sponsors, and the financial well-being of new entrants. Designed as a pilot, the NIS should be seriously evaluated for its costs and for its value as a model for a longitudinal survey.<sup>14</sup> Experts agree that only a longitudinal survey ultimately can answer Congress' most pressing questions.<sup>15</sup>

Finally, it is essential to improve our knowledge of newly naturalizing citizens. In the past few years there have been dramatic increases in the numbers of persons naturalizing, but little is known about the individual circumstances under which residents choose to naturalize. Only more detailed knowledge about such things as eligibility and motivations will yield indicators to forecast the number of future applications. Accurate forecasts are needed to meet demand and to organize processing integrity.

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<sup>14</sup> A longitudinal survey would, among other things, help address serious deficiencies due to "lost data sources." In the 1950s, the U.S. discontinued collecting data on persons leaving permanently. Without accurate emigration data, demographic estimates of the size and growth of the foreign population are imprecise exercises. In the 1980s, the "Alien Address" database was discontinued. Knowing the size of the legal population makes it possible to get significantly more precise estimates of the size and location of illegal residents.

<sup>15</sup> Levine, D. B.; Hill, K.; Warren, R. (eds.). 1985. *Immigration Statistics: A Story of Neglect*. Washington, DC: National Academy Press. Edmonston, B. (ed.). 1996. *Statistics on U.S. Immigration: An Assessment of Data Needs for Future Research*. Washington, DC: National Academy Press. National Research Council. (J.P. Smith, B. Edmonston, eds.). 1997. *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington, DC: National Academy Press.

## Limited Duration Admissions

There exists remarkably little comprehensive or policy-relevant knowledge or research on the administration of the LDA system or its impact on the U.S. economy.<sup>16</sup> Problems in the LDA data system are even more pervasive than in the legal permanent system.

The Commission believes that improvements in data collection and analysis of LDAs and the impact of these admissions should be considered an urgent priority. The INS has made significant efforts to improve its data and has directed funds toward new computer systems. The Commission urges the Congress to support continued innovation in data collection and storage retrieval. As in our last report, the Commission suggests that building upon existing administrative recordkeeping will be most cost-effective.

Improved data and new research efforts are especially critical as there is remarkably little known about the number, characteristics, and impact of LDA workers and foreign students. For example, important basic information is lacking on LDA workers—their geographic location in the U.S., occupations, or labor-market effects. Longitudinal data and analysis are needed regarding the transition of LDA workers to immigrant status—directly or through other temporary categories. Likewise, little is known about the total population and characteristics of foreign students, their geographic distribution, academic status, duration of stay, employment activities, or change and adjustment of legal status.

There is a critical need to continue and extend improvements in departure data—one of the more crucial components of the entire immigrant information system. Precise exit information is necessary to track duration of stay, compliance with visa regulations, and overstays. Further, the utility of current data could be meaningfully

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<sup>16</sup> Lowell, B.L. (ed.). 1996. *Temporary Migrants in the United States*. Washington, DC: U.S. Commission on Immigration Reform.

extended, for example, by collecting accurate information on intended destination. The Commission endorses continued emphasis on the improvement and introduction of electronic/paperless mechanisms for the collection of departure data.

### **Unauthorized Migration**

The measurement and study of illegal aliens—a clandestine population—always has been fraught with difficulties. Ironically, a focus on estimates of this population may well have produced more accurate numbers than official figures on legal residents. Yet, if our research knowledge of legal immigrants is circumscribed, and research on LDAs nearly nonexistent, the analysis of the illegal population, while extensive, suffers from combinations of problems.

At a rudimentary level, there is a need to know more about the number of illegal aliens who entered without inspection [EWI] in contrast to temporary admittees who overstay the time permitted on their LDA visa.<sup>17</sup> In terms of enforcement efforts the distinction is important, but there is an unknown range of error in current estimates. What proportion fall into each type? Improvements in existing databases are sorely needed along with research into innovative and reliable means of estimating each population.

Much could be gained from knowing about the varied means by which EWIs and LDA overstayers come to the United States and the length of their stay. If, for example, LDA overstayers had shorter durations of residence in illegal status, then their proportion of the total illegal population is, in a sense, more “fluid.” At a more critical extreme, subpopulations of highly mobile and circular mi-

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<sup>17</sup> U.S. General Accounting Office. 1995. *Illegal Immigration: INS Overstay Estimation Methods Need Improvement*. GAO/PEMD-95-20. Washington, DC: U.S. Government Printing Office.

grants may stay for only short periods in the United States. These highly mobile individuals would not be fully captured in standard estimates of the illegal population.<sup>18</sup>

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<sup>18</sup> There are few reliable estimates of the highly-mobile, illegal subpopulation, nevertheless, *ad hoc* estimates increasingly are heard. A correct estimate of this population should adjust for its average, or “person year,” size. For example, if 100 illegal workers spent one-half year working in the United States, they would earn the yearly wages of 50 workers. See Heer, D.M. 1990. *Undocumented Mexicans in the United States*. Cambridge: Cambridge University Press.

## **CONCLUSION**

This report concludes the work of the U.S. Commission on Immigration Reform. Together with our three interim reports, this final set of recommendations provides a framework for immigration and immigrant policy to serve our national interests today and in the years to come. The report outlines reforms that will enhance the benefits of legal immigration while mitigating potential harms, curb unlawful migration to this country, and structure and manage our immigration system to achieve all these goals. Most importantly, this report renews our call for a strong commitment to Americanization, the process by which immigrants become part of our community and we learn and adapt to their presence. Becoming an American is the theme of this report. Living up to American values and ideals is the challenge for us all.