



Immigration Reform:

A Step-by-Step Approach

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BACKGROUND

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The Senate's Comprehensive Immigration Bill: Top 10 Concerns

The Heritage Foundation Immigration and Border Security Reform Task Force

Abstract

More than any other nation in history, the United States has welcomed immigrants in search of a better life. Over the past several decades, however, immigration policy has become confused, unfocused, and dysfunctional. Millions of people who entered the U.S. illegally belie the core principle of the rule of law and belittle the legal naturalization process, while continued large-scale immigration without effective assimilation threatens social cohesion and America's civic culture and common identity. This is especially true when immigrants are assimilated into the welfare state rather than into a society of opportunity. American citizens, as well as current and future immigrants, deserve better. In April 2013, the Senate introduced the Border Security, Economic Opportunity, and Immigration Modernization Act. But, instead of offering meaningful reform, the act fails to address the intricacies of America's immigration challenges by trying to solve everything in one colossal bill; it also imposes exorbitant costs and is filled with political trade-offs and misguided policies. In this Backgrounder, the Heritage Foundation Immigration and Border Security Reform Task Force details the 10 most critical reasons why Congress should reject the Senate's flawed approach, and lays out steps for true immigration reform.

The United States is—by far—the world's leading destination for immigrants.¹ More than any other nation in history, the United States has made itself a welcome home for immigrants in search of a better life. Over the past several decades, however, immigration policy has become confused, unfocused, and dysfunctional. America

KEY POINTS

- More than any other nation in history, the United States has offered immigrants a new home. Over the past several decades, however, immigration policy has become confused, unfocused, and dysfunctional.
- Millions of people who broke U.S. law to live in America make a mockery of the legal naturalization process. Continued large-scale legal immigration without effective assimilation threatens social cohesion and America's civic culture and common identity.
- In April, the Senate introduced the misnamed Border Security, Economic Opportunity, and Immigration Modernization Act. The act is an amnesty bill that fails to address the intricacies of America's immigration challenges, imposes exorbitant costs on taxpayers, and is filled with political trade-offs and policies that merely encourage additional illegal immigration.
- Amnesty was tried in 1986. It failed. Instead of repeating the mistakes of the past, the U.S. should implement reforms that encourage lawful immigration, discourage unlawful immigration, and uphold America's principles.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2819>

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lacks a simple system to attract the qualified immigrants who can help the economy grow. Millions of people who came to the U.S. unlawfully belie the core principle of the rule of law and make a mockery of the legal immigration process, while continued large-scale immigration without effective assimilation threatens social cohesion and America's civic culture and common identity. This is especially true if immigrants are assimilated into the welfare state rather than into a society of opportunity.

American citizens, as well as current and future immigrants, all deserve better than the current system. Yet, the present reform proposal in the Senate amounts to little more than an "easy button" solution that will fail to solve the many challenges of America's broken immigration system. History, in fact, has shown that big bills designed to solve everything wind up creating as many problems as they address.² They become loaded with payoffs for special interests and often introduce measures that work at cross-purposes. The same is true of the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744).

Introduced on April 17, 2013, the Border Security, Economic Opportunity, and Immigration Modernization Act offers a flawed approach to fixing the nation's broken immigration system. Not only does the legislation fail to address the intricacies of America's immigration challenges by trying to solve everything in one colossal bill, it also imposes exorbitant costs and is full of political trade-offs and misguided policies. Following are the top 10 concerns that make the bill unworkable and unfixable:

1. Amnesty

According to the most recent numbers published by the Department of Homeland Security, there

were an estimated 11.5 million illegal immigrants in the United States in January 2011.³ While the majority are believed to have crossed the U.S. border illegally, approximately 40 percent of illegal immigrants overstayed the terms of their legal visa.⁴ Regardless, S. 744 would create a framework for providing amnesty to the majority of these individuals.

Amnesty comes in many forms, but in all of its variations it discourages respect for the law, treats law-breaking aliens better than law-following aliens, and encourages future unlawful immigration into the United States. The U.S. saw these facts ring true back in the 1980s when the United States last granted a mass amnesty.

In legislation remarkably similar to S. 744, the 1986 Immigration Reform and Control Act granted unlawful immigrants who entered the U.S. before 1982 "temporary resident status." Aliens with this status were authorized for travel and employment. Eighteen months after receiving temporary legal resident status an individual could become a legal permanent resident (LPR). After five years he could then become a citizen.

When the bill passed, its proponents argued that the bill's amnesty provisions would be a one-time thing. Specifically, the House committee originating the legislation said that "a one-time legalization program is a necessary part of an effective enforcement program."⁵ The chief architects of the legislation argued that the enforcement and security provisions contained within the bill, including border security and stepped-up enforcement of existing immigration and labor laws, would ensure that illegal immigration would not be a problem in the future. Since that time, however, the unlawful immigrant population in the United States has nearly quadrupled.

1. "A Nation of Immigrants," Pew Hispanic Center, January 29, 2013, <http://www.pewhispanic.org/2013/01/29/a-nation-of-immigrants/> (accessed June 4, 2013).
2. Amy Payne, "5 Ways the Immigration Bill Is Like Obamacare," The Heritage Foundation, The Foundry, May 2, 2013, <http://blog.heritage.org/2013/05/02/morning-bell-5-ways-the-immigration-bill-is-like-obamacare/>.
3. Michael Hoefer, Nancy Rytina, and Bryan Baker, "Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011," Department of Homeland Security, Office of Immigration Statistics, March 2012, p. 1, http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf (accessed June 4, 2013).
4. Edward Alden, "Visa Overstay Tracking: Progress, Prospects and Pitfalls," testimony before the Committee on Homeland Security, U.S. House of Representatives, March 25, 2010, http://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=1&ved=0CDAQFjAA&url=http%3A%2F%2Fwww.cfr.org%2Fcontent%2Fpublications%2Fattachments%2FAldenTestimony3.25.2010.pdf&ei=P_StUZ62I8XK4AOo3YCAAQ&usq=AFQjCNFI1cifg84kfOuRvya65vAkXqxuOQ&sig2=yOwajpl5aLufvc-PN_CUmg&bvm=bv.47244034,d.dmg&cad=rja (accessed June 4, 2013).
5. "Report to Accompany H.R. 3810 of the 99th Congress, the Immigration Reform and Control Act of 1986, Report 99-682 (Part 1)," Committee on the Judiciary, U.S. House of Representatives (July 16, 1986), reprinted in 1986 U.S. Code Cong. & Ad. News 5649, 5653, 1986 WL 31950.

Now, more than two decades later, leaders in Congress are once again proposing amnesty. Specifically, S. 744 would:

- Create a “registered provisional immigrant” (RPI) status that would grant travel and work authorization similar to the “temporary resident status” of 1986. RPI status would be initially valid for six years and could be renewed indefinitely.⁶
- Allow those granted RPI status to adjust their status to “legal permanent resident” once the bill’s border security provisions are met. So too, an individual must be able to show that he was “regularly employed” while an RPI, demonstrate that he is not likely to become a public charge (through an average income or resources not less than 125 percent of the federal poverty level), and pursue government-assisted English language and civics education.⁷
- Streamline the naturalization process for unlawful immigrants by stipulating that an alien LPR who has been eligible for work authorization for no fewer than 10 years before gaining that LPR status may be naturalized after three years as an LPR.⁸ Current law requires that applicants for naturalization have resided in the U.S. as LPRs for five years.⁹

Making matters worse, the draft law states that anyone who was present in the U.S. on or before December 31, 2011, would qualify for amnesty, creating massive opportunity for fraud, since there is no proof required that applicants have been in the U.S. several years.

At the same time, the bill also contains a version of the DREAM Act, which would grant amnesty to

those illegal immigrants who came to the U.S. when they were under the age of 16. This version would be more inclusive than previous bills, since it sets no upper age limit for DREAM Act recipients.¹⁰ The bill also creates a special “blue-card” program that would grant work authorization and lawful status to unlawful agricultural workers.¹¹ After five years, DREAM Act–eligible immigrants would be granted citizenship and those with blue-card status would be eligible to become legal permanent residents.¹²

To allow an amnesty would teach precisely the wrong lesson to America’s lawful immigrants and the culture at large. The message of amnesty is: When a group of people who have violated the law grows too big to prosecute, the U.S. will simply change the law to accommodate them. Even more, the U.S. will allow them to stay in the country until, ultimately, they become permanent residents or even citizens. A massive pardon of intentional violation of law also undermines the rule of law, particularly since it would be the second blanket amnesty in about a quarter century.

Amnesty is also deeply unfair to all those who waded through the United States’ complex and convoluted immigration system to come and remain here legally. The same is true for the approximately 4.4 million individuals who at this very moment are waiting in line to come to the United States, some of whom have been waiting for more than two decades.¹³

2. Border Security “Triggers”

In 1986, Congress promised the American people enhanced border security in exchange for amnesty. This improved security largely never came to fruition. This time around, S. 744’s authors included requirements that the Secretary of Homeland Security certify certain “border triggers” before additional steps

6. Border Security, Economic Opportunity, and Immigration Modernization Act, S. 744, 113th Cong., 1st Session, §2101.

7. *Ibid.*, §2102.

8. *Ibid.*

9. Immigration and Nationality Act Sec. 316, 8 U.S.C. §1427.

10. Border Security, Economic Opportunity, and Immigration Modernization Act, §2103.

11. *Ibid.*, §2211.

12. *Ibid.*, §2103 and §2212.

13. U.S. Department of State, Bureau of Consular Affairs, *Annual Report of Immigrant Visa Applicants in the Family-Sponsored and Employment-Based Preferences Registered at the National Visa Center, as of November 1, 2012*, <http://www.travel.state.gov/pdf/WaitingListItem.pdf> (accessed June 4, 2013), and U.S. Department of State, Bureau of Consular Affairs, “Visa Bulletin for March 2013,” http://travel.state.gov/visa/bulletin/bulletin_5885.html (accessed June 4, 2013).

in the legalization process can proceed. Specifically, the bill requires that the Department of Homeland Security (DHS) commence the implementation of a Comprehensive Southern Border Security Strategy and a Southern Border Fencing Strategy before the Secretary can begin processing applications for RPI status.¹⁴ The bill also requires that the Comprehensive Southern Border Security Strategy is substantially deployed and operational, and that the Southern Border Fencing Strategy is implemented and substantially completed in order for those with RPI status to be adjusted to LPRs.

While these requirements may sound good on paper, in reality, the DHS has been trying unsuccessfully to define credible metrics for border security since 2004. Even if it had effective triggers, they do not guarantee a secure border. Border-crossing conditions constantly change. Thus, even if the goal is achieved, there is no guarantee it will stay that way.

The U.S. should do more to secure its borders, but using border security as a political tool to pass a bloated comprehensive bill is simply wrong.

Further, the Secretary of Homeland Security has repeatedly stated that U.S. borders “have never been stronger.”¹⁵ So too, in the past five years, the White House has never asked for additional border security funding. Yet, this bill lavishes billions of additional spending on the DHS with no clear requirements on how the money is to be spent. At least \$2 billion could legitimately be labeled the Secretary’s slush fund. Added to this is the fact that the Secretary of Homeland Security can waive the final border security requirements where litigation, a disaster, or an act of God has prevented their implementation; implementation has been declared unconstitutional;

or 10 years have passed since the bill was enacted. One may be left with serious doubts about whether the border security requirements of S. 744 will actually be met.

The bill’s overall strategy would also put greater pressure on U.S. border security measures and drive up the cost associated with them, given that amnesty will create a greater incentive for would-be illegal border crossers. In fact, in April 2013, the chief of the U.S. Border Patrol testified that apprehensions at the border were up 13 percent over 2012 numbers, indicating a significant increase in unlawful entries.¹⁶ The U.S. should do more to secure its borders, but using border security as a political tool to pass a bloated comprehensive bill is simply wrong.

3. Cost to Taxpayers

In addition to concerns of rule of law and fairness, amnesty will cost taxpayers trillions of dollars. This is because some taxpayers contribute more in taxes than they receive in government benefits, while others consume more than they contribute. Most unlawful immigrants fall into this second category of net tax consumers. Even now unlawful immigrant households consume \$14,387 more in benefits than they pay in taxes on average.¹⁷ Current unlawful immigrants receive public education for their children and services at the state and local levels, such as policing, fire protection, road use, and sewer maintenance. Illegal immigrants on average do not pay enough in taxes to cover the cost of these services. In addition, roughly half of illegal immigrants have minor children who were born in the U.S. These children are eligible for nearly all federal means-tested welfare programs including food stamps, Medicaid, Temporary Assistance for Needy Families, and the Children’s Health Insurance Program (CHIP). The total cost of means-tested welfare to these children comes to around \$17 billion per year. Under current law, illegal immigrant households receive about \$2.40 in

14. Border Security, Economic Opportunity, and Immigration Modernization Act, §3 and §5.

15. Jordy Yager, “Napolitano at Immigration Hearing: U.S. Borders Have ‘Never Been Stronger,’” *The Hill*, February 13, 2013, <http://thehill.com/homenews/senate/282845-napolitano-says-us-borders-have-never-been-stronger#ixzz2VG6xdKtt> (accessed June 4, 2013).

16. Michael Fisher, “Questions + Answer,” testimony before the Committee on Homeland Security and Governmental Affairs, U.S. Senate, April 10, 2013.

17. Robert Rector and Jason Richwine, “The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer,” Heritage Foundation *Special Report* No. 133, May 6, 2013, <http://www.heritage.org/research/reports/2013/05/the-fiscal-cost-of-unlawful-immigrants-and-amnesty-to-the-us-taxpayer>.

government benefits for every \$1.00 paid in taxes. The overall cost to taxpayers (total benefits minus total taxes) is \$54 billion per year.

S. 744 would provide millions of these immigrants with amnesty, eventually entitling them to extensive new benefits. Indeed, a recent Heritage study indicates that the net cost of amnesty for all unlawful immigrants would be at least \$6.3 trillion.¹⁸ These costs must be paid by current taxpayers, either by increased taxes or reduced benefits. While S. 744 does not grant every unlawful immigrant amnesty, it would grant it to the vast majority, leading to trillions in new costs.

The Senate bill is designed to conceal costs from taxpayers by delaying amnesty recipients' access to most government benefits for the first decade after the bill's enactment.

Specifically, S. 744 would immediately provide RPIs with access to cash welfare benefits through the refundable earned income tax credit (EITC) and related additional child tax credits (ACTC). The cost of these welfare benefits to the taxpayer would be around \$10 billion per year.¹⁹ While RPIs would pay more in taxes after amnesty as their wages increased and they began to work more on the books, these increased tax payments would be largely offset by the new EITC and ACTC welfare payments. Overall, Heritage estimates that amnesty would continue to cost taxpayers over \$50 billion per year (total benefits minus taxes) for the first 10 to 13 years after the bill becomes law.²⁰

The situation gets worse. S. 744 is designed to conceal costs from taxpayers by delaying amnesty recipients' access to most government benefits for the first decade after the bill's enactment. About 13 years after passage, amnesty recipients would become eligible for over 80 federal means-tested welfare programs and Obamacare. Heritage estimates that when this happens the net fiscal cost (total benefits minus total taxes) of amnesty would rise to \$106 billion per year. Amnesty recipient households would receive roughly three dollars in government benefits for each dollar in taxes paid.²¹

S. 744 would also give most illegal immigrants access to future Social Security and Medicare benefits. The Heritage study estimated that once the amnesty recipients reach retirement age, the annual net cost to the taxpayers will reach \$160 billion per year. Ultimately, amnesty recipients will be net tax consumers at every stage of their lives; the total benefits they receive will always exceed the taxes they pay.²²

The Senate bill also continues the problem of family-chain migration, which drives up the cost of federal, state, and local programs. While S. 744 does remove siblings as beneficiaries of family-based visas, it also classifies spouses and children of LPRs as immediate relatives entitled to family visas that are not subject to visa limits.²³ With the majority of family-chain immigrants being predominantly low-skilled laborers, this provision would likely raise welfare costs and poverty levels.²⁴ Additionally, as Heritage Fellow Robert Rector explains:

Once unlawful immigrant households were legalized, there would be an increased tendency for brothers, sisters, and cousins to migrate from abroad both lawfully and unlawfully to join their

18. Ibid.

19. Based on figures from the 2010 Current Population Survey of the U.S. Census Bureau, there are at least 3.44 million unlawful immigrant households in the U.S. On average, each unlawful immigrant household would be eligible to receive approximately \$2,900 in EITC and ACTC tax credits. As a result, the government could pay around \$10 billion in tax credits per year to amnesty recipients.

20. Derrick Morgan, "How to Read the CBO's Scoring of the Immigration Bill," Heritage Foundation *Issue Brief* No. 3963, June 10, 2013, <http://www.heritage.org/research/reports/2013/06/how-to-read-the-cbo-s-scoring-of-the-immigration-bill>.

21. Rector and Richwine, "The Fiscal Cost of Unlawful Immigrants and Amnesty."

22. Ibid.

23. Border Security, Economic Opportunity, and Immigration Modernization Act, §2307 and §2305.

24. Robert Rector, "'Merit-Based' Immigration Under S.1348: Bringing In the High-Tech Waitresses," Heritage Foundation *WebMemo* No. 1492, June 7, 2007, <http://www.heritage.org/research/reports/2007/06/merit-based-immigration-under-s1348-bringing-in-the-high-tech-waitresses>.

relatives. Thus, other things being equal, amnesty would likely increase future unlawful immigration, in turn increasing future fiscal costs.²⁵

At the same time, S. 744 does not require unlawful immigrants to file tax returns to pay back taxes before gaining legal status, contrary to claims by its proponents. Rather, the bill only requires those seeking RPI status to pay “all Federal income taxes assessed” by the Internal Revenue Service (IRS). This means, of course, they would have had to file their income tax returns while here illegally. The payment of back taxes has been a long-held requirement of immigration reform that members of the “Gang of Eight,” who wrote the bill, have often supported publicly. However, the bill itself gives the Treasury Department and IRS no guidance on how to calculate the tax liability of illegal immigrants that have not filed tax returns in all the years they were in the country illegally. Presumably many will fit into this category because they were working off the books for cash, and their employers provided them no income documentation and forwarded none to the Treasury Department. The bill also requires unlawful immigrants to pay only assessed federal retroactive income taxes, and says nothing of state and local taxes.²⁶

In the end, it is highly probable that Treasury would waive the back taxes requirement for those illegal immigrants without income documentation because of the difficulty of establishing their tax liability—especially with the considerable burden the IRS is already carrying due to enforcing the current tax code, implementing Obamacare, and determining why some of its employees wrongly targeted certain groups for extra and unnecessary scrutiny. Even worse, S. 744 may provide amnesty recipients with retroactive eligibility to the refundable EITC and ACTC. The value of unpaid retroactive EITC and ACTC payments roughly equals the value of unpaid federal income and Federal Insurance Contributions Act (FICA) taxes. This means that retroactive tax “collection” could be a net *cost* to the government.

Overall, unlawful immigrants are not likely to compensate current taxpayers by paying back taxes, and, in fact, they may end up collecting retroactive welfare payments. In the future, their taxes will not begin to cover the benefits they would receive after amnesty.

4. Open Season on Spending

Another key concern is that S. 744 would ignore the U.S. spending and debt problems. Indeed, the bill would provide the Secretary of Homeland Security with extensive new spending authority. This is in addition to ballooning spending on welfare, entitlement, and other public benefits for those granted amnesty. For example, the Senate bill gives \$8.3 billion to the Secretary of Homeland Security in the Comprehensive Immigration Reform Trust Fund.²⁷ This fund would be used for the implementation of various provisions of the bill, such as \$3 billion for the Southern Border Security Strategy and over \$1 billion for general startup costs associated with this bill. While Congress calls for these funds to be repaid by fees and penalties, there is no guarantee that this will happen. Indeed, Congress has been known to use trust funds and new streams of money to pay for additional spending. This “spend now, repay later” mentality worsens the U.S. fiscal condition.

The bill also includes opaque spending measures with no clear limits, listed as “such sums as may be necessary.” These unlimited spending measures include funding for the new Office of Citizenship and New Americans, free cell phones for those who live or work near the border, and undefined and obscure “grant programs” within the U.S. Citizenship and Immigration Services (USCIS) that fund public or private nonprofit organizations to assist amnesty applicants.²⁸ These open-ended streams of money reduce transparency and accountability, making misuse or wasting of funds more likely.

Worryingly, all of this new spending would not be offset in the budget, even though it is required by the Budget Control Act (BCA).²⁹ A loophole in the BCA allows the Gang of Eight to list the bill as “emergency spending,” thus enabling lawmakers to spend billions

25. Rector and Richwine, “The Fiscal Cost of Unlawful Immigrants and Amnesty.”

26. Border Security, Economic Opportunity, and Immigration Modernization Act, §2101.

27. Ibid., §6, and Romina Boccia, “Immigration Bill Is a Trojan Horse for Spending,” The Heritage Foundation, The Foundry, April 19, 2013, <http://blog.heritage.org/2013/04/19/immigration-bill-spending-a-trojan-horse/>.

28. Border Security, Economic Opportunity, and Immigration Modernization Act, §2215, §1107, and §2106.

outside existing budget limits.³⁰ Of course, emergency spending is supposed to be for events that are sudden, unforeseen, temporary, and require immediate action. Even though this bill meets none of those criteria, too many in Congress are willing to ignore the law and the U.S. spending problem. As a result, S. 744 would only add to the U.S. growing national debt, both in the short term and the long term.

5. Expansion of Government Bureaucracy

In addition to creating an open season on government spending, the provisions within S. 744 would also substantially expand government bureaucracy. The bill creates several new offices, task forces, and commissions including the:

- **Southern Border Security Commission**, composed largely of appointed members and charged with making recommendations to achieve effective control along the border;³¹
- **Department of Homeland Security Border Oversight Task Force**, composed of members appointed by the executive and charged with providing review and recommendations on government immigration and border enforcement policies and programs, and their specific impact on border communities;³²
- **Task Force on New Americans**, composed largely of Cabinet members and created to establish coordinated federal policies and programs to promote assimilation;³³
- **Joint Employment Fraud Task Force**, created to investigate compliance with immigration

employment verification requirements;³⁴ and

- **Bureau of Immigration and Labor Market Research**, charged with analyzing labor shortages, developing methodologies for determining the annual cap for the newly created employment-based W visa, and help employers to recruit W visa holders.³⁵

Even where the bill does not explicitly create new government agencies and offices, it is likely to expand government bureaucracy. For one, the amnesty provisions contained within S. 744 would create a flood of applications to be processed by USCIS, an agency that is already struggling to keep up. Yet, instead of providing much-needed reforms to USCIS that would create a healthier and more responsive agency, an issue that is not addressed within the bill, the likely response will be to simply throw more money and manpower at the problem.³⁶ The same response is likely to be true for the Internal Revenue Service, which may require more personnel to enforce the bill's requirement that amnesty applicants satisfy applicable federal tax liability.

Additional provisions also establish burdensome government regulations and fees that promise to have a direct effect on business, including the setting of mandatory wages for nonimmigrant agricultural workers and pro-union provisions restricting agriculture employers' ability to hire needed workers.³⁷ The bill also established numerous fees to be paid by employers seeking foreign labor, which add to business costs and ultimately fund many of the bill's other misguided priorities.³⁸ Such regulations and fees will only serve to burden business, raise costs,

29. Budget Control Act of 2011, Public Law 112-25.

30. Border Security, Economic Opportunity, and Immigration Modernization Act, §6.

31. *Ibid.*, §4.

32. *Ibid.*, §1113.

33. *Ibid.*, §2521.

34. *Ibid.*, §3101.

35. *Ibid.*, §4701.

36. James Jay Carafano and Matt A. Mayer, "Better, Faster, Cheaper Border Security Requires Better Immigration Services," Heritage Foundation *Background* No. 2011, February 28, 2007, <http://www.heritage.org/research/reports/2007/02/better-faster-cheaper-border-security-requires-better-immigration-services>.

37. Border Security, Economic Opportunity, and Immigration Modernization Act, §2232.

38. *Ibid.*, §6.

and decrease the incentive for employers to create new jobs.

6. Loopholes and Ambiguity

At more than 1,000 pages, it should come as little surprise that the Border Security, Economic Opportunity, and Immigration Modernization Act is laced with trade-offs and ambiguity. Much like Obamacare, the complexity of this legislation creates several loopholes and waivers within U.S. immigration law, fostering an environment where Congress neglects its constitutional duties. By delegating much of Congress's responsibility to secure the United States borders and control immigration to the executive branch and unelected bureaucrats, this legislation would make a challenging issue worse.

Throughout the legislation, Congress grants unprecedented discretionary and regulatory powers over immigration to the Department of Homeland Security. The Secretary of Homeland Security, for instance, may waive portions of the Immigration and Nationality Act when considering an alien's eligibility for RPI status. This includes restrictions on admittance of those who have committed crimes involving moral turpitude or use of controlled substances, prostitution, and smuggling.³⁹ The Secretary, along with the Attorney General, is also granted the authority to waive requirements for receiving amnesty set in the bill for "humanitarian purposes, to assure family unity, or if it is otherwise in the public interest."⁴⁰ These broad terms could be used to apply exceptions to a wide range of otherwise ineligible illegal immigrants, including criminal aliens. Indeed, the word "waiver" alone appears 94 times throughout the legislation. Of course, this does not even take into account the vast areas over which the bill gives federal bureaucrats free rein to write regulations for implementing the law. In the case of Obamacare, it has been more than three years since President Obama signed the bill into law, and the regulations are still being written.

At the same time, loopholes are also abundant throughout the legislation. For one, as previously mentioned, amnesty applicants need not prove that they were physically present in the U.S. before December 31, 2011, thereby creating extensive opportunity for fraud.⁴¹ In fact, even in the case of an immigrant who has previously been deported, and then reenters the country illegally after December 31, 2011, the Secretary may still allow application for amnesty.⁴² So, too, would illegal immigrants who are granted blue-card status under the Agricultural Worker Program of 2013 not be prosecuted for any Social Security fraud committed while they were in the country illegally, including falsifying documentation or claiming benefits fraudulently. American citizens committing the same acts are subject to fines and imprisonment for up to five years.

The Senate bill grants unprecedented discretionary and regulatory powers over immigration to the Department of Homeland Security.

Other sections of the legislation also require that applicants for RPI status or adjustment from RPI to LPR status demonstrate an income above 100 percent or 125 percent of the federal poverty line, respectively. To get around proving that they are above the given poverty threshold, however, applicants need only show that they are not "likely to become a public charge."⁴³ Like the condition for physical presence, no requirements are offered for proving that one will not become a public charge. Inadmissibility of immigrants who are likely to become a public charge is, in fact, a long-standing feature of American immigration law, but it is virtually never enforced.

7. Fails on Lawful Immigration Reform

In addition to being extremely costly to the American people, amnesty and the provisions of

39. *Ibid.*, §2101.

40. *Ibid.*, §3405.

41. *Ibid.*, §2101.

42. *Ibid.*, p. 7.

43. *Ibid.*

S. 744 are not fair to all those who have come, or seek to come, here legally. Today, there are approximately 40 million immigrants within the United States, making up nearly 13 percent of the U.S. population, and millions more arrive each year.⁴⁴ For many, going through the legal immigration system is a difficult and time-consuming process; many wait years or even decades to receive a visa to the U.S. In fact, an estimated 4.4 million individuals are currently in line to come through the U.S. immigration system, some waiting 24 years.⁴⁵

The current immigration system is slow and overly complex, yet, rather than address these problems, S. 744 would thrust millions of additional people on the system by granting amnesty to those who are in the U.S. unlawfully, and unrealistically requiring USCIS to first clear the backlog of those waiting to enter the country. While clearing the backlog is certainly a laudable goal, without real reform to USCIS, arbitrary mandates to clear the backlog are only likely to overwhelm the system. Not only that, but if S. 744 were to pass, the political pressure to proceed with amnesty would be so great that one must wonder whether the promise of not allowing illegal immigrants to jump the line in front of those trying to come here legally will be kept.

Indeed, while the bill seeks to take some laudable steps to reform the legal system, such as expanding the Visa Waiver Program and abolishing the diversity lottery, overall it fails to make the type of meaningful reforms necessary. Not only does it do nothing to strengthen the response and capacity of USCIS, it would make the *legal* immigration system more convoluted.

One prime example is the H-1B program, which the bill would make virtually unworkable. H-1B visas allow U.S. companies to hire highly educated foreign workers for occupations requiring specialized skills and knowledge. Employers must pay H-1B workers the “prevailing wage” and certify that their employment will not adversely affect other employees. This allows companies to expand and create more jobs for American workers as well. Section 4211 of the bill, however, guts the H-1B program by imposing heavy new restrictions, and additional amendments could make it even worse. It would also, among other things, force employers to pay higher wages to most H-1B employees than to U.S. workers. Forcing businesses to pay H-1B workers above-market wages is bad enough. The other restrictions would create a bureaucratic nightmare for employers, putting them in legal jeopardy.

Another prime example is the “merit-based” visa system that would be created by the bill. Rather than simply streamlining and fixing the current two-track visa system, the bill creates a third track, a complicated and confusing points system with nearly 30 different categories of consideration. So, too, does the bill complicate the existing family and employment based systems, with new waivers, fees, and requirements. Any true attempt at meaningful immigration reform should make it easier, not harder and more costly, for individuals to come here legally. This is one area where everyone should agree.

8. Disregard for Federalism

The Tenth Amendment of the United States Constitution clearly articulates that powers not

44. U.S. Department of Commerce, U.S. Census Bureau, “Selected Characteristics of the Foreign Born Population by Period of Entry into the United States: 2011 American Community Survey 1-Year Estimates,” http://factfinder2.census.gov/faces/tableservices/jsf/pages/productview.xhtml?pid=ACS_11_1YR_S0502&prodType=table (accessed June 4, 2013). In 2011, as many as 6.86 million individuals were admitted to the U.S. as longer-term non-immigrants or as lawful permanent residents (LPRs). In accounting for non-immigrants, Heritage did not include those who were briefly visiting the U.S. for pleasure or business, those who were merely transiting through the U.S., or those who were commuter students from Mexico or Canada. Heritage counted the remaining non-immigrants, which included those who came to the U.S. on work visas like H-1B, students on visas like F-1, and other categories, such as exchange students, diplomats, and alien fiancées, and came to a total of 6,377,120. In addition to these longer-term non-immigrants who were admitted to the U.S., 481,948 individuals came to the U.S. as new-arrival LPRs. This number does not include those who were already here on non-immigrant visas and had their status adjusted to LPR, because these visa adjusters have already been counted as non-immigrants. While the resulting total of 6.86 million may double-count some foreigners who received two different longer-term visas within one calendar year, it is a strong upper estimate of how many people came to the U.S. for more than just a brief stay in 2011. For these and other figures, see the Department of Homeland Security, Office of Immigration Statistics, “2011 Yearbook of Immigration Statistics,” September 2012, http://www.dhs.gov/sites/default/files/publications/immigration-statistics/yearbook/2011/ois_yb_2011.pdf (accessed June 13, 2013).

45. U.S. Department of State, Bureau of Consular Affairs, *Annual Report of Immigrant Visa Applicants*, and U.S. Department of State, Bureau of Consular Affairs, “Visa Bulletin for March 2013.”

explicitly delegated to the federal government are thereby reserved to the states.⁴⁶ The Founders understood that in order to know what is truly necessary and prudent for the protection of citizens' rights and liberties, one must be in constant interaction with the people. For this reason, the Founders felt that states fostered the best-equipped individuals to represent the interests of public safety on behalf of their own citizens.

States also have a unique familiarity with their communities that enables them to better navigate the difficult issues of detection, detention, and deportation of illegal aliens. Following this same rationale, many legal experts believe that state and local governments retain inherent authority to enforce federal civil law. Opponents to this practice, however, feel the federal government should be the controlling voice when determining immigration policies and border security, with little to no guidance from the states themselves. As was the case with Arizona's S. B. 1070 immigration law, when the state attempted to implement requirements it felt necessary to determine the immigration status of an individual, the federal government saw the state as an obstacle rather than an ally.⁴⁷

Yet, with fewer than 6,000 Immigration and Customs Enforcement (ICE) agents, failing to use the one million state and local law enforcement personnel to supplement federal personnel makes little sense. State and local law enforcement would, in fact, be a powerful force multiplier for immigration law enforcement. Yet, S. 744 continues to promote a top-down federal approach to addressing immigration while leaving minimum room for real collaboration.⁴⁸

The bill does include a select few instances where some form of collaboration presents itself between

the state, local, and federal governments. For example, four of 10 appointed members to the Southern Border Security Commission are to be representatives of the four states along the southern border. One representative is to come from each of the states and be either the governor or someone appointed by the governor.⁴⁹ Also, with approval from the Secretary of Defense, a governor may order personnel of the National Guard of his or her own state to perform operations and missions in the southwest border region for the purposes of assisting U.S. Customs and Border Protection.⁵⁰ These instances, however, are very limited.

State and local law enforcement would be a powerful force multiplier for immigration law enforcement. Yet, the Senate bill promotes a federal top-down approach to addressing immigration, leaving minimum room for real collaboration.

Otherwise, the bill provides no clear proposal for partnerships between the federal and state or local governments. Indeed, the legislation makes no mention of effective collaborative immigration enforcement programs, such as Section 287(g) of the Immigration and Nationality Act, which allows the federal government to enter into agreements with state and local law enforcement to "act in the stead of ICE agents by processing illegal aliens for removal."⁵¹ Instead, it pushes a federal-government-knows-best-and-will-fix-all mentality.

46. The Constitution of the United States of America, 10th Amendment, *The Heritage Guide to the Constitution*, <http://www.heritage.org/constitution#!/amendments/10> (accessed June 4, 2013).

47. Matt A. Mayer and John Malcolm, "Childish Reaction to Supreme Court Immigration Ruling: Obama Administration Ends a Key Joint Program with Arizona," Heritage Foundation *Issue Brief* No. 3651, June 27, 2012, <http://www.heritage.org/research/reports/2012/06/obama-administration-s-response-to-the-supreme-court-ruling-on-arizona-s-immigration-law>.

48. Jena Baker McNeill, "Section 287(g): State and Local Immigration Enforcement Efforts Are Working," Heritage Foundation *WebMemo* No. 2405, April 22, 2009, <http://www.heritage.org/research/reports/2009/04/section-287g-state-and-local-immigration-enforcement-efforts-are-working>.

49. Border Security, Economic Opportunity, and Immigration Modernization Act, §4.

50. *Ibid.*, §1103(a).

51. U.S. Immigration and Customs Enforcement, "Fact Sheet: Delegation of Immigration Authority Section 287(g) Immigration and Nationality Act," <http://www.ice.gov/news/library/factsheets/287g.htm> (accessed June 4, 2013), and Immigration and Nationality Act Sec. 316, 8 U.S.C. § 1357(g).

9. Special Interests and Earmarks

Among the many dangers of working on comprehensive pieces of legislation is the propensity for earmarks and unique carve-outs for special interests groups. The 1,000-plus-page immigration bill is no exception. There are several special-interest considerations that reveal not only the cronyism involved in the government process, but also how Congress picks winners and losers by determining who receives money and who does not.

Lawyers would receive an enormous boon and would directly benefit from the enactment of S. 744. An administrative appellate authority would be established that authorizes and incentivizes massive class-action lawsuits regarding immigrant status.⁵² The costs for these suits would be borne by taxpayers, but they unfortunately do not stop there. Taxpayers would also be on the hook for providing counsel to aliens, both legal and illegal, regardless of the alien's ability to afford his own.⁵³ This would provide an avenue to file a suit if an alien was ever denied free counsel, increasing the burdens for the Attorney General and the Department of Homeland Security. These two examples are just a few of the many provisions in the bill which boost business for immigration lawyers.

There is also the issue of funding for a wide assortment of new grants and programs. The catch to these programs is that the Secretary of Homeland Security decides which organization gets the money authorized by Congress. Among the many is a whopping \$50 million grant to "assist eligible applicants" through the process of applying for amnesty.⁵⁴ The Initial Entry, Adjustment, and Citizenship Assistance Grant Program also receives \$100 million, and the Legal Services Corporation, previously reserved for U.S. citizens and aliens with legal status, is expanded to offer services to blue-card aliens and workers with grievances, among others.⁵⁵

The cronyism goes further, as lawmakers include special provisions for specific special-interest groups. Ski and snowboard instructors, for instance, are exempted from the H-2B visa cap.⁵⁶ Also contained within the bill are special provisions for the residents of the Commonwealth of the Northern Mariana Islands and for carrier maintenance crews for airlines, cruise lines, and railways.⁵⁷ Lawmakers also include preferred entry for select groups of individuals through the Jobs Originated through Launching Travel (JOLT) Act provisions in the bill, through which visitors from Canada, China, and Brazil receive preferential treatment when applying for visas and are fast-tracked through the process.⁵⁸

A large, comprehensive bill is not good for Americans because of the limited time for proper scrutiny, and, as S. 744 makes clear, it is an easy vehicle for hiding special-interest provisions that benefit a few people while ignoring the rest.

10. Fails on Assimilation and Opportunity

The Senate immigration reform bill fails to address many of the nation's challenges that inhibit opportunity for immigrants, residents, and citizens alike. In fact, in many cases it would only make the problem worse and foster greater dependence on government, particularly among new immigrants and amnesty recipients. Whether this dependence is in the form of the entitlement system or assimilation programs which emphasize participation over integration, the outcome is the same: an overreliance on the federal government without equipping individuals to earn their success.

In terms of integration, the bill would shift assimilation priorities from the Office of Citizenship established by President George W. Bush to the newly created Office of Citizenship and New Americans and a new Task Force on New Americans. Whereas the current model of assimilation and integration

52. Border Security, Economic Opportunity, and Immigration Modernization Act, §2104.

53. *Ibid.*, §3502.

54. *Ibid.*, §2106.

55. *Ibid.*, §2537, §2211, §2232, and §2212.

56. *Ibid.*, §4601.

57. *Ibid.*, §2109 and §4604.

58. *Ibid.*, §4503 and §4508. See also, Jessica Zuckerman, "JOLT Act: Congress Moving in the Right Direction on Visa Reform," Heritage Foundation *Issue Brief* No. 3605, May 15, 2012, <http://www.heritage.org/research/reports/2012/05/jolt-act-congress-moving-in-the-right-direction-on-visa-reform>.

emphasizes the instruction in the culture, history, and language of the United States through community and faith-based organizations, S. 744 uses a federal-centric approach. Indeed, the Task Force on New Americans would be created to “provide a coordinated federal response to issues that impact the lives of new immigrants and receiving communities.”⁵⁹

Similarly, the Initial Entry, Adjustment, and Citizenship Assistance (IEACA) grant program would pour \$100 million into public and private organizations, selected by the government, to design or implement integration programs. Grants from the IEACA program would also fund direct assistance to individuals seeking to apply for amnesty, those seeking an adjustment of status, and those seeking to become naturalized U.S. citizens, along with “any other assistance that the Secretary or grantee considers useful to aliens who are interested in applying for registered provisional immigrant status.”⁶⁰ Essentially, what this and other programs in the bill would do is promote an entitlement view of citizenship and government.

At the same time, S. 744 does nothing to correct the U.S. serious entitlement problems. There is nothing in the bill that reforms the broken entitlement system and creates a system of earned success. Rather than furthering an expansive welfare state which only breeds a culture of dependence, America should foster reforms to the education and welfare systems. These reforms should ensure that the U.S. welcomes all new immigrants into a society of opportunity and prosperity.

Making Immigration Work for All

The U.S. immigration system is in need of significant reform, but S. 744 relies on old, flawed solutions that will do nothing but make the current situation worse. Instead of passing this deeply flawed immigration bill Congress should:

- **Reject amnesty.** Amnesty ignores the rule of law, rewarding those who broke the law with legal status and ultimately U.S. citizenship. Amnesty is also unfair to those who followed the rules and waited or are still waiting to enter the U.S. Furthermore, amnesty only makes the U.S. immigration problems worse by encouraging even more

illegal immigration. Amnesty will also lead to trillions in new spending and huge increases in government bureaucracy. Such costs will be borne by current taxpayers. Instead of another costly and unfair mass amnesty, Congress should develop fair, compassionate, and practical solutions for unlawful immigrants.

- **Take a piece-by-piece approach.** Each aspect of immigration reform requires close attention to detail to make sure that any policies are well crafted and actually solve the problems they were designed to tackle. Trying to fix immigration with one comprehensive bill will only encourage special-interest handouts and ambiguous, poorly thought-out policies. Legal immigration, temporary worker programs, interior enforcement, border security, state and local cooperation, and many other important issues all deserve close inspection and rigorous debate. Tackling each of these critical policies one at a time will give each the attention it deserves, and foster meaningful reform.
- **Enhance border security.** The U.S. has dramatically increased the number of border agents over the past decade, but more needs to be done. Rather than using border security as a political football and promoting hollow metrics, meaningful steps should be taken. Through the use of technologies like unmanned aerial vehicles and cameras and sensors, the Border Patrol will be better able to monitor the border, detect and halt illegal border crossings, and better protect U.S. sovereignty. Congress should provide the U.S. Coast Guard with additional resources and funding so that it can provide adequate maritime security. To truly enhance border security, the U.S. must also seek more cooperation with Mexico. Specifically, U.S. and Mexican law enforcement should make greater use of Border Enforcement Security Task Forces and the Merida Initiative to cooperate on a variety of border security and law enforcement issues.
- **Reform the legal immigration system.** The U.S. legal immigration system should be fixed to

59. Border Security, Economic Opportunity, and Immigration Modernization Act, §2524.

60. Ibid., §2537.

ensure that those who want to come to the U.S. legally can do so in a reasonable and efficient manner. To do so, Congress should reform United States Citizenship and Immigration Services by correcting the agency's faulty budget model to make it less dependent on application fees. The current visa process should also be streamlined to make it easier for foreigners to come here legally. Reforming the legal immigration system should also include new and enhanced avenues for the entry of skilled workers, particularly those educated in the U.S. For those who stay, the U.S. must also have a thoughtful policy of immigrant assimilation.

- **Make immigration more responsive to the economy.** In addition to an improved legal immigration system, the U.S. should seek to foster a focused temporary worker program tied to market and workforce needs that would provide a rotating, temporary workforce. Such a program would not only help ensure that employers' labor needs are met; it would also help to discourage additional illegal immigration by creating another avenue for legal entry and employment. Critically, a temporary program must be truly temporary or it will simply become a new path to unlawful entry, not a solution that fixes it.
- **Reinvigorate interior enforcement measures.** The Immigration Reform and Control Act promised enforcement in exchange for amnesty in 1986. More than 25 years later, this promise has not yet been fulfilled. Interior enforcement measures and programs such as Social Security No Match, random workplace inspections, checks of I-9 forms, and E-Verify help to depress the use of illegal labor and make it clear that the U.S. takes enforcement of its immigration laws seriously.

- **Recognize state and local authorities as responsible partners.** The U.S. has thousands of local and state law enforcement officers who could augment the limited and scattered capabilities of federal officers and agencies. Through programs like 287(g), which allow Immigration and Customs Enforcement to train state and local police to enforce federal immigration laws, state and local authorities can enhance enforcement. By working as partners with the federal government, state and local authorities can also help to guide policy, and improve security and enforcement of U.S. laws in a more efficient and effective manner than the current federal-government-knows-best approach.

A Nation of Immigrants, Built on American Principles

U.S. coins bear the phrase "E pluribus unum"—"out of many, one"—to signify the varied backgrounds of those who came together to make this country great. Millions have come to the U.S. because it is a nation built on the principles of liberty, limited government, and the rule of law that enable everyone to strive for the American Dream. The U.S. immigration system should allow those who want to pursue the American Dream and come to the U.S. legally to do so. The Senate's misnamed Border Security, Economic Opportunity, and Immigration Modernization Act tramples on the principles that made the U.S. the country it is today by disregarding the rule of law, increasing the size of government yet more, and allowing unlawful immigrants to fall into government dependence. Instead of repeating the mistakes of the past, the U.S. should implement reforms that encourage lawful immigration, discourage unlawful immigration, and uphold America's first principles.

WebMemo



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No. 2925
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Border Security: The Heritage Foundation Recommendations

The Heritage Foundation

The United States was established on principles that support the welcoming of new residents to its shores to learn and embrace American civic culture and political institutions through the processes of immigration and naturalization. Over the past several decades, however, immigration policy has become skewed, falsely presented as an uncompromising decision between unfettered immigration and none at all. Recently, the Obama Administration has begun to call for granting amnesty to the some 10.8 million illegal immigrants in the U.S. as part of a comprehensive immigration reform bill. The Heritage Foundation instead proposes a phased approach to immigration reform centered on border security, interior enforcement, and legal immigration processes.

The following papers offer a comprehensive review of The Heritage Foundation's most recent work on the border security component of immigration reform.

White House Must Stop Playing Politics with Immigration and Arizona Law

<http://www.heritage.org/Research/Reports/2010/05/White-House-Must-Stop-Playing-Politics-with-Immigration-and-Arizona-Law>

By James Carafano, Ph.D.

WebMemo No. 2909

May 20, 2010

Congress should reject efforts by the White House to demonize the people of Arizona in a crass effort to further the President's political agenda. Congress should also insist on incremental, com-

monsense policies that will address the pressing need for immigration and border security reforms instead of the amnesty-first approach—which both the American people and Congress roundly rejected the last time it was proposed in 2007.

SBinet: Why Border Security Technology Should Not Be Dropped

<http://www.heritage.org/Research/Reports/2010/05/SBINet-Homeland-Security-Should-Not-Abandon-Border-Security-Technology>

By Jena Baker McNeill

WebMemo No. 2906

May 20, 2010

Securing America's southern border is more important than ever. Yet the Department of Homeland Security (DHS) is preparing to drop key border security technologies that it has been developing since 2005. This decision makes no sense.

U.S. Strategy Against Mexican Drug Cartels: Flawed and Uncertain

<http://www.heritage.org/Research/Reports/2010/04/US-Strategy-Against-Mexican-Drug-Cartels-Flawed-and-Uncertain>

By Ray Walser, Ph.D.

This paper, in its entirety, can be found at:
<http://report.heritage.org/wm2925>

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Backgrounder No. 2407
April 26, 2010

Mexican drug cartels virtually rule large parts of Mexico, with violence and murder spilling across the U.S. border. In 2009, the death toll reached a high of more than 9,000. While the Obama Administration should be commended for its continuation of the Bush Administration's Mérida Initiative, President Obama and his cabinet have gone too far in placing the blame for Mexico's drug mayhem on U.S. gun laws and American drug use, and many existing policies have yielded modest results at best. Heritage Foundation Latin America expert Ray Walser lays out the comprehensive plan that the U.S. should follow to stem the tide of drug violence.

Time to Decouple Visa Waiver Program from Biometric Exit

<http://www.heritage.org/Research/Reports/2010/04/Time-to-Decouple-Visa-Waiver-Program-from-Biometric-Exit>

By Jena Baker McNeill
WebMemo No. 2867
April 15, 2010

While Congress and DHS may see deployment of biometric exit as a necessary step toward understanding the number of visa overstays inside the U.S., the expansion of the Visa Waiver Program (VWP) should not be inhibited by the failure to produce a biometric system. Congress should remove this hurdle by decoupling VWP from the exit requirement and paving the way for the admission of new member countries.

Biometric Exit Programs Show Need for New Strategy to Reduce Visa Overstays

<http://www.heritage.org/Research/Reports/2010/01/Biometric-Exit-Programs-Show-Need-for-New-Strategy-to-Reduce-Visa-Overstays>

By Diem Nguyen and Jena Baker McNeill
Backgrounder No. 2358
January 25, 2010

Despite Congress's mandate in 2007 that DHS track all foreign visitors biometrically by June 2009, DHS missed the deadline, and biometric exit, as opposed to the current biographic approach, has proved costly without adding much additional security. Following is a plan on how Congress can

break the stalemate—and provide useful data and security for Americans as well as the many visitors who come to the U.S. every year.

Congress Should Stop Playing Politics with E-Verify

<http://www.heritage.org/Research/Reports/2009/09/Congress-Should-Stop-Playing-Politics-with-E-Verify>

By Jena Baker McNeill
WebMemo No. 2622
September 22, 2009

Uncertainty over the future of E-Verify will only lead to confusion as the private sector attempts to understand its obligations under this new rule. Congress should clarify this matter by permanently authorizing the program and refining it in a way that encourages employer participation and improves accuracy. Additionally, it should support other effective workplace immigration enforcement tools such as Social Security No-Match.

Homeland Security Department Guts Workplace Enforcement

<http://www.heritage.org/Research/Reports/2009/07/Homeland-Security-Department-Guts-Workplace-Enforcement>

By James Carafano, Ph.D.
WebMemo No. 2535
July 10, 2009

The DHS announced it plans to kill some responsible, reasonable workplace verification rules. As a result, the department will likely perform fewer workplace checks.

The PASS ID Act: Rolling Back Security Standards for Driver's Licenses

<http://www.heritage.org/Research/Reports/2009/06/The-PASS-ID-Act-Rolling-Back-Security-Standards-for-Driver's-Licenses>

By Janice L. Kephart and Jena Baker McNeill
Backgrounder No. 2288
June 23, 2009

PASS ID would repeal REAL ID, stripping away the substantive provisions that are already making driver's licenses more secure, including a repeal of 9/11 commission identity verification recommendations, information sharing between states, and airport ID security standards. Congress should preserve REAL ID, fund it adequately, and take steps to

ensure its full implementation by moving interested states into the program.

U.S. Border Security: Realities and Challenges for the Obama Administration

<http://www.heritage.org/Research/Reports/2009/06/US-Border-Security-Realities-and-Challenges-for-the-Obama-Administration>

By Matt Mayer
Backgrounder No. 2285
June 17, 2009

President Obama's initial actions on border security are largely consistent with those of President Bush. The challenges for Obama will come when the economy improves and the industries that hire large numbers of illegal immigrants increase the incentives for illegal immigrants to cross the border. It is critical to ensure that the Border Patrol receives the resources it needs for training and recruiting.

Visa Waiver Program: A Plan to Build on Success

<http://www.heritage.org/Research/Reports/2009/06/Visa-Waiver-Program-A-Plan-to-Build-on-Success>

By Jena Baker McNeill, James Carafano, Ph.D., James Dean, and Nathan Sales
Backgrounder No. 2282
June 12, 2009

Congress established the VWP to strengthen America's relationship with key allies around the globe. Recent reforms have made the program a better tool for thwarting terrorist and criminal travel as well as for combating violations of U.S. immigration laws. Congress should transfer permanent waiver authority to DHS and decouple VWP from the biometric air-exit mandate.

The Ultralightness of Smuggling

<http://www.heritage.org/Research/Commentary/2009/04/The-ultralightness-of-smuggling>

By James Carafano, Ph.D.
Commentary
April 21, 2009

On the border, you expect strange things to happen. When the Yuma County Sheriff's Office got the call to report to a crash site—a lettuce field just north of San Luis—officers didn't know what to expect. New Mexico had its legendary UFO

encounter at Roswell—maybe this would put Arizona's San Luis on the map. What they found was pretty strange indeed.

Battle for the Border

<http://www.heritage.org/Research/Commentary/2009/04/Battle-for-the-Border>

By Edwin Feulner, Ph.D.
Commentary
April 13, 2009

Almost two years ago I visited southern California to watch the U.S. Border Patrol at work. The federal government was building a fence and, with help from the National Guard, federal agents were stepping up patrols and slowing the flow of illegal aliens across our southern border.

How to Keep America Safe from Mexico's Drug Wars

<http://www.heritage.org/Research/Commentary/2009/03/How-to-keep-America-safe-from-Mexicos-drug-wars>

By James Carafano, Ph.D.
Commentary
March 30, 2009

Since 9/11, Washington has poured billions into homeland security grants, yet it's not at all clear that this spending spree has done much to improve national preparedness or security. The grants have become exactly what the 9/11 commission warned against: "pork-barrel" funding mechanisms. Taxpayers would get far more bang for their homeland security bucks if more of the money was channeled where it's really needed—like cooperative law enforcement initiatives to protect our communities along the southern border.

15 Steps to Better Border Security: Reducing America's Southern Exposure

<http://www.heritage.org/Research/Reports/2009/03/15-Steps-to-Better-Border-Security-Reducing-Americas-Southern-Exposure>

By Jena Baker McNeill
Backgrounder No. 2245
March 9, 2009

The 9/11 attacks raised concerns over the security of U.S. borders. In response, the Bush Administration employed additional Border Patrol agents,

deployed new technologies at the border, and erected physical barriers. The Obama Administration should continue these measures by increasing training capabilities, supporting SBInet, encouraging states to enter into Section 287(g) compacts, and to create State Defense Forces in order to promote citizen participation in border security.

E-Verify Expires: Time for Congress to Reauthorize the Program

<http://www.heritage.org/Research/Reports/2009/03/E-Verify-Expires-Time-for-Congress-to-Reauthorize-the-Program>

By Jena Baker McNeill

WebMemo No. 2332

March 9, 2009

E-Verify helps responsible employers hire legal workers in an economically viable manner. It and other similar programs are the type of business-friendly and cost-effective programs that Congress should be supporting. Consequently, Congress should reauthorize and fully fund E-Verify.

An Analysis of Federal, State, and Local Homeland Security Budgets

<http://www.heritage.org/Research/Reports/2009/03/An-Analysis-of-Federal-State-and-Local-Homeland-Security-Budgets>

By Matt Mayer

Center for Data Analysis Report No. CDA09-01

March 9, 2009

Despite a rich history in which states and localities have taken responsibility for their own affairs, the U.S. federalizing more and more of the homeland security mission. Washington's one-size-fits-all solutions rarely succeed. The country's homeland security needs are too diverse, federal resources are physically too far from any one location to secure rapid response, and federal decision making is notoriously inept.

U.S., Canada Working Together on Improving Border Security

<http://www.heritage.org/Research/Reports/2009/03/US-Canada-Working-Together-on-Improving-Border-Security>

By Jena Baker McNeill and Diem Nguyen

WebMemo No. 2329

March 6, 2009

Initiatives to secure the U.S. from potential terrorists in Canada should respect both nations' sovereignty and addresses common concerns without hindering either nation's economic viability.

Back to the Border for the National Guard?

<http://www.heritage.org/Research/Commentary/2009/03/Back-to-the-border-for-the-National-Guard>

By James Carafano, Ph.D.

Commentary

March 3, 2009

Sending brigades of our already overstretched military to the border would doubtless grab a few headlines, but it's a less-than-optimal strategy for winning the long war on our border.

Obama Pursuing Homeland Security Lite

<http://www.heritage.org/Research/Commentary/2009/02/Obama-pursuing-Homeland-Security-Lite>

By James Carafano, Ph.D.

Commentary

February 17, 2009

The Administration must start sending out very strong messages that there are no time outs in the terror war.

Growing Instability in Mexico Threatens U.S. Economy and Border Security

<http://www.heritage.org/Research/Reports/2009/02/Growing-Instability-in-Mexico-Threatens-US-Economy-and-Border-Security>

By James Roberts and Ray Walser, Ph.D.

WebMemo No. 2290

February 12, 2009

Mexico's ongoing political stability and economic health are critical to the prosperity and national security of the U.S. The Obama Administration must make confronting the many challenges facing America's southern neighbor both a foreign and a domestic policy priority.

Adding Visa Waiver Restrictions: The Wrong Course for Congress

<http://www.heritage.org/Research/Reports/2009/01/Adding-Visa-Waiver-Restrictions-The-Wrong-Course-for-Congress>

By Jena Baker McNeill, James Carafano, Ph.D., and James Dean

WebMemo No. 2248
January 27, 2009

Congress should not destroy the VWP by instituting unworkable requirements. Doing so would decrease security and alienate U.S. allies while battering America's already-damaged economy.

Key Questions for Janet Napolitano, Nominee for Secretary of Homeland Security

<http://www.heritage.org/Research/Reports/2009/01/Key-Questions-for-Janet-Napolitano-Nominee-for-Secretary-of-Homeland-Security>

By Jena Baker McNeill

WebMemo No. 2204
January 13, 2009

The U.S. Senate will soon render its advice and consent to the nomination of Governor Janet Napolitano (D-AZ) as the new DHS secretary. In giving its advice and consent, Senators should explore Governor Napolitano's views on issues across the homeland security spectrum. Consequently, the Senate should consider these preliminary questions.

Making Reform Possible. By following the recommendations contained in the documents listed above, Congress and the Obama Administration will finally be able to secure America's borders—a critical first step toward comprehensive immigration reform.

WebMemo



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Throwing Money at the Problem No Solution to Immigration and Border Security

James Jay Carafano, Ph.D.

There already exist on the books numerous laws that, if enforced in a targeted manner, would discourage illegal immigration and the employment of undocumented labor, as well as send the signal that such activities will no longer be overlooked. Recent actions by the Administration prove that reasonable enforcement measures (well short of massive deportations) can reduce the number of illegal border crossings. In addition, Congress can take a number of modest actions that would strengthen enforcement, both at the border and in the workplace.

None of these measures require the kind of comprehensive legislation that was recently proposed in the Senate. The recently revived Senate immigration reform bill, which would grant immediate legal status to the 12 million or more people that are unlawfully present in the United States, would work at cross purposes with enforcement efforts: encouraging more illegal immigration; overburdening federal agencies; and complicating the task of upholding the rule of law.

Current Enforcement Efforts. Supporters of the Senate bill have propagated the myth that the bill is necessary to enhance border security and enforce immigration laws in the workplace. That claim is patently false. Virtually all of the useful security provisions in the draft legislation, including building barriers at the border and hiring more border patrols, were authorized in previous legislation (like the Secure Fence Act of 2006) and funded by Congress.

Indeed, the government is already using these tools. Formal removals (in which a judge orders an

alien to leave) jumped from 178,000 in 2001 to 232,000 in 2006—a 30 percent increase. Last year, enforcement agents intercepted and turned back about 900,000 aliens attempting to cross the U.S.–Mexico border. The Department of Homeland Security has already ended the controversial policy of “catch and release,” whereby individuals arrested for immigration violations were released on their own cognizance pending a removal order from a judge. Individuals who frequently absconded after being released are now being detained until deported.

The department has also stepped up enforcement against employers that intentionally hire undocumented workers to gain an advantage over their competitors or reap illegal profits by scuffing tax laws. Additionally, more is being done to go after criminal aliens, including gang members. Operation Community Shield, for example, is a nationwide law enforcement initiative targeting violent criminal street gangs. The program has resulted in the arrest of almost 5,000 criminals and the deportation of more than half of them. Meanwhile, the department has been hiring and deploying border agents as fast they can, as well as expanding bed space and streamlining the detention and removal

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process to deport unlawfully present individuals as fast as the law will allow. Thus, it is not clear why the Senate bill is required at all.

No Need for Emergency Spending. The press is reporting that some Senators are proposing an emergency supplemental spending bill for more enforcement and border security. The move is little more than a political ploy to win support for the moribund comprehensive immigration reform bill. Congress and the Administration should reject supplemental spending outright for several reasons.

First, it undermines fiscal responsibility. With the president threatening to veto regular appropriations bills that go over budget, it would make no sense for the Administration to accept additional spending that was not offset by other cuts in federal spending.

Second, it throws money at the problem with little assurance that it will be spent efficiently or effectively. The Administration has already stated that it has a plan and appropriations to significantly increase border security and enforcement over the next 18 months. It is difficult to imagine how current government efforts could absorb significant additional funds and allocate them effectively.

Third, the prospect of supplemental spending could encourage Congress to accept the legislation proposed in the Senate. In its current form, the Senate bill offers immediate legal status to any individual unlawfully present in the United States. Amnesty would have a two-way, crippling effect on border security and immigration reform. First, dealing with the millions that would enroll in the amnesty program will overwhelm federal agencies and detract from enforcing the law and providing services to legitimate immigration cases. Second, the offer of amnesty will spur more illegal border crossings, further compromising border security and law enforcement.

Follow the Law. Rather than throwing more money at the problem, much can be done under existing authority to secure the border, enforce the law, and provide a powerful deterrent to future illegal migration. The Administration should continue to do the following:

1. **Increase the number of border patrol agents.** Implement the Administration's goal of hiring

3,000 agents per year—a more than five-fold increase in the numbers hired in previous years. Contractors from the private sector can assist with many functions including border patrol and detention and removal.

2. **Cooperate with state and local law enforcement.** Cooperative efforts should focus on enhancing border security and dealing with the criminal alien population. Such efforts include expanding Border Enhancement Security Task Forces; supporting state operations similar to “Operation Linebacker” conducted in Texas; providing homeland security grants to assist community policing in border communities; and participating in the 287(G) program which coordinates cooperation between federal, state, and local law enforcement on immigration matters.
3. **Deploy technology and obstacles along the border where they make sense.** The Department of Homeland Security should implement its border security plans, which include increased intelligence sharing, expanding its capabilities along the border through its SBI Net program, and placing obstacles where they prove efficient and effective.
4. **Target enforcement on specific sectors of the economy.** These include sectors where undocumented workers are the most prevalent and where businesses intentionally hire illegal workers as part of a plan to undercut competitors and reap illegal profits. This can be done using existing legal authority.

These measures will not remove every unlawful present person from the United States, nor will they seal the border. They will, however, enable the government to gain control of its southern border, facilitate serious workplace enforcement, and serve as a deterrent against future illegal migration.

Next Steps. Enforcing current law and establishing a balanced and well-designed temporary worker program—one that allows for a market-driven source of labor provided by a rotating temporary workforce—would diminish the incentives for illegal immigration by providing an additional option for legal entry and, in combination with other reforms, gradually reduce the population of illegal

aliens. This strategy would better foster national security and serve a growing economy.

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Background

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15 Steps to Better Border Security: Reducing America's Southern Exposure

Jena Baker McNeill

One of many concerns raised by the September 11, 2001, terrorist attacks on New York and Washington is the security of U.S. borders. The Homeland Security Act of 2002 established border security as a major mission for the new Department of Homeland Security (DHS). The failed congressional attempt at comprehensive immigration reform focused renewed attention on the U.S. border with Mexico as well as on the challenges of illegal border crossings and surges in cross-border crime. In response, the Bush Administration employed additional Border Patrol agents, deployed new technologies at the border, and erected physical barriers.

These efforts have contributed to a decrease in the illegal alien population in the U.S. and to an expansion of cross-border security cooperation with Mexico. Sustaining these efforts is an essential component of regaining control of America's southern border and battling cross-border crime cartels while improving the flow of legal goods and services across the border. This was a good start. Today, however, the Obama Administration must continue these measures and work to integrate national efforts with state and local governments as well as with private citizens.

At the Border

Understanding the southern border is the first step toward gauging border security progress. This border is more than just a demarcation on a map—it has unique challenges that must be considered in any attempt to gain operational control. Not only is the

Talking Points

- The 9/11 attacks raised concerns over the security of U.S. borders. The failed congressional attempt at comprehensive immigration reform focused renewed attention on the U.S. border with Mexico as well as on illegal border crossings and surges in cross-border crime.
- In response, the Bush Administration employed additional Border Patrol agents, deployed new technologies at the border, and erected physical barriers, which contributed to a decrease in the illegal alien population in the U.S. and to an expansion of cross-border security cooperation with Mexico.
- The Obama Administration should continue these measures by increasing training capabilities, supporting *SBinet*, encouraging states to enter into Section 287(g) compacts, and to create State Defense Forces (SDFs) in order to promote citizen participation in border security.
- Simultaneously, the U.S. should assist in Mexico's economic development and promote private investment in border infrastructure.

This paper, in its entirety, can be found at:
www.heritage.org/Research/HomelandSecurity/bg2245.cfm

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southern border extremely long, spanning 2,000 miles from Texas to California, its terrain is incredibly diverse, from rugged, mountainous regions to expansive and barren desert.¹ While physical features, such as the Rio Grande River and the Sonoran and Chihuahuan deserts, serve as natural border barriers that limit the ability of people to enter the U.S. illegally, in other areas all that separates the United States from Mexico is an old fence.²

The main method by which to enter and exit the U.S. and Mexico is through the 39 ports of entry (POE).³ These POEs operate almost around the clock, processing vast numbers of people, goods, and vehicles. In 2005, U.S. Customs and Border Protection (CBP) processed more than 319 million people and more than 133 million trucks and cars, a good majority of which came through the southern border.⁴ While the POEs act as a security mechanism, these entrances are also a constant source of vulnerability, largely stemming from out-of-date and dilapidated infrastructure.⁵

POEs serve to regulate the flow of people, goods, and services into and out of the U.S. and Mexico, making the border an economic engine that generates hundreds of billions of dollars a year in commerce for both countries—and moving goods and services throughout North America.

This shared border has also led to an extensive economic relationship between the U.S. and Mexico. America is Mexico's primary source of foreign direct investment (FDI).⁶ Immigrants living in the U.S. send millions of dollars in remittances back home to Mexico every year.⁷ The benefits of this relationship to the U.S. are also immense. Due to the free-trade relationship established between the two countries under the North American Free Trade Agreement (NAFTA), Mexico became America's second-largest trading partner. (In 2008, China became No. 2, with Canada in first place, and Mexico dropping to third.)⁸

Challenges and Challenging Solutions

As the economic relationship between the U.S. and Mexico has expanded, challenges have also arisen that jeopardize the security of the border and require the immediate attention of both the U.S. and Mexico.

Cartels Running Amok. Criminal cartels have seized *de facto* control of broad swathes of land in Mexico just across the U.S. border.⁹ Some of the most powerful cartels include the Gulf Cartel, The Federation, the Tijuana Cartel, the Sinaloa, and the Juarez Cartel—who have also been known to make alliances with one another. These cartels sell drugs and weapons, engage in human trafficking, and

1. U.S. Customs and Border Protection, "National Border Patrol Strategy," September 2004, p. 9, at http://cbp.gov/linkhandler/cgov/border_security/border_patrol/border_patrol_ohs/national_bp_strategy.ctt/national_bp_strategy.pdf (February 25, 2009). See also James Jay Carafano, "Heritage at the Border: Ideas that Make a Difference," Heritage Foundation WebMemo No. 1395, March 14, 2007, at <http://www.heritage.org/Research/HomelandSecurity/wm1395.cfm>.
2. *Ibid.* See also Timothy Egan, "Border Desert Proves Deadly for Mexicans," *The New York Times*, May 23, 2004, at <http://query.nytimes.com/gst/fullpage.html?res=9905E1DC163EF930A15756C0A9629C8B63> (February 25, 2009).
3. U.S. Customs and Border Protection, "CBP Border Wait Times," at <http://apps.cbp.gov/bwt/> (February 25, 2009).
4. U.S. Customs and Border Protection, "Securing America's Borders at Ports of Entry: Office of Field Operations Strategic Plan FY 2007–2011," September 2006, p. 11, at http://www.cbp.gov/linkhandler/cgov/border_security/port_activities/securing_ports/entry_points.ctt/entry_points.pdf (February 25, 2009).
5. U.S. Government Accountability Office, *Border Security: Despite Progress Weaknesses in Traveler Inspections Exist at Our Nation's Ports of Entry*, GAO-08-219, November 2007, p. 28, at <http://www.gao.gov/new.items/d08219.pdf> (February 25, 2009).
6. Andreas Waldkirch, "The Effects of Foreign Direct Investment in Mexico Since NAFTA," Colby College, March 28, 2008, p. 4, at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1115300 (February 25, 2009).
7. David Adams, "Flow of Dollars Home to Latin America Dwindles," *St. Petersburg Times*, July 28, 2008, at <http://www.tampabay.com/news/nation/article742859.ece> (February 25, 2009).
8. U.S. Census Bureau, Foreign Trade Statistics, "Top Trading Partners—Total Trade, Exports, Imports," November 2008, at <http://www.census.gov/foreign-trade/statistics/highlights/top/top0811yr.html> (February 25, 2009).
9. Colleen W. Cook, "Mexico's Drug Cartels," CRS Report to Congress, October 16, 2007, p. 1, at <http://www.fas.org/sgp/crs/row/RL34215.pdf> (February 25, 2009).

launder money. From these “businesses” stem ever-increasing numbers of kidnappings, robberies, and murders. No ordinary street gangs, these cartels are like violent mini-militaries, fully equipped with intelligence, weapons, and other equipment.¹⁰ They engage in these crimes largely without interference from Mexican law enforcement, which is simply too overwhelmed, lacking both manpower and resources to tackle the problem.¹¹

Cartel violence has escalated in recent years in retaliation to Mexican President Felipe Calderon’s efforts to crack down on cartel criminal activity. In 2007, close to 3,000 people were murdered by cartels.¹² By 2008, the number had risen to more than 5,300 (the number is expected to rise in 2009).¹³ The motivation behind this violence largely centers on the highly profitable illegal drug trade—largely fed by American demands for illegal narcotics. This battle has induced outrageous acts of violence in areas like Ciudad Juarez, a Mexican city across the border from El Paso, Texas, including gruesome beheadings.¹⁴ In June 2008, a 12-year-old girl was killed when cartel gunmen used her as a human shield.¹⁵

The violence has begun to spill over into the United States. In January 2008, a U.S. Border Patrol agent, Luis Aguilar, was run over and killed by drug

smugglers as he tried to arrest them in California.¹⁶ In 2005, four Americans were kidnapped for ransom by a cartel in Nuevo Laredo, Mexico, not too far from Laredo, Texas.¹⁷ While they were later released, their kidnapping as well as other acts of violence led the U.S. State Department to issue a travel warning for American tourists in the Laredo area.

Illegal Immigration. Approximately 11 million illegal aliens live in the United States. About 375,000 people enter the U.S. illegally through gaps in the southern border each year.¹⁸ Once in the U.S., illegal aliens often do not feed the tax system, but put a major strain on government services, such as for health care and education. Particularly hard-hit are state and local governments, which often bear the burden of footing the bill. Illegal aliens in California have cost the state between \$9 billion and \$38 billion in public services.¹⁹ The state of Texas has estimated that the bill for illegal immigrant hospital care was as much as \$1.3 billion in 2006.²⁰ While statistics demonstrate that the illegal population has decreased over the past year, the costs still remain too large for state and local governments to handle. Furthermore, in the wake of the economic downturn, as the number of illegal aliens has decreased, so have the budgets of state and local governments—providing fewer dollars with which to pay for these ser-

10. Ray Walser, “Mexico, Drug Cartels, and the Merida Initiative: A Fight We Cannot Afford to Lose,” Heritage Foundation Backgrounder No. 2163, July 23, 2008, pp. 4, 8, 9, at <http://www.heritage.org/Research/LatinAmerica/bg2163.cfm>.

11. *Ibid.*

12. Penny Star, “Drug-Cartel Murders in Mexico Double in 2008,” CNSNews, December 18, 2008, at <http://www.cnsnews.com/Public/content/article.aspx?RsrcID=40962> (February 25, 2008).

13. Bill Whitaker, “Brutal Drug War Fueled by U.S. Appetite,” CBS News, December 16, 2008, at <http://www.cbsnews.com/stories/2008/12/16/eveningnews/main4672172.shtml> (February 25, 2009).

14. Alicia A. Caldwell, “Ciudad Juarez Violence Keeps Americans Away,” *The Atlanta Journal Constitution*, October 17, 2008, at <http://www.ajc.com/services/content/printedition/2008/10/17/border.html> (January 27, 2009).

15. Walser, “Mexico, Drug Cartels, and the Merida Initiative.”

16. *Ibid.*

17. Ginger Thompson, “Mexico: Kidnappers Free 4 Americans,” *The New York Times*, May 28, 2005, at <http://query.nytimes.com/gst/fullpage.html?res=9C00E7D71139F93BA15756C0A9639C8B63> (February 25, 2009).

18. C. David Skinner, “Illegal Immigration Across the U.S.–Mexico Border,” U.S. Army War College, March 15, 2006, p. 3, at <http://www.strategicstudiesinstitute.army.mil/pdffiles/ksil499.pdf> (February 25, 2009).

19. Philip J. Romero, “Racing Backwards: The Fiscal Impact of Illegal Immigration in California, Revisited,” *The Social Contract*, Vol. 17, No. 4 (Summer 2007), p. 237, at http://www.thesocialcontract.com/pdf/seventeen-four/tsc_17_4_romero.pdf (January 24, 2009).

20. Richard Wolf, “Rising Health Care Costs Put Focus on Illegal Immigrants,” *USA Today*, January 22, 2008, at http://www.usatoday.com/news/washington/2008-01-21-immigrant-healthcare_N.htm (February 25, 2009).

vices, and placing a heavier burden on taxpayers.

While the economic impacts of illegal immigration are disconcerting, gaps in the southern border threaten the physical safety of Americans. Among these millions of illegal aliens are serious criminals, often not even from Mexico, seeking to enter the U.S. undetected. In 2007, CBP apprehended a man attempting to cross the border into the U.S. in the Yuma sector of Arizona.²¹ Upon his arrest, CBP discovered that he had already been arrested 23 times in the U.S. for a multitude of crimes including robbery, and had already spent eight years in jail and 13 years on probation.²²

How to Assess Border Security

The standard for evaluating current and future border programs is how effectively they contribute to the overall national goal of shifting the balance between lawful and illegal migration, combating transnational criminal and other national security threats, and enhancing the sovereignty of both the U.S. and Mexico. Doing so requires actions based on the following principles:

- **Principle No. 1: Smart Security.** All too often progress at the border has centered on numbers—of agents hired, miles of fencing built, cameras deployed, etc.²³ A smart approach to border security includes policies and programs that make Americans more secure and prosperous while protecting the sovereignty of both border partners. An example of a smart approach to border security is the Border Enforcement Security Taskforce (BEST). BEST is a program that couples U.S. federal, state, and local law enforcement with Mexican law enforcement to share

information and collaborate on matters such as border crime.²⁴ Neither country is forced to cede control over its border to the other; instead, both the U.S. and Mexico work together to tackle border challenges voluntarily, while maintaining individual sovereignty.

- **Principle No. 2: Economics.** The border is an economic engine that facilitates trade—by reducing the transaction cost for business while maintaining security. The U.S. should be looking for border security policies and programs that will help to secure the border while protecting and promoting our nation's economic interests. One such effort is the Security and Prosperity Partnership (SPP). Created in 2005, the SPP works as a forum to increase dialogue between the U.S., Canada, and Mexico. The three countries have used the SPP to work together to find new avenues to improve the flow of commerce, cut red tape, and increase consistency of trade rules and regulations as well as to increase security.²⁵ This cooperation has helped to facilitate economic development and increase quality of life in all three nations—without requiring any nation to cede its sovereignty. The SPP has no formal organization and no budget, and actions taken by each of the partner countries occur within the realm of their own existing laws.²⁶ Improving Mexico's economic growth can help reduce the desire of Mexicans to cross the U.S. border illegally (as they often come to the U.S. for economic reasons). Stemming the flow of illegal immigration would allow Border Patrol agents to focus on catching international criminals and terrorists and stem the flow of drugs and weapons into America.

21. Press release, "Yuma Border Patrol Agents Nab Criminal Alien," U.S. Customs and Border Protection, November 26, 2007, at http://cbp.gov/xp/cgov/newsroom/news_releases/archives/2007_news_releases/112007/11262007_6.xml (February 25, 2009).

22. *Ibid.*

23. David Heyman and James Jay Carafano, "Homeland Security 3.0: Building a National Enterprise to Keep America Safe, Free, and Prosperous," Heritage Foundation *Special Report* No. 23, September 18, 2008, at http://www.heritage.org/Research/HomelandDefense/upload/sr_23.pdf.

24. U.S. Immigration and Customs Enforcement, "Border Enforcement Security Task Force," December 3, 2008, at http://www.ice.gov/pi/news/factsheets/080226best_fact_sheet.htm (February 25, 2009).

25. Daniella Markheim, "U.S. Partnerships with Canada, Mexico, and the E.U. to Streamline Trade Regulations Should Continue," Heritage Foundation *WebMemo* No. 2229, January 16, 2009, at <http://www.heritage.org/Research/TradeandEconomicFreedom/wm2229.cfm>.

26. *Ibid.*

• **Principle No. 3: A Team Effort.** The effects of lax border security extend far beyond Washington. This means that securing the border should be the responsibility of more than one federal agency or policy mandate. What is required is a team effort that includes federal, state, and local governments, as well as private citizens. Making the most difference at the border will require that all of these parts are integrated to ensure that assets are deployed at the right place at the right time. Washington can support this process by making key investments in infrastructure, organization, technology, and resources and by supporting the development of this team through legislation and policy reform.

Manpower Increase. In 2006, the Bush Administration called for a 6,000-person increase of Border Patrol agents by December 31, 2008,²⁷ bringing the total number of agents to 18,000. CBP instituted a major recruitment campaign, and has reported that the goal has been met.²⁸ CBP recently announced that it plans to hire 11,000 more people in 2009 (many of which will be new agents).²⁹

Some critics argue that the U.S. should be spending more money on technology and less on manpower—citing the cost of hiring and training new agents. Training one new agent at the Border Patrol Academy was estimated to cost \$14,700 in fiscal year (FY) 2006.³⁰ While the cost of training new agents is high, Border Patrol agents are useful for a variety of missions, including drug interdiction, apprehending illegal aliens, preventing acts of ter-

rorism, and ensuring the free flow of commerce across the ports of entry—activities that cannot be handled exclusively by technology.

Concerns remain that the current recruitment levels are too large for the Border Patrol training centers to handle. Training facilities are already overwhelmed; the demand for an additional 11,000 agents will make training even more of a challenge.

Support of the Guard. In 2006, President Bush sent 6,000 National Guard troops to the southern border through a program called Operation Jump Start.³¹ These troops were deployed under Title 32 (“National Guard”) of the United States Code and were tasked with helping current Border Patrol agents secure America’s borders.³² As CBP became more successful in its recruiting efforts, these troops were phased out.

The National Guard deployment was met with concerns by some Americans that President Bush was militarizing the border—possibly violating the Posse Comitatus Act of 1878. The Posse Comitatus Act makes it unlawful to use the “Army and Air Force to execute the domestic laws of the United States except where expressly authorized by the Constitution or Congress.”³³ But the National Guard members, who are stationed at the border under Title 32 (“National Guard”) of the U.S. Code, are not subject to the prohibitions of Posse Comitatus, unlike deployment under Title 10 (“Armed Forces”). In addition, any federal troops employed not tasked with the apprehension of illegal aliens or other law enforcement efforts under either title are

27. Press release, “CBP Meets 18,000 Border Patrol Agent Hiring Commitment—Weeks Early,” U.S. Customs and Border Protection, December 17, 2008, at http://cbp.gov/xp/cgov/newsroom/news_releases/december_2008/12172008_9.xml (February 25, 2009).

28. *Ibid.*

29. U.S. Customs and Border Protection, “CBP Launches Recruitment Campaign to Fill 11,000 Positions,” February 3, 2009, at http://www.cbp.gov/xp/cgov/newsroom/news_releases/02032009_2.xml (February 25, 2009).

30. Richard M. Stana, “Border Patrol: Costs and Challenges Related to Training New Agents,” testimony before the Subcommittee on Management, Investigations, and Oversight, Committee on Homeland Security, U.S. House of Representatives, June 19, 2007, at <http://www.gao.gov/new.items/d07997t.pdf> (March 3, 2009).

31. Sergeant Jim Greenhill, “Operation Jump Start a Success, Officials Say,” *National Guard Bureau*, December 17, 2008, at http://www.ngb.army.mil/news/archives/2006/12/121106-OJS_success.aspx (February 25, 2009).

32. Stephen R. Viña, “Border Security and Military Support: Legal Authorizations and Restrictions,” CRS Report for Congress, May 23, 2006, p. 5, at <http://www.fas.org/sgp/crs/homsec/RS22443.pdf> (February 6, 2009).

33. *Ibid.*, p. 3.

not covered under the prohibition. Congress has also authorized exceptions to Title 10 for certain homeland security related activities.³⁴

During Operation Jump Start, Guard troops assisted CBP through intelligence and administrative activities. Concerns that the troops would stay indefinitely, to the detriment of other national security missions, such as the war in Iraq also proved unfounded. Troops were eventually phased out. (In fact, several border governors were concerned the National Guard might be leaving too early).³⁵ Although the National Guard should not be placed at the border for the long term, this does not mean that the Guard could not have a role in keeping America's borders safe.

At this time, National Guard forces can best support border security activities through support during annual training periods. These deployments benefit guard units by providing additional training opportunities and can provide added support to Border Patrol agents. Activities can be programmed in advance so they facilitate rather than disrupt other training and deployment requirements. During these operations National Guard forces can remain under Title 32 status which places control of these troops under the command of the state governor.³⁶

The Secure Fence Act. The Secure Fence Act was enacted by Congress in 2006.³⁷ The bill directed DHS to build 670 miles of physical fencing along the southern border by December 31, 2008.³⁸ Construction was met with a variety of challenges; the cost of materials for fencing, such as steel, skyrocketed.³⁹ Furthermore, DHS went through lengthy challenges—including litigation (which DHS ultimately won), which dealt with the issue of whether the Secretary of DHS had the power to waive environmental laws along the border.⁴⁰ As of January 2009, 601 miles of physical fencing had been built—but DHS continues to build more fencing.⁴¹

Employing tactical infrastructure at the border remains an issue of some controversy. Some view the fence as sending the wrong message to our southern neighbors—that Americans do not like them. Others argue that the financial cost is too high and that it is harmful to the environment.⁴² Those who support the effort, however, insist that it is the only way to truly stem the tide of illegal immigration—a barrier that can make apprehending illegal aliens easier by slowing them down as they enter America.⁴³

In some areas, erecting fences is the best way to tackle the illegal-entry problem. But the cost makes it important to use fencing only in areas with a low

34. Eric V. Larson and John E. Peters, "Preparing the U.S. Army for Homeland Security: Concepts, Issues, and Options," RAND Corp., 2001, Appx. D, at http://www.rand.org/pubs/monograph_reports/MR1251/ at (February 25, 2009).

35. The Associated Press, "Border Governors Worried About National Guard Pullout," June 20, 2008, at <http://www.iht.com/articles/ap/2008/06/20/america/National-Guard-Border.php> (February 26, 2009).

36. United States Code, "Title 32—National Guard," at http://www4.law.cornell.edu/uscode/html/uscode32/usc_sup_01_32.html (February 26, 2009).

37. Ellen Sullivan, "U.S.—Mexico Border Fence Almost Complete," Associated Press, January 27, 2009, at http://www.google.com/hostednews/ap/article/ALeqM5jE_bOUpQb6MxrxSQno3N6gEdY-MAD95VN7G00 (February 25, 2009).

38. Press release, "Border Fence Project Surpasses 500 Mile Mark," U.S. Customs and Border Protection, December 19, 2008, at http://www.cbp.gov/xp/cgov/newsroom/news_releases/december_2008/12192008.xml (February 26, 2009).

39. Randal C. Archibold, "Border Fence Is Not Likely to Be Done by Year's End," *The New York Times*, September 10, 2008, at <http://www.nytimes.com/2008/09/11/us/11fence.html?emc=tnt&tntemail=y> (February 26, 2009).

40. David Stout, "Justices Refuse Check on Border Fences," *The New York Times*, June 24, 2008, at http://www.nytimes.com/2008/06/24/washington/23cnd-scotus.html?_r=1 (February 26, 2009). Congress approved environmental waiver authority in 2005.

41. Sullivan, "U.S.—Mexico Border Fence Almost Complete."

42. Manuel Roig-Franzia, "Mexico Calls U.S. Border Fence Severe Threat to Environment," *The Washington Post*, November 16, 2007, at <http://www.washingtonpost.com/wp-dyn/content/article/2007/11/15/AR2007111502272.html> (February 25, 2009).

43. Blas Nuñez-Neto and Stephen R. Viña, "Border Security: Fences Along the U.S. International Border," CRS Report to Congress, January 13, 2005, at <http://www.fas.org/sgp/crs/RS22026.pdf> (February 25, 2009).

“melting point.” The melting point is the time it takes for an individual to cross the border and “melt” into a landscape unnoticed. In urban border communities, spending money on physical barriers makes sense because individuals can easily cross the border and sneak quickly into the urban landscape (for example, one can hide in a building or steal a car and drive away). But in other areas, like the middle of the desert, the barren landscape makes it easy for Border Patrol agents to detect border crossers.

CBP has made considerable progress in constructing border infrastructure, though installation has been slowed by dramatic increases in the cost of materials and litigation. Additionally, the initial estimates for fencing requirements did not account for the increase in deployments of manpower and technology at the border.⁴⁴ As a result, CBP should reassess the cost effectiveness for any additional infrastructure, and Congress should listen to their recommendations.

SBI_{net}. Initiated in 2006, SBI_{net} is designed to bring new technologies and capabilities to support the work of the men and women of the Border Patrol.⁴⁵ The program deploys a combination of both infrastructure and technology, such as cameras, radars, sensors, and towers, along 387 miles of border, with the goal of creating a “virtual fence” to help border agents detect people as they attempt to cross the border illegally.

The beginning phases of SBI_{net} were problematic. Construction of the SBI_{net} system was delayed because of land permit issues. DHS encountered permit problems when it learned that the environmental waiver authority for fencing did not extend to SBI_{net}.⁴⁶ These problems as well as complica-

tions with the technology itself delayed implementation by three years.⁴⁷ The program also faced complaints by DHS that the pilot program did not obtain enough input from the Border Patrol agents who would be using the equipment.⁴⁸

While the pilot program was deemed operational in February of 2008, concerns remain that SBI_{net} will never be fully functional. In September 2008, the Government Accountability Office (GAO) remained “unclear and uncertain” about what kind of technological capabilities will ever come out of SBI_{net} and emphasized that current requirements were still “ambiguous and in a continued state of flux.”⁴⁹ The SBI_{net} program has taken significant steps to remedy the concerns expressed by GAO, including replacement of the program manager. Program officials have indicated that the project will move forward with permanent construction by April 2009.⁵⁰

State and Local Governments. During the Bush Administration, state and local governments began to see the first-hand effects of lax border security on their communities, including skyrocketing costs for illegal-immigrant services, increased crime in border towns, and travel restrictions and warnings stemming from border violence. Washington’s failure to tackle comprehensive immigration reform frustrated these state and local governments even further—driving them to take action.

Recognizing the interest of state and local governments in border security, the Bush Administration did create some initiatives which would allow these governments to participate in border security. The Secure Border Initiative (SBI), for instance,

44. Kevin Johnson, “In the Southwest, Fixing the Fence Never Ends,” *USA Today*, September 17, 2007, at http://www.usatoday.com/news/nation/2007-09-16-border-fence_N.htm (February 126, 2009).

45. U.S. Customs and Border Protection, “SBI_{net}: Securing U.S. Borders,” September 2006, at <http://www.dhs.gov/xlibrary/assets/sbinetfactsheet.pdf> (February 26, 2009).

46. Richard M. Stana, “Secure Border Initiative: Observations on Deployment Challenges,” U.S. Government Accountability Office, GAO-08-1141T, September 10, 2008, at <http://www.gao.gov/htext/d081141t.html> (February 26, 2009). DHS was extended the authority by Congress in 2005 to waive environmental laws as necessary to construct the physical fence.

47. *Ibid.*

48. *Ibid.*

49. *Ibid.*

50. Alice Lipowicz, “DHS Prepares to Deploy Virtual Fence,” *Federal Computer Week*, February 6, 2009, at <http://fcw.com/articles/2009/02/06/sbinet-update.aspx> (February 26, 2009).

instituted a program to work with corrections departments to identify illegal aliens in prisons so that these individuals could be deported to their home countries instead of being released in the U.S. when their sentences ended.⁵¹

Supporters of state and local participation in border security emphasize that the U.S. needs to do more to integrate state and local governments into the planning and execution of border strategy because these governments are much more familiar with the on-the-ground realities at the border and bring valuable knowledge of local culture, customs, geography, politics, and threats to the community.⁵² Local governments enforce housing violations and police departments recover stolen cars, often cutting off smuggling and drug-trade avenues. Others argue that since state and locals often end up footing the bill for illegal immigrants, these governments should have an opportunity to engage in decision making at the border.

On the other hand, some Americans insist that the federal government, exclusively, should handle the border because it is a function of national security and falls under Washington's constitutional responsibility to "provide for the common defense."⁵³ While it is the federal government's job to secure the border, allowing state and local governments to participate will do more than just enforce U.S. laws—it will increase the safety of their communities—and it should be encouraged. It is vital that DHS begin to look for ways to further integrate state and local governments into border security—capitalizing on their knowledge, expertise,

and *willingness*. The ability of such an effort to succeed is documented and demonstrates the need for this type of teamwork at the border. In 2006, Operation Rio Grande, a program among federal, state, and local law enforcement officials was a big success. The program, instituting interdiction operations, community policing, and other measures, reduced crime by a whopping 60 percent in patrolled border counties.⁵⁴

The wrong approach to this problem would be to establish a sweeping mandate that would force state and local law enforcement to do the federal government's job.⁵⁵ Instead, DHS can rely on Section 287 (g) of the Immigration and Nationality Act (INA), which allows DHS to enter into assistance compacts with state and local governments.⁵⁶ Under this section, states can secure adequate training for state and local law enforcement officers—including training on immigration and civil rights law and racial profiling issues—who would then be authorized to deal with immigration offenders and enforce immigration laws.

Private Citizens. Much like state and local governments, private citizens living in border communities recognized the need to take action at the border—because border crimes and illegal immigration were having a direct impact on their neighborhoods and daily lives.⁵⁷ Border ranchers, for instance, had had enough of illegal aliens destroying and stealing fencing and scaring cattle from watering holes. Affected citizens began to organize and take action on their own. One such example is the Minuteman Project—a neighborhood watch

51. U.S. Customs and Border Protection, "Fact Sheet: Secure Border Initiative," November 2, 2005, at http://www.dhs.gov/xnews/releases/press_release_0794.shtm (February 26, 2009).

52. James Jay Carafano, "Safeguarding America's Sovereignty: A 'System of Systems' Approach to Border Security," Heritage Foundation *Backgrounder* No. 1898, November 28, 2005, at <http://www.heritage.org/Research/HomelandSecurity/bg1898.cfm>.

53. Preamble to the U.S. Constitution.

54. Press release, "Perry: Border Security Operations Are Unparalleled Success," State of Texas, Office of the Governor, October 17, 2006, at <http://governor.state.tx.us/news/press-release/2348/> (February 26, 2009).

55. James Jay Carafano, "Section 287 (g) Is the Right Answer for State and Local Immigration Enforcement," Heritage Foundation *Executive Memorandum* No. 994, March 2, 2006, at <http://www.heritage.org/Research/HomelandSecurity/em994.cfm>.

56. *Ibid.*

57. James Jay Carafano, Brian W. Walsh, David B. Muhlhausen, Laura P. Keith, and David D. Gentilli, "Better, Faster, and Cheaper Border Security," Heritage Foundation *Backgrounder* No. 1967, September 6, 2006, at <http://www.heritage.org/Research/HomelandSecurity/bg1967.cfm>.

group focused on detecting illegal aliens and securing the border.⁵⁸

While some view the success of the Minutemen as an example of the potential positive impact of private citizens at the border, others remain concerned that such activities verge on vigilantism. Concerns also remain that these volunteers are assuming significant safety and liability risks. However, it is not unheard of for private citizens to assist in vital government functions. In America, citizen's arrest laws exist, allowing an ordinary person to make an arrest if he or she has personally witnessed a felony.⁵⁹ While citizen's arrest laws vary from state to state, what is important is their significance: American laws recognize that ordinary citizens can help the government enforce the law. Using citizens at the border can produce a multitude of benefits, as demonstrated by the success of the Minuteman Project. Citizens can protect property from crime, deter drug sales, and act as additional community policing in border communities—allowing law enforcement and Border Patrol agents the leeway to focus on intercepting drug shipments and catching potential terrorists.

Critics of citizen involvement at the border are rightfully concerned with the safety and liability ramifications of these activities. A volunteer attempting to apprehend a trespasser on his or her property could be harmed without proper training and guidance. Minimizing these concerns requires a certain level of organization and accountability, which can be achieved through accreditation, official standards, and practical employment concepts consistent with volunteer service.⁶⁰ The best way would be to encourage states to organize State Defense Forces (SDFs), volunteer organizations dedicated to assisting the federal government in a

number of activities, including border control.⁶¹ These forces report to and are funded by state governments, are governed by state law, and report to the governor. Such an organization allows SDFs to use state military resources, such as armories and training sites, while requiring states to provide training and other resources to volunteers.

America's Relationship with Mexico. During the Bush Administration, both the United States and Mexico sought to strengthen ties with one another. Economically, President Bush reaffirmed his support for NAFTA, the free-trade agreement formed in 1994 among the U.S., Canada, and Mexico. In exchange for this and other forms of economic support, Mexico began to cooperate more extensively with the United States on matters of border security and illegal immigration. Both President Bush and President Vicente Fox agreed to work together to reduce deaths at the southern border, where many people die while attempting illegal border crossings.⁶²

American union groups criticize the U.S.'s free-trade relationship with Mexico as harming American workers by shifting jobs to countries where labor and production are cheaper. During the presidential campaign, Barack Obama insisted that he would rewrite NAFTA if it did not include more protections for American workers.⁶³ But the reality is that NAFTA and other free-trade agreements have benefited American and Mexican workers in terms of more jobs and more business. During the first 13 years of NAFTA, U.S. gross domestic product (GDP) grew by more than 50 percent, and the economy created a net 26 million new jobs.⁶⁴ Between 1993 and 2007, Mexico added 10.1 million jobs to its economy and enjoyed \$375 billion in trade with NAFTA countries.⁶⁵

58. *Ibid.*

59. *Black's Law Dictionary*, 8th Edition, 2004.

60. Carafano *et al.*, "Better, Faster, and Cheaper Border Security."

61. *Ibid.*

62. Tim Weiner, "In Mexico, Grim Resolve After Deaths," *The New York Times*, May 26, 2001, at <http://query.nytimes.com/gst/fullpage.html?res=9F07E4DA163CF935A15756C0A9679C8B63&n=Top%2FReference%2FTimes%20Topics%2Fpeople%2FF%2FFox%2C%20Vicente> (February 26, 2009).

63. Ambassador Terry Miller, "Trade Policy and Election Promises: Does the Rhetoric Match the Facts?" Heritage Foundation Lecture No. 1072, March 12, 2008, at <http://www.heritage.org/Research/TradeandEconomicFreedom/hl1072.cfm>.

New Challenges. Mexico has been strongly affected by the U.S. economic downturn in late 2008. Mexico relies heavily on oil revenues and sales to the U.S. market—the United States purchases as much as 82 percent of Mexico’s exports.⁶⁶ As economic growth in Mexico decreases and unemployment rises, illegal immigration may begin to increase again if quality of life further deteriorates in Mexico (illegal immigration decreased with the U.S. economic downturn).

The terrorist attacks of 9/11 changed the focus at the border from purely illegal immigration to include the security of the U.S. homeland—as the U.S. became concerned that the southern border might be used as a loophole for terrorists to enter the U.S. Mexico’s current economic instability has provided the drug cartels with more power—adding to the security concerns at the border. The more powerful the cartels become, the more rule of law deteriorates—making the border ever more susceptible to crime and terrorism.

The increasing power of drug cartels and deteriorating rule of law, as well as Mexico’s economic instability have led some scholars to question whether Mexico is destined to become a failed state.⁶⁷ But the United States and Mexico, working together, can ensure that this does not become a reality. America must remain steadfast in its commitment to free trade with Mexico and should expand economic opportunities with Mexico and Central America as much as possible. Mexico’s security is linked to America’s security—if Mexico remains a haven for drug cartels and other serious criminals, it will become increasingly difficult to maintain control of the border.

The Way Forward

The Obama Administration should use the lessons learned and best practices of the Bush Administration as a guide for the future. Reinventing the wheel on border security would be a waste of resources and would further delay real security at America’s borders. Following is a guideline for the Obama Administration and Congress.

To better secure the border, 11,000 border agents and support staff are set to be hired—and must be trained to do their jobs effectively and safely. To meet these training demands, Congress and DHS should:

1. **Expand training capacities.** Training is essential for new border agents—it helps maintain the agents’ safety, minimize liability, and ensure that the agents understand and fulfill their missions. CBP needs to ensure that all new agents receive adequate training. Congress should provide additional funds for new classrooms, living space, firing ranges, physical fitness facilities, and training areas at the Border Patrol Academy and the Federal Law Enforcement Training Center, along with monies for additional staff and instructors.⁶⁸ CBP should also look to collaborate with local institutions to use their already constructed spaces as satellite training campuses.⁶⁹
2. **Find alternative training avenues.** CBP must find faster and more innovative strategies by which to train agents, without sacrificing the quality of training. An example of such a solution would be to provide computer-based post-academy training that would decrease the training costs while allowing knowledgeable CBP agents to share best practices with other agents.

64. Daniella Markheim, “Renegotiating NAFTA and Other U.S. Trade Agreements: Fixing What Isn’t Broken,” Heritage Foundation *WebMemo* No. 2116, October 24, 2008, at <http://www.heritage.org/research/TradeandEconomicFreedom/wm2116.cfm>.

65. Office of the United States Trade Representative, “NAFTA Works,” April 1999, at http://www.ustr.gov/assets/Trade_Agreements/Regional/NAFTA/asset_upload_file851_3609.pdf (February 26, 2009).

66. Ray Walser, “Calderon and President-elect Obama Meet: A New Start in the Neighborhood,” Heritage Foundation *WebMemo* No. 2202, January 12, 2009, at <http://www.heritage.org/Research/LatinAmerica/wm2202.cfm>.

67. United States Joint Forces Command, “The Joint Operating Environment 2008: Challenges and Implications for the Future Joint Force,” November 25, 2008, at <http://www.jfcom.mil/newslink/storyarchive/2008/JOE2008.pdf> (February 26, 2009).

68. Carafano *et al.*, “Better, Faster, and Cheaper Border Security.”

69. *Ibid.*

3. Use contractors to provide more manpower.

One way to easily increase manpower is to employ contractors. Contractors can perform virtually any border security mission, including law enforcement functions. Contract workers could be used to meet temporary manpower needs while CBP recruits more Border Patrol agents.

When considering technological aids, SBInet is a tool that has the promise to provide security in areas of the border where physical fencing does not make sense. But the Obama Administration must ensure that the initial problems with the pilot program do not resurface during the permanent construction phases of the project. Congress can ensure the success of SBInet by:

4. **Ensuring that SBInet is fully funded.** SBInet will never function properly if it is not given adequate resources. Congress has diverted some of the SBInet funds to physical fencing in the past. But doing this again or using SBInet money for another border project will simply continue to delay implementation—costing the U.S. government more money and time.

5. **Reforming congressional oversight of DHS.** Currently, 88 committees, subcommittees, and commissions have some sort of oversight jurisdiction over DHS.⁷⁰ This system of oversight has led Congress to communicate conflicting messages to DHS. CBP, as a part of DHS, has also experienced these mixed messages in its attempt to execute policies and programs at the border, such as SBInet. Congress could provide clearer oversight—ensuring that both contractors and DHS officials are taking the right steps at the border and by consolidating oversight of homeland security into four committees, two in the House and two in the Senate. By ensuring that CBP answers to fewer committees, each exclusively dedicated to homeland security, Congress and DHS can work

together to develop a smart border strategy without jeopardizing America's sovereignty.

Future infrastructure investments must focus primarily on the ports of entry, not only to improve security but also to reduce the cost of transaction times for moving goods, people, and services across the border expeditiously.

6. **Encourage private-sector investment in border infrastructure.** The best means by which to tackle border infrastructure problems is through investment by the private sector.⁷¹ Not only would this save government resources, it would allow the private sector to use its knowledge and creativity to design border infrastructure that is commerce-friendly without jeopardizing security or sovereignty.⁷² The government can encourage the private sector to take these steps in a number of ways, for example, by expanding the protections of the Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act which includes liability protection for private-sector entities investing in and marketing new technologies that increase Americans' safety.⁷³

Under Section 287 (g) of the Immigration and Nationality Act (INA), DHS can enter into assistance compacts with state and local governments. To strengthen this program, Congress and DHS should:

7. **Promote participation in 287 (g).** DHS cannot demand that state and local governments participate under 287 (g). But Congress can ensure that states know the option is available. DHS should create and implement a marketing strategy that would inform states of the program and encourage nationwide implementation of Section 287 (g). Creating a national center for best practices and lessons learned, and requiring DHS to report to Congress each year on the

70. Jena Baker McNeill, "Congressional Oversight of DHS in Dire Need of Overhaul," Heritage Foundation *Background* No. 2161, July 14, 2008, at <http://www.heritage.org/research/HomelandDefense/bg2161.cfm>.

71. Jena Baker McNeill, "Building Infrastructure Resiliency: Private Sector Investment in Homeland Security," Heritage Foundation *Background* No. 2184, September 23, 2008, at <http://www.heritage.org/Research/HomelandDefense/bg2184.cfm>.

72. *Ibid.*

73. Support Anti-Terrorism by Fostering Effective Technologies (SAFETY) Act, Public Law 85-804 (2002).

program's progress will help to ensure 287 (g)'s continued success.

8. **Allow flexibility with homeland security grants.** More robust community policing should be a key component of a smart border strategy.⁷⁴ Community policing is a “collaboration between the police and the community that identifies and solves problems” in a proactive manner. It helps to deter the types of crime at the border, not to enforce federal immigration laws.⁷⁵ Deterring this criminal activity will in turn make the federal government's challenge of policing the border more manageable. Congress should allow states and cities participating in Section 287 (g) to use funds from homeland security grants to provide community policing at the border, including overtime for state and local law enforcement agents assisting in federal immigration enforcement investigations.⁷⁶
9. **Expand DHS Border Enforcement Security Taskforces (BEST) to include 287 (g).** These task forces involve federal, state, and local entities working with the Mexican government to tackle cross-border crime and secure the border. The focus is information-sharing and collaboration; its strength lies in the fact that it maintains the sovereignty of the two nations—both continue to control their own security policies.⁷⁷ The 287 (g) programs will need to receive a certain amount of legitimacy from DHS in order to recruit participants, retain public support, and fulfill their missions. One way to achieve this is by expanding the already successful BEST task forces to formally include 287 (g) programs.

The best way to minimize safety and liability ramifications is to encourage states to organize State Defense Forces (SDFs), volunteer organizations dedicated to assisting the federal government in a multitude of activities, including

border control. To promote the creation of SDFs, Congress should:

10. **Require DHS and the Department of Defense to encourage border states to form SDFs.**⁷⁸ Creating SDFs will help develop the team effort at the border by increasing the resources available. States are not required to organize SDFs and may be reluctant to do so without DHS support and guidance. DHS should prepare a strategy by which to inform and market SDFs to state governments and citizens.
11. **Provide funds to establish a system of accreditation and standards for SDFs.** Given the current economic situation of many state governments, there may not be money available to establish a system of accreditation and standards for SDFs. But such a system is vital to the success of SDFs—and is the best means by which to decrease liability and increase safety.⁷⁹
12. **Collaborate with states to create legal-guide pamphlets.** DHS should work with states to produce legal-guide pamphlets that would serve as a resource for private citizens, such as border-area property owners, who must often deal with illegal aliens trespassing on their property. This will help to ensure that private citizens can protect their property without taking careless, risky, or illegal actions.

Finally, to secure the border, the U.S. should:

13. **Expand the Merida Initiative.** Gaining control over the drug cartels is one of the most important steps that Mexico must take in order to regain control of the country. In June 2008, the U.S. and Mexico jointly developed the Merida Initiative—a program aimed at tackling drug cartels through U.S. assistance to Mexican law enforcement with equipment, technology, and training. Around \$300 million of the \$1.5 bil-

74. *Ibid.*

75. Jerry Ratcliffe, *Intelligence-Led Policing* (Cullompton, United Kingdom: Willan Publishing, 2008), p. 67.

76. *Ibid.*

77. U.S. Immigration and Customs Enforcement, “Border Enforcement Security Taskforce,” December 3, 2008, at http://www.ice.gov/pi/news/factsheets/080226best_fact_sheet.htm (January 28, 2009).

78. *Ibid.*

79. *Ibid.*

lion allocated for the program has been spent so far. The U.S. needs to go further to ensure that all of these monies are spent to provide this valuable assistance.⁸⁰

14. **Leave NAFTA alone.** NAFTA has produced positive economic benefits for both the U.S. and Mexico. Stripping Mexico of these benefits could further cripple the U.S. and Mexican economies. Given the agreement's benefits, President Obama should not attempt to rewrite NAFTA and should instead reaffirm his commitment to the agreement. He should also urge President Calderon to continue efforts to reform Mexico's economy by breaking up monopolies and other oligopolies, and look for ways to assist with the agricultural and commercial development of rural and southern Mexico.
15. **Provide full funding for the Coast Guard.** An effective border strategy cannot focus exclusively on land borders. As land borders become

more secure, drug smugglers and human traffickers will quickly look to sea options. Maritime security efforts must be enhanced in conjunction with land security. The Coast Guard acts as the law enforcement for the high seas; however, it lacks the resources and capacities to do its job as effectively as it could.⁸¹

Conclusion

Gaining control of the border is not optional—the security of the United States depends on the ability and determination of the U.S. government to keep its citizens safe. The U.S. can, and should, do it in such a way that fosters prosperity for Americans and Mexicans alike.

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80. Walser, "Calderon and President-elect Obama Meet: A New Start in the Neighborhood."

81. Mackenzie M. Eaglen, James Dolbow, Martin Edwin Andersen, and James Jay Carafano, "Securing the High Seas: America's Global Maritime Constabulary Power," Heritage Foundation *Special Report* No. 20, March 12, 2008, at <http://www.heritage.org/Research/NationalSecurity/sr20.cfm>.

ISSUE BRIEF

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U.S.–Mexico Border: Tighter Border Security Requires Mexico’s Cooperation

Ray Walser, Ph.D. and Jessica Zuckerman

As the debate over immigration reform heats up, the topic of border security—especially on the southwest border with Mexico—looms larger. Washington policymakers ask: How many miles of fence, how many Border Patrol agents, how many billions of tax dollars will be enough to finally “secure” the border?

There is no easy answer. Airtight border security is more an abstract concept than a practical goal. It is difficult to envision a system of airport-like security or 100 percent “operational control” of 2,000 miles of often rugged and inhospitable terrain.

Ultimately, an effective border security policy requires a reliable security partner in Mexico. Thankfully, the objectives of Mexico’s new government are to engineer a more secure, more prosperous, and more rule-of-law-oriented future.

Mexico: The Essential Partner. Under Presidents George W. Bush and Barack Obama, the U.S. has already developed a considerable range of policy tools for working with Mexico. These range from the Merida Initiative and a 21st-century border management plan to the establishment of Border Enforcement Security Task Force teams, all of which work closely with Mexican counterparts.

The U.S. also shares highly sensitive intelligence with Mexican authorities, who are just as concerned as their American counterparts about terrorism and transnational criminal organizations. Further, the U.S. has improved military-to-military cooperation without trying to “militarize” the fight against transnational crime. U.S. Northern Command has assumed an active role in aggressively seeking to partner with Mexico’s armed forces.

A deepening of cooperation could put additional U.S. trainers in Mexico and deliver more cooperation in intelligence and operations planning but without any military “boots on the ground.” In short, the current level of cooperation between the two parties is unprecedented and will likely continue to grow.

An Expanding U.S.–Mexican Agenda. The Mexican government has additional projects on the drawing board that include a gendarme force that is able to police rural areas and, potentially, a border patrol. Mexico also looks to stem the flow of Central Americans across its southern border, many of whom have the U.S. as their intended destination.

Both the U.S. and Mexico are concerned about the capacity of criminal organizations to weaken certain Central American nations to the point of “state failure.” Both sides share a common goal of dismantling the criminal conveyor belts that thrive off illegal flows of people or drugs to the U.S.

As Congress works through these issues, it will need continued assurances that Mexico will play its part as a responsible neighbor. Congress therefore should work to strengthen incentives that speed the legal movements of peoples and goods from abroad while deterring illegal movements. This is a daunting task. If projections hold, for example, Mexico

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could surpass Canada as the U.S.'s top trading partner over the next decade. Integrated, cross-border supply chains continue to put as much as 40 percent of American content into Mexican-made exports.

To aid this growth, more needs to be done to enhance programs for pre-screened travelers and pre-clearance for trusted shippers, putting additional accountability and responsibility in the hands of Mexican authorities. Additionally, the U.S. must decide where to allocate scarce resources at vital sectors along the border. It must decide whether the focus is to be on relatively open spaces or on established crossing points that many argue remain vulnerable to crafty smugglers of persons and drugs.

What the U.S. Should Do. As the second Obama Administration, Congress, and the American people look at critical and interconnected issues of immigration reform and border security, they should also take into consideration the need to do the following:

- **Develop a comprehensive U.S.–Mexico anti-crime strategy.** The Obama Administration and Congress should work to develop a broad master plan for U.S.–Mexican relations that coordinates law enforcement, judicial, and military assets to target transnational criminal organizations, gangs, human traffickers, terrorists, and other 21st-century threats to shared security. It should also develop effective criteria to measure progress and enhanced security.
- **Continue modernization of the southwest border.** The Administration and Congress should

increase public–private partnerships to build smarter border infrastructure that speeds legal movements while preventing illicit movements. They should also work to enhance the deployment of key technologies, such as cameras and sensors, to aid the Border Patrol in identifying and halting illegal crossing and potential threats.

- **Foster U.S.–Mexico bilateral border security and immigration accords.** The U.S. should explore with Mexico specific agreements, protocols, and parallel laws that draw the two governments closer together in order to regularize and expedite legal movements of people and goods while increasing cross-border disincentives and obstacles to illegal activities, especially illegal migration.

Mexico as Part of the Solution. It is important to remember that in a world of complex and shifting security threats, America's borders with Mexico and Canada are the U.S. homeland's last line of defense, not its first.

With a stable, democratic, and more prosperous Mexico on America's southern flank, much is possible. While Mexico is part of America's immigration and border security woes, it should also be made a part of the solution.

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Background

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The Human Tragedy of Illegal Immigration: Greater Efforts Needed to Combat Smuggling and Violence

Ray Walser, Ph.D., Jena Baker McNeill, and Jessica Zuckerman

Abstract: *Over the past 10 years, traversing the U.S.–Mexico border illegally has become increasingly dangerous for would-be immigrants. Illegal immigrants face kidnapping, murder, and rape at the hands of violent drug cartels and ever more ruthless human smugglers. Crossing treacherous desert areas exposes the travelers to heat exhaustion and dehydration. Hundreds of people die every year trying to cross the border into the U.S. However, illegal immigration is dangerous not only to the illegal immigrants themselves—it is costly to societies and nations as a whole. In order to fight illegal immigration and reduce the toll on human lives, the United States must take a comprehensive approach of increasing border security and improving legal immigration procedures and public diplomacy, as well as fostering reforms and greater efforts to crack down on human smuggling in Latin America. The Heritage Foundation lays out a plan for such an approach.*

In August 2010, 72 would-be illegal immigrants from Mexico were lined up and executed, their bodies discovered on a remote ranch a mere 90 miles from the U.S. border.¹ The drug gang responsible for the kidnapping and murders, Los Zetas, captured its victims as they traveled through Tamaulipas, presumably on their way to cross the border illegally into the United States. When the 72 people refused to work for the gang, they were executed.

Violence against illegal border-crossers has become a regular occurrence around land and sea borders over the past decade. Criminal acts committed against illegal

Talking Points

- Over the past 10 years, traversing the U.S.–Mexico border illegally has become increasingly dangerous. In 2009 alone, the U.S. Customs and Border Protection found 417 bodies along the U.S.'s southern border. Estimates indicate that each year some 22,000 individuals may be kidnapped while traveling through Mexico. Cost-free migration to the U.S. is simply no longer possible.
- Illegal immigration is dangerous not only to the immigrants themselves—it is costly to societies and nations as a whole, as countries face an outflow of human capital and individuals struggle with the effects of partial-family emigration.
- To curb illegal immigration and reduce the toll on human lives, the United States must take a comprehensive approach of increasing border security and improving legal immigration procedures and public diplomacy, as well as fostering reforms and greater efforts to crack down on human smuggling in Latin America.

This paper, in its entirety, can be found at:
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immigrants include kidnapping, robbery, extortion, sexual violence, and death at the hands of cartels, smugglers, and even corrupt Mexican government officials. Hundreds of individuals perish trying to cross the U.S. southwest border each year—due to heat exhaustion, drowning, and falling into the hands of the wrong people.² In Mexico, violence against illegal immigrants in transit has exploded since President Felipe Calderon began his battle against the country's transnational criminal organizations in 2006. Despite some success in thwarting these organizations, the slow pace of justice and law enforcement reform, as well as rampant corruption, has allowed organized crime to continue to thrive in Mexico. Likewise, as Mexico attempts to clamp down on narcotics operations, these increasingly multifaceted criminal organizations turn to other sources of income, such as human smuggling and sex trafficking.

The dangers of illicit movement are not confined to Mexico. Thousands of illegal immigrants attempt to reach the United States annually by sea from the Caribbean islands of Cuba, Haiti, and the Dominican Republic. They all put themselves at risk of abandonment, exposure, capsizing, and drowning.

This violence is augmented by an inconsistent policy by the Obama Administration, which downplays the risks of illegal migration, and an unorganized U.S. border security strategy. Exacerbating the problem is that enforcement of immigration laws inside the United States has been inconsistent—leaving a significant economic incentive for further illegal immigration. The escalating violence, *ad hoc* border security, and spotty immigration enforcement demands a more comprehensive and robust strategy for combating human smuggling, violence, and the huge numbers of illegal aliens. Such a strategy should include the following elements:

- Continued partnerships with nations to combat human smuggling and to dismantle trafficking networks throughout the region;
- Concerted efforts to promote justice and law enforcement reform, as well as free-market reform throughout Latin America to foster healthier economies, and thus weaken the incentive to migrate;
- Rejection of proposals for amnesty, which give incentives to illegal immigrants;
- An organized strategy for integrating border manpower, technology, and other resources into an enterprise capable of responding to threats and decreasing the flow of illegal aliens across the border;
- Increased interior enforcement in the U.S. and reforms in legal immigration aimed at discouraging illegal entry; and
- Creation of an active public diplomacy program to educate potential illegal immigrants on the risks of such a journey and the consequences of illegal entry into the U.S.

Multiple Illegal Routes

For many illegal immigrants, their journey to the United States does not begin at America's southern border. Mexico serves as a starting point as well as a path of transit for people all across Latin America seeking illegal entry into the United States.

Last year, Mexico's National Immigration Institute (INM) apprehended and repatriated a total of 62,141 illegal immigrants within Mexico's border. Of the 400,235 individuals that the INM estimates enter Mexico every year illegally, approximately 150,000—or 37 percent—intend to cross over into the United States.³ These individuals travel from their home countries throughout the region to Mexico's 750-mile

1. David Luhnow, "Mexico Killings Show Migrants' Plight," *The Wall Street Journal*, August 27, 2010, at <http://online.wsj.com/article/SB10001424052748704913704575454033356912888.html> (May 23, 2011), and "Source: Investigator in Migrants' Massacre Killed," MSNBC, August 27, 2010, at http://www.msnbc.msn.com/id/38883757/ns/world_news-americas (May 23, 2011).
2. Based on average number of bodies recovered by Customs and Border Protection per year from 2007 to 2009, and Chad C. Haddal, "Border Security: The Role of the U.S. Border Patrol," Congressional Research Service *Report for Congress* No. RL32562, August 11, 2010, at <http://www.fas.org/spp/crs/homsec/RL32562.pdf> (May 23, 2011).
3. Cynthia Gorney, "Mexico's Other Border," *National Geographic*, February 2008, at <http://ngm.nationalgeographic.com/2008/02/mexicos-southern-border/cynthia-gorney-text> (May 23, 2011).

Migrant Routes Through Mexico



Source: Amnesty International, "Invisible Victims: Migrants on the Move in Mexico," at <http://www.amnesty.org/en/library/asset/AMR411014/2010/en/8459f0ac-03ce-4302-8bd2-3305bdae9cde/amr4110142010eng.pdf> (May 11, 2011).

Map 1 • B2568  heritage.org

shared border with Guatemala and Belize. While the terrain is mountainous and jungle-covered, there are few checkpoints along the crossing, making it appear to be a hospitable environment to many would-be illegal immigrants. Yet, at Mexico's southern border begins a dangerous journey of some 2,000 miles to the United States.

Illegal immigrants also travel by sea. Last year, the U.S. Coast Guard intercepted 2,088 illegal aliens off the coasts of the United States.⁴ While the number of interceptions has consistently declined over the past six years, previous estimates indicate that thousands of people still attempt to make the

maritime journey from the Caribbean each year.⁵ The majority of these immigrants set sail from Cuba, Haiti, and the Dominican Republic, each journey filled with its own set of challenges.

Trying to immigrate illegally comes with tremendous risks, including kidnapping, extortion, injury, and death. Illegal immigration also foists a tremendous social cost on the communities and societal units throughout Latin America, such as the economic difficulties posed by the absence of a family member, or the overall cost of the outflow of human capital.

4. U.S. Coast Guard, "Alien Migrant Interdiction: Total Interdictions—Fiscal Year 1982 to Present," May 20, 2011, at <http://www.uscg.mil/hq/cg5/cg531/AMIO/FlowStats/FY.asp> (May 23, 2011).

5. Robert B. Watts, "Caribbean Maritime Migration: Challenges for the New Millennium," *Homeland Security Affairs*, Supplement No. 2 (2008), at <http://www.hsaj.org/?special:fullarticle=supplement.2.6> (May 23, 2011).

Southern Border Hazards

While apprehensions of illegal immigrants along the U.S. southern border declined by more than 50 percent between 2004 and 2009, deaths have increased by nearly 28 percent in the same time.⁶ In 2009 alone, U.S. Customs and Border Protection found 417 bodies along the U.S. border with Mexico.⁷ In 2009, along the deadliest areas of the border, such as Arizona's Sonoran Desert, the risk of death for illegal border-crossers was one and a half times greater than it had been in 2004, and a staggering 17 times greater than it had been in 1998.⁸

According to various estimates, between 80 percent and 95 percent of illegal immigrants employ smugglers to assist in crossing the southern border.⁹ While smugglers often ease the means of travel, there are also significant risks in employing these networks. Chief among the concerns is that smugglers have been known to leave behind people who fail to keep up with the group due to exhaustion, injury, dehydration, or age.¹⁰ Furthermore, immigrants seeking to cross the southern border illegally increasingly do so in desert regions where the extreme heat can lead to over-exhaustion and death.

A study by the American Civil Liberties Union and Mexico's National Human Rights Commission estimates that 30 percent of the 390 people whose bodies were recovered in 2008 died due to exposure to extreme heat.¹¹ Those left behind often lack food and water, and face little chance of survival. Illegal immigrants may also be packed into trucks, hidden under seats, or smuggled in trunks to avoid detection. There they risk death and injury from suffocation or overturned vehicles.

Kidnappings

In 2009 and 2011, Mexico's National Human Rights Commission (CNDH) released reports highlighting the kidnappings of illegal immigrants in Mexico. The reports were assembled from the testimonies of those who claim to have been kidnapped while traveling through Mexico. CNDH was made aware of 198 multiple kidnappings in the period from September 2008 through February 2009, and 214 multiple kidnappings from April to September 2010. In total, these cases resulted in the kidnapping of 9,758 individuals and 11,333 individuals, respectively. The figures, however, represent only those kidnappings occurring during a six-month

6. U.S. Customs and Border Protection, "Total Illegal Alien Apprehensions by Fiscal Year: Oct. 1st through Sept. 30th," at http://cbp.gov/linkhandler/cgov/border_security/border_patrol/apps.ctt/apps.pdf (May 23, 2011), and U.S. Government Accountability Office, "Illegal Immigration: Border-Crossing Deaths Have Doubled Since 1995; Border Patrol's Efforts to Prevent Deaths Have Not Been Fully Evaluated," GAO-06-770, August 2006, at <http://www.gao.gov/new.items/d06770.pdf> (May 23, 2011).
7. Lourdes Medrano, "Border Deaths for Illegal Immigrants Hit Record High in Arizona Sector," *The Christian Science Monitor*, December 16, 2010, at <http://www.csmonitor.com/USA/2010/1216/Border-deaths-for-illegal-immigrants-hit-record-high-in-Arizona-sector> (May 23, 2011). Estimates, however, often vary according to source and method of data collection; even Department of Homeland Security annual numbers have varied at different dates of reporting. Further, while this number in and of itself is tragic, the number of immigrants who perish along the U.S. southwest border may actually be much higher. This is due to the fact that the data compiled by CBP fails to include bodies recovered by local law enforcement, and also does not take into account bodies found immediately on the Mexican side of the border. According to various sources, the average deaths between 1998 and 2008 may have been closer to 539 per year, even reaching a high of 827 in FY 2007 by the estimates of Mexico's Secretariat of Foreign Relations (SRE). Many other deaths may go unreported.
8. Maria Jimenez, "Humanitarian Crisis: Migrant Deaths at the U.S.–Mexico Border," ACLU of San Diego and Imperial Counties and Mexico's National Human Rights Commission, October 1, 2009, at <http://www.aclu.org/immigrants-rights/humanitarian-crisis-migrant-deaths-us-mexico-border> (May 23, 2011).
9. Bryan Roberts, Gordon Hanson, Derek Cornwell, and Scott Borger, "An Analysis of Migrant Smuggling Costs Along the Southwest Border," U.S. Department of Homeland Security *Working Paper*, November 2010, at <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-smuggling-wp.pdf> (May 23, 2011).
10. "No Safe Passage: Add Drugs Gangs [sic] to the Long List of Dangers Facing Migrants," *The Economist*, September 9, 2010, at <http://www.economist.com/node/16994348> (May 23, 2011).
11. Jimenez, "Humanitarian Crisis."

period. Given the most recent findings, it is likely that more than 400 kidnappings involving some 22,000 individuals may be occurring in Mexico on an annual basis.¹² At its worst point, Colombia, the former “kidnap capital of the world,” saw an estimated 3,500 individuals kidnapped per year.¹³

The testimonies in the reports detailed scenarios in which individuals were ambushed by gangs or smugglers and held in safe houses awaiting their ransoms to be paid by their relatives and loved ones. The ransom demanded between 2008 and 2009 ranged from \$1,500 to \$5,000 with an average of \$2,500. While held captive, nine out of 10 of the victims were threatened with their own death or that of their relatives. Many also reported being deprived of food, beaten, tied, gagged, blindfolded, drugged, or burned.¹⁴

From 2008 to 2009, 55 percent of the reported kidnappings occurred in the southern portion of Mexico, predominantly in the states of Veracruz and Tabasco.¹⁵ By 2010, this percentage had reached 67.4.¹⁶ For many, however, the greatest risk lies not along Mexico’s southern border but along the railway lines, where illegal immigrants traversing through Mexico hop on freight trains heading north. In fact, between 2008 and 2009, of the 2,525 kidnapped individuals for whom the specific location of abduction was identified, nearly 98 per-

cent were kidnapped on railway lines or trains.¹⁷ In some cases, train drivers, engineers, and private security guards on the trains are complicit in the immigrants’ kidnappings, allowing criminal organizations or authorities to board the train and abduct illegal immigrants.¹⁸

Criminal gangs have also been known to lie in wait near immigration checkpoints where illegal immigrants will hop off the train to avoid identification. The members of the Mara Salvatrucha gang, for instance, call themselves “immigrant hunters.”¹⁹ Criminal organizations like Mara Salvatrucha have been expanding their reach and increasingly turning to human smuggling as a means of profiteering. Assuming the average ransom price has not risen even further since 2009, and a possible 22,000 kidnappings annually, these smugglers and criminal organizations could be making more than \$50 million a year from ransoming their victims.²⁰

Yet it is not just Mexican criminal organizations that pose a risk to illegal immigrants. Among the 2008–2009 kidnapping cases reported by the CNDH, 59 percent were said, by interviewed immigrants, to be carried out by “coyotes” or “polleros.” During this same period, illegal immigrants giving eyewitness accounts also indicated that state, local, or federal authorities were either responsible for or complicit in 2 percent of kidnappings (soaring to 8.9

12. Comisión Nacional de Los Derechos Humanos, “Informe Especial Sobre Los Casos de Secuestro en Contra de Migrantes,” June 15, 2009 (in Spanish), at <http://www.cndh.org.mx/INFORMES/Especiales/infEspSecMigra.pdf> (May 23, 2011), and Comisión Nacional de Los Derechos Humanos, “Informe Especial Sobre Los Casos de Secuestro en Contra de Migrantes,” February 22, 2011, at <http://www.cndh.org.mx/InfEspecialSecuestroMigrantes7.pdf> (June 2, 2011).

13. Simon Fraser, “Colombia: Kidnap Capital of the World,” BBC News, June 27, 2001, at <http://news.bbc.co.uk/2/hi/americas/1410316.stm> (May 23, 2011).

14. Comisión Nacional de Los Derechos Humanos, “Informe Especial Sobre Los Casos de Secuestro en Contra de Migrantes,” 2009.

15. *Ibid.*

16. Comisión Nacional de Los Derechos Humanos, “Informe Especial Sobre Los Casos de Secuestro en Contra de Migrantes,” 2011.

17. Comisión Nacional de Los Derechos Humanos, “Informe Especial Sobre Los Casos de Secuestro en Contra de Migrantes,” 2009.

18. Amnesty International, “Invisible Victims: Migrants on the Move in Mexico,” April 2010, at <http://www.amnesty.org/en/library/asset/AMR41/014/2010/en/8459f0ac-03ce-4302-8bd2-3305bdae9cde/amr410142010eng.pdf> (January 19, 2011).

19. George W. Grayson, “Mexico’s Forgotten Southern Border: Does Mexico Practice at Home What It Preaches Abroad?” Center for Immigration Studies *Backgrounder*, July 2002, at <http://www.cis.org/MexicoSouthernBorder-Policy> (May 23, 2011).

20. Comisión Nacional de Los Derechos Humanos, “Informe Especial Sobre Los Casos de Secuestro en Contra de Migrantes,” 2009.

percent in 2010).²¹ Yet, despite the prevalence and horrors of these kidnappings, victims are reluctant to file complaints. Mexican law provides that illegal immigrants may receive temporary visas pending investigation, but most are unaware of this fact or do not want to interrupt their journey to report the crime. Others are fearful that they will be deported if they speak to authorities, while some return home after the trauma or voluntarily turn themselves over to Mexico's National Migration Institute (INM) to avoid falling back into the hands of gangs.²²

There were several high-profile cases of illegal-immigrant abductions in Mexico in 2010, the most horrific being the massacre of 72 would-be border-crossers in Tamaulipas. In December of the same year, 40 Central American illegal immigrants, mainly Salvadorans and Guatemalans, were abducted from a freight train traveling north through Mexico. The train, originally carrying 250 people, was reportedly stopped first by "police and immigration officials," who detained 92 of the illegal immigrants. Following the stop, approximately 150 travelers re-boarded the train. The conductor of the train, run by the government-owned Ferrocarril del Istmo de Tehuantepec (FIT), then demanded fees from the illegal immigrants. Apparently unhappy with the amount he was paid, he warned there would be "more problems ahead." Shortly thereafter, the train was boarded a second time by armed men who proceeded to kidnap 40 of the illegal immigrants still aboard. The illegal travelers believe the Los Zetas cartel was involved, but they also raised questions about possible involvement of government authorities.²³

Extortion

As the CNDH report and the kidnapping of the 40 Central American illegal immigrants seem to

indicate, state and local authorities are sometimes complicit in such kidnappings. More commonly, however, authorities will seek to exact financial payments from illegal immigrants through extortion. As regional expert George Grayson explains, "rather than engage in crude violence, unscrupulous officials typically exact bribes [mordidas]."²⁴

Extortion of illegal immigrants most often occurs during unlawful immigration checks. In Mexico, the INM has ultimate authority to verify the status of travelers and detain them. The Federal Police, however, may conduct verifications of status at the request of the INM. According to current Mexican law, military and state and local law enforcement officials cannot initiate verifications and, similar to U.S. law, may only detain an illegal immigrant if the individual is first stopped for other illegal activity. While there are strict rules on how these immigration checks are to be carried out, these rules and other regulations are often disregarded.²⁵

There were more cases of extortion before 2008 due to a law that indicated that illegal immigrants could be punished for their presence in Mexico by up to 10 years in prison. Military and police officers would often use this law for monetary gain, extracting bribes from immigrants under threat of imprisonment. In 2008, however, the penalty of incarceration for illegal immigrants was reduced to a fine. This was a positive step toward necessary reforms. Nevertheless, corruption within the ranks of law enforcement remains rampant and much of the region continues to lack a strong and stable system of rule of law.²⁶

Sexual Violence and Human Trafficking

One in every five aspiring immigrants passing through Mexico is female, yet as many as 60 percent

21. Comisión Nacional de Los Derechos Humanos, "Informe Especial Sobre Los Casos de Secuestro en Contra de Migrantes," 2009 and 2011.

22. Amnesty International, "Invisible Victims."

23. "Top UN Official Tells Mexico to Investigate Kidnapping of Central American Migrants," Fox News Latino, January 21, 2011, <http://latino.foxnews.com/latino/news/2011/01/21/officials-tells-mexico-investigate-kidnapping-central-american-migrants/> (May 24, 2011).

24. Grayson, "Mexico's Forgotten Southern Border."

25. Amnesty International, "Invisible Victims."

26. *Ibid.*

of these women and girls will experience sexual assault during their journeys. As Amnesty International explains:

All irregular migrants are at risk of abuse, but women and children—particularly unaccompanied children—are especially vulnerable. They face serious risks of trafficking and sexual assault by criminals, other migrants and corrupt public officials.... [F]ew cases are officially registered and virtually none are ever prosecuted....²⁷

According to some immigration experts, the level of abuse is so high that some smugglers require women to receive contraceptive shots before beginning their trip, to prevent pregnancy as a result of rape.²⁸ In many cases, this sexual violence is considered just another “price” imposed on these women, or a means to threaten them and their families in order to extract further payment.

Just as in the case of kidnappings, many accounts of sexual violence may underestimate the total number of instances that occur, as women are often reluctant to report their experiences both out of fear of deportation and shame. Another study of illegal immigrants along the Guatemalan–Mexican border found that as many as 70 percent of illegal female travelers in that region are subject to sexual violence.²⁹

Many women seeking illegal entry into the U.S. and other advanced economies are also at risk of becoming victims of human trafficking. Human trafficking rates in Latin America and the Caribbean are growing rapidly.³⁰ An estimated 17,500 indi-

viduals are trafficked into the United States from areas throughout Latin America every year.³¹ While this number is high, it should come as no surprise, given that the region’s sex-trafficking industry is estimated to be valued at up to \$16 billion annually, not including child trafficking.³² In terms of the U.S.–Mexican border, efforts to crack down on illegal crossings have led hired smugglers to take more drastic measures in escorting their human cargo. According to the Congressional Research Service, “in order to avoid detection by U.S. border patrol agents, smuggling routes have become more dangerous and therefore more costly. Some smugglers have sold undocumented immigrants into situations of forced labor or prostitution in order to recover their costs.”³³

There are a number of ploys used to lure women into human-trafficking rings—the promise of marriage or a job, or scare-warnings of being kidnapped by traffickers while traveling unaccompanied to the U.S., or running out of money on the journey north to the U.S. border.³⁴ The traffickers then use violence, rape, and threats to the immigrants’ families to achieve compliance.³⁵ As in the case of kidnappings, the lack of preventative measures and an effective system of justice to hold traffickers accountable denies victims a legal source of protection, causing many not to report abuse.³⁶

Injury and Death

Along with the dangers of injury and death facing those who try to cross dangerous parts of the U.S.–Mexican border, many illegal immigrants face extremely dangerous situations elsewhere along

27. *Ibid.*

28. *Ibid.*

29. *Ibid.*

30. David E. Guinn, “Defining the Problem of Trafficking: The Interplay of US Law, Donor, and NGO Engagement and the Local Context in Latin America,” *Human Rights Quarterly*, Vol. 30, No. 1 (February 2008).

31. Clare Ribando Seelke, “Trafficking in Persons in Latin America and the Caribbean,” Congressional Research Service Report for Congress No. RL33200, October 16, 2009, at http://assets.opencrs.com/rpts/RL33200_20091016.pdf (May 23, 2011).

32. *Ibid.*

33. *Ibid.*

34. Amy Risley, “Sex Trafficking: The ‘Other’ Crisis in Mexico?” *The Latin Americanist*, March 2010.

35. *Ibid.*

36. *Ibid.*

the journey, particularly when riding freight trains. These trains are known colloquially as “la bestia” (the beast) or “the train of death” for the danger they pose to stowaways.³⁷

Aware of the risk of being caught by train conductors or immigration officials along the route, many illegal immigrants ride on the tops of train cars to avoid detection. During the trip, however, they risk falling asleep or losing their grip and rolling off, as well as being knocked off by tunnels or passing branches. Illegal immigrants face similar dangers when they stow away by clinging to couplings or shock absorbers between cars and axels. Many are then knocked off or injured by rocks that are kicked up under the train, or once again by falling asleep along the way. Many are killed or lose limbs when they fall onto the tracks. Similarly, when people hide in sealed train cars they risk dying from heat or suffocation in these “rolling coffins.”³⁸

No comprehensive estimates exist on the number of injuries or deaths that occur along the train tracks between locations such as Ciudad Hidalgo, Mexico City, Veracruz and the U.S.–Mexican border.³⁹ But at shelters along the railroad tracks, shelter operators see these injuries all too often. At Jesus the Good Pastor Shelter outside Tapachula, Mexico, some 5,000 injured individuals passed through its doors between 1992 and 2006.⁴⁰ These individuals represent just a small cross section of all those injured along the freight trains’ paths.

More recently, concerns have been raised over the dangers along northbound bus routes as well. In April 2011, several mass graves were uncovered in Tamaulipas, Mexico, the same region where the

72 immigrants were found slaughtered last August. Once again, the Los Zetas drug gang is believed to be behind the murders. Originally formed by a group of army deserters as a wing of the infamous and deadly Gulf Cartel, Los Zetas has since broken away and evolved into a broader crime syndicate, drawing profit not only from the drug trade but also extortion, kidnappings, and oil theft. This time it appears they have turned to kidnapping young men off inter-city buses as a way of forcibly finding new recruits. Just like in August of 2010, those that refused were killed. More chilling yet, in another case of law enforcement corruption, at least 16 police officers have been arrested as suspected accomplices in the murders.⁴¹ As of April 15, 2011, 145 bodies had been recovered in the graves, as families throughout Mexico wait to find out if their loved ones are among the dead.⁴²

Tragedy by Sea

In 2010, the U.S. Coast Guard interdicted 2,088 illegal immigrants off the coast of the United States.⁴³ While the number of interdictions has consistently declined over the past six years, previous estimates count as many as 50,000 people attempting to make the maritime journey illegally from the Caribbean each year.⁴⁴ The majority of these travelers set sail from Cuba, Haiti, and the Dominican Republic.

Cuban Journey. In 1980, Americans became intimately familiar with the image of Cuban “boat people” fleeing their home island in hope of reaching U.S. shores. During what was known as the Mariel boatlift, approximately 125,000 people fled Cuba for South Florida in a six-month period after

37. Karl Penhaul, “‘Train of Death’ Drives Migrant American Dreamers,” CNN, June 25, 2010, at <http://www.cnn.com/2010/WORLD/americas/06/23/mexico.train.death/index.html?iref=allsearch> (May 24, 2011).

38. George Grayson, “Mexico’s Southern Flank: The ‘Third’ U.S. Border,” *Orbis* Vol. 50, No. 1 (Winter 2006).

39. Kansas City Southern de Mexico, “Mapa del Sistema,” at [http://www.kcsouthern.com/en-us/KCS/Documents/system_map\[1\].pdf](http://www.kcsouthern.com/en-us/KCS/Documents/system_map[1].pdf) (March 16, 2011).

40. Grayson, “Mexico’s Southern Flank.”

41. Mara Gay, “Officers Arrested Over Mexico Mass Graves; Death Toll Climbs to 145,” AOL News, April 15, 2011, at <http://www.aolnews.com/2011/04/15/police-officers-arrested-over-mexico-mass-graves-death-toll-cli/> (May 24, 2011).

42. *Ibid.*

43. U.S. Coast Guard, “Alien Migrant Interdiction, FY 1982–Present,” January 11, 2011, at <http://www.uscg.mil/hq/cg531/AMIO/FlowStats/FY.asp> (January 11, 2011).

44. Watts, “Caribbean Maritime Migration.”

Fidel Castro declared that anyone who wanted to go to the U.S. was free to board a boat at Mariel harbor and leave Cuba.⁴⁵ While Cuban nationals had been leaving Cuba in significant numbers since the end of the Cuban Revolution, the Mariel boatlift was the first major influx of Cuban immigrants to the U.S.⁴⁶ It would not be the last.

In 1994, another massive flood of Cuban émigrés approached U.S. shores when Castro announced that the Cuban Frontier Guard would not prevent anyone from leaving the country. During the Balsero (rafter) crisis, the U.S. Coast Guard interdicted approximately 38,560 Cubans in the Florida Strait as a part of Operation “Able Vigil.”⁴⁷ Until 1994, Cuban refugees who were picked up at sea by the Coast Guard would be brought to the U.S. mainland and were allowed to remain in the U.S. After this second influx of immigrants, the U.S. and Cuba declared in a “normalizing” agreement on immigration policy that the U.S. would no longer pick up Cubans at sea to bring them ashore. Thus began the policy known as “wet foot, dry foot” in 1995. Cubans intercepted at sea are now automatically repatriated to Cuba or, if they exhibit a credible fear of persecution, held at Guantanamo Bay while seeking asylum or refuge in a third country. Only those who reach U.S. soil are allowed to remain here.⁴⁸

The adoption of the “wet foot, dry foot” policy drastically changed the nature of Cuban immigration to the United States. Before 1995, the goal of those fleeing Cuba had simply been to make it off the island and wait for U.S. rescuers in the Flori-

da Strait. Thus, rafts, small boats, even Styrofoam vessels and inner tubes made up a large number of the means of transport. These vessels presented many dangers, including the threat of capsizing and drowning, dehydration, exhaustion, and lack of food. Estimates indicate that during the Balsero crisis, 25 percent to 75 percent of Cubans who attempted the journey died at sea.⁴⁹

Under current immigration policy, Cubans must now traverse the 90 miles from the island to the coast of Florida and reach U.S. soil in order to be admitted into the country. Consequently, Cubans have increasingly turned to smugglers and “go-fast” boats, long and narrow vessels designed to reach high speeds, to circumvent Coast Guard vessels, thereby lowering the risks of dehydration and drowning associated with longer voyages.⁵⁰ Many of these vessels are financed not by the individuals themselves, but by their relatives in the U.S. who are willing to pay up to \$10,000 per individual.⁵¹ Hence, human smuggling from the island, in large part, is supported by Cuban Americans willing to pay to bring their relatives to the U.S. in the hopes of exploiting the current policy. At the same time, illegal Cuban immigrants are also turning to island hopping, heading first to the Dominican Republic, then Puerto Rico, in order to avoid detection.⁵²

These new methods carry a variety of new risks. First, smugglers have been known to abandon their human “cargo,” or force the people in their care to swim to land, when threatened with interdiction. In

45. Andrew Glass, “Castro Launches Mariel Boatlift, April 20, 1980,” *Politico*, April 20, 2009, at <http://www.politico.com/news/stories/0409/21421.html> (May 24, 2011).

46. Ruth Ellen Wasem, “Cuban Migration to the United States: Policy and Trends,” Congressional Research Service *Report for Congress* No. R40566, June 2, 2009, at <http://www.fas.org/sfp/crs/row/R40566.pdf> (January 28, 2011).

47. U.S. Coast Guard, “Alien Migrant Interdiction, FY1982–Present.”

48. Wasem, “Cuban Migration to the United States.”

49. Jefferson Morley, “U.S.–Cuba Migration Policy,” *The Washington Post*, July 27, 2007, at <http://www.washingtonpost.com/wp-dyn/content/article/2007/07/27/AR2007072701493.html> (May 24, 2011).

50. David Kyle and Marc Scarcelli, “Migrant Smuggling and the Violence Question: Evolving Illicit Migration Markets for Cuban and Haitian Refugees,” *Crime, Law and Social Change*, Vol. 52, No. 3 (March 6, 2009), at <http://law.journalfeeds.com/society/crime-law-and-social-change/migrant-smuggling-and-the-violence-question-evolving-illicit-migration-markets-for-cuban-and-haitian-refugees/20090306/> (May 24, 2011).

51. “High-Speed Escape: Greater Optimism at Home Has Not Stopped the Exodus to the United States,” *The Economist*, June 12, 2008, at <http://www.economist.com/node/11546110> (May 24, 2011).

52. Watts, “Caribbean Maritime Migration.”

2002, 17 Cubans were found on Cay Sal, an uninhabited island in the Bahamas, without food and water. The smuggler told these individuals that he would return for them after finding fuel and never came back.⁵³ In addition, smugglers eager to deliver their cargo and receive their payment have also become more aggressive in run-ins with the Coast Guard, leading to death and injury among passengers. In 2006, an overloaded boat of Cubans repeatedly tried to ram a Coast Guard cutter attempting to interdict their vessel. One immigrant aboard died as a result.⁵⁴

Perhaps the best known case in recent U.S.–Cuban memory is that of Elián Gonzalez. In November 1999, five-year-old Elián was found by a local fisherman in an inner tube three miles off the coast of Ft. Lauderdale, Florida.⁵⁵ The young boy had been among 11 people being smuggled from Cuba to the United States when the boat capsized. Nine others, including Elián’s mother, drowned. Upon being rescued by the fisherman, Elián was turned over to the U.S. Coast Guard. Despite the continued “wet foot, dry foot” policy, the Coast Guard opted to bring him ashore for medical attention after he had floated alone for two days without food or water.⁵⁶ Elián’s relatives in Miami, countless refugee groups, and other Cuban exiles fought to keep him in the United States, arguing that his mother had died trying to free him from government oppression.⁵⁷ Ultimately, the 11th U.S. Circuit Court of Appeals ruled that he be returned to his father in Cuba, and then-Attorney General Janet Reno ordered a raid to remove Elián from his relatives’ home in Miami. More than 10 years later, Elián remains a symbol of the plight of illegal Cuban refugees, while the death

of his mother and others aboard their boat serves as a reminder of the vast dangers of the journey.

Today, the “wet foot, dry foot” policy remains an incentive that encourages illegal Cuban immigration. Congress, however, has yet to agree on a revision of the policy because of continued political repression in Cuba and the continued existence of the Castro regime.

Haitian and Dominican Crossings. The Haitian experience today largely parallels that of early Cuban émigrés. Haiti, with an estimated per capita GDP of merely \$1,200, and with 80 percent of its population living under the poverty line, has long been the poorest nation in the Western hemisphere.⁵⁸ Thus, Haiti’s economy cannot as readily support networks of professional human smugglers as Cuba’s. These networks demand vast coordination and resources, requiring smugglers to solicit high fees, which few Haitians can meet. The majority of Haitians, therefore, attempt to cross the nearly 700 miles between Haiti and Florida unassisted.

The distance alone, over seven times further than the distance between the United States and Cuba, makes the journey significantly more dangerous for Haitian travelers. This is particularly true, given that many vessels set out without navigation equipment, including compass and charts. Many of those navigating have little or no nautical experience. For the most part, they simply follow the northerly winds and hope to stumble upon the Florida coast. Coupled with the fact that most set out in very small sailboats, this raises the question of how many Haitians are lost at sea each year.⁵⁹ According to estimates by the U.S. Coast Guard, the success rates

53. “17 Cuban Migrants Left Abandoned on an Island,” *The Los Angeles Times*, August 31, 2002, at <http://articles.latimes.com/2002/aug/31/nation/na-cubans31> (May 24, 2011).

54. “Cuban Smugglers Clash with Coast Guard,” *The New York Times*, July 9, 2006, at <http://www.nytimes.com/2006/07/09/us/09cuba.html> (May 24, 2011).

55. U.S. Coast Guard, “Daily Chronology of Coast Guard History: November,” September 28, 2010, at http://www.uscg.mil/history/Chronology_Nov.asp (May 24, 2011).

56. “A Chronology of the Elián Gonzalez Saga,” PBS *Frontline*, at <http://www.pbs.org/wgbh/pages/frontline/shows/elian/etc/eliancron.html> (May 24, 2011).

57. “How the Saga Unfolded,” BBC News, June 28, 2000, at <http://news.bbc.co.uk/2/hi/americas/627262.stm> (May 24, 2011).

58. Central Intelligence Agency, “The World Factbook: Haiti,” May 17, 2011, at <https://www.cia.gov/library/publications/the-world-factbook/geos/ha.html> (May 24, 2011).

59. Watts, “Caribbean Maritime Migration.”

for these small vessels and rafts is no better than 50 percent, and is often closer to 25 percent.⁶⁰ A 25 to 31 miles-per-hour wind (22 to 27 knots), for example, can cause waves between 8 feet and 13 feet, easily destroying these makeshift and unseaworthy vessels and sweeping their passengers out to sea.⁶¹

Unlike Cubans, Haitian immigrants are automatically repatriated back to Haiti. The same is true of Dominican immigrants, who attempt to cross the roughly 90-mile Mona Pass between Puerto Rico and the Dominican Republic. From Puerto Rico, these immigrants then attempt to travel to Florida. The Dominican Republic has a per capita GDP more than seven times that of Haiti.⁶² While 42.2 percent of the Dominican Republic remains below the poverty line, the economy is much more able to support organized smuggling networks.⁶³ Dominican smugglers run “yolas,” shallow boats, at night to avoid detection. These boats are often overloaded, making them extremely dangerous and likely to capsize in the same manner as Haitian vessels. Ultimately, there is no way to know just how many vessels capsize or are lost at sea each year.

Island Hopping. Last year, the U.S. Coast Guard interdicted 422 Cubans, 1,377 Haitians, and 140 Dominicans in the waters off the U.S. coast.⁶⁴ Since 2004, the number of individuals interdicted has decreased from 10,899 to 2,088 in 2010.⁶⁵ In order to both intercept and deter these illegal immigrants, the Coast Guard maintains a forward deployment of

vessels and aircraft in the Florida Strait, Windward Passage, and Mona Pass.⁶⁶ Coast Guard interdiction occurs on both humanitarian grounds, under the International Convention for the Safety of Life at Sea, and as a matter of rule of law. Other deterrents include the aggressive repatriation of Haitian, Dominican, and certain Cuban illegal immigrants, prosecution of smugglers, and public diplomacy media campaigns in nations of origin.

In order to avoid interdiction some illegal immigrants have turned to island hopping. Haitians, for instance, have been known to travel to the Turks and Caicos Islands, the Bahamas, or Bermuda before attempting to reach their final destination of the United States.⁶⁷ Others have increasingly turned to land routes through Mexico.

Commonly called the “dusty foot” route, playing off the “wet foot, dry foot” policy, land passage, according to multiple sources, has recently become the preferred means of entry for the majority of Cubans and others throughout the Caribbean islands.⁶⁸ This change in migration patterns coincides with the decrease in maritime interdictions.

All that fleeing Cubans must do is to reach the U.S.–Mexico border and present themselves to U.S. Customs and Border Protection agents. By making it onto American soil, even if only at a point of entry, a Cuban can generally claim the benefits of the “dry foot” policy and be paroled into the U.S.⁶⁹ In 2007, 1,044 Cubans arrived on Florida’s shore, 2,868 were intercepted at sea, and 11,126 traveled

60. Rear Admiral Vincent Atkins, U.S. Coast Guard, “Department of Homeland Security Air and Marine Operations and Investments,” testimony before the Subcommittee on Homeland Security, Committee on Appropriations, U.S. House of Representatives, April 19, 2010, at http://www.dhs.gov/ynews/testimony/testimony_1271690315007.shtm (May 24, 2011).

61. National Oceanic and Atmospheric Administration, “Beaufort Wind Scale,” at <http://www.spc.noaa.gov/faq/tornado/beaufort.html> (May 24, 2011).

62. Central Intelligence Agency, “The World Factbook: Dominican Republic,” May 17, 2011, at <https://www.cia.gov/library/publications/the-world-factbook/geos/dr.html> (May 24, 2011).

63. *Ibid.*

64. U.S. Customs and Border Protection, “Total Illegal Alien Apprehensions by Fiscal Year.”

65. *Ibid.* Total alien migrant interdiction figures include Haitian, Dominican, and Cuban, as well as minimal numbers of Chinese (0 in 2010), Mexican (61 in 2010), “other” (88 in 2010), and Ecuadorian (0 in 2010) migrants.

66. Atkins, “Department of Homeland Security Air and Marine Operations and Investments.”

67. Kyle and Scarcelli, “Migrant Smuggling and the Violence Question.”

68. *Ibid.*, and Wasem, “Cuban Migration to the United States.”

69. Wasem, “Cuban Migration to the United States.”

through Mexico to reach the U.S. border.⁷⁰ In October 2008, Mexico began a policy of repatriating all Cubans who arrive in the country without proper documents.⁷¹ In both Mexico and the U.S., all other nationalities face automatic repatriation.

The majority of immigrants choosing the “dusty foot” route to the United States are Cuban or Dominican. This is largely because the length and complexity of the journey require highly organized smuggling rings to support the trek. The typical smuggling fee lies somewhere between \$10,000 and \$15,000 per person.⁷² According to Mexico’s National Institute of Immigration (INM), 337 immigrants of Caribbean origin were interdicted and deported by Mexican authorities last year.⁷³ These numbers, however, represent only those caught by authorities. The total number of Caribbean immigrants attempting to travel to the United States through Mexico is probably significantly higher.

While the distance between Mexico and the Dominican Republic can be over 1,000 miles, the distance between Cuba and the popular landing site of Quintana Roo, Mexico, is only 120 miles. Once reaching Mexican land, however, illegal immigrants face the same dangers as Mexicans and Central Americans traveling north. Additionally, these immigrants are often specifically targeted for kidnapping and extortion. This is particularly true for Cubans, since criminal gangs and corrupt officials have realized that many of these immigrants’ expenses are paid by wealthier relatives in the United States, and seek to extract ransoms or other payments. Illegal

immigrants also face violence in the Yucatan Peninsula as smugglers compete for business and deliver their human cargo at all costs.⁷⁴

On June 11, 2008, for example, armed criminals seized a bus carrying 33 Cubans who had been intercepted off the coast of Mexico and were being transported to an immigrant detention facility in Chiapas. Mexican officials blamed the incident on Miami-based smugglers determined to deliver their cargo to the United States and receive payment.⁷⁵ In 2010, Mexican authorities rescued six illegal Cuban immigrants held hostage in Cancún. The year before, 14 illegal Cuban immigrants were tortured and beaten by smugglers in an abandoned home, also in Cancún.⁷⁶

Societal Costs of Illegal Immigration

Illegal immigration has far-reaching impacts that extend deep inside the home country, taking a large toll on communities and societal units throughout Latin America. This aspect is often overlooked despite its long-term negative effects. In Latin America, the largest percentage of illegal immigrants consists of males between the ages of 30 and 50.⁷⁷ Many of these men leave their homes motivated by the hopes of better economic opportunities. Once in their destination country, they look for jobs to make money to send home to their families. These remittances have proven to provide measurable benefits for the families in the countries of origin. Remittances allow opportunities for housing, buying food, and access to education and health

70. Kyle and Scarcelli, “Migrant Smuggling and the Violence Question.”

71. Wasem, “Cuban Migration to the United States.”

72. *Ibid.*

73. Instituto Nacional de Migración, “3.2.1. Eventos de extranjeros devueltos por la autoridad migratoria mexicana, según continente y país de nacionalidad, 2010,” May 26, 2011, at <http://www.inm.gob.mx/estadisticas/2010/cuadro3.2.1.xls> (June 2, 2011).

74. Kyle and Scarcelli, “Migrant Smuggling and the Violence Question.”

75. Carol J. Williams, “No Strait Route for Cuban,” *Los Angeles Times*, June 18, 2008, at <http://articles.latimes.com/2008/jul/18/world/fg-smuggle18> (March 17, 2011).

76. Juan O. Tamayo, “Police Rescue Kidnapped Cuban Migrants,” *The Miami Herald*, September 2, 2010, at <http://www.miamiherald.com/2010/09/02/1803894/police-rescue-kidnapped-cuban.html> (March 17, 2011).

77. Louka T. Katseli, Robert E.B. Lucas, and Theodora Xenogiani, “Effects of Migration on Sending Countries: What Do We Know?” United Nations Secretariat, Department of Economic and Social Affairs, International Symposium on International Migration and Development, June 2006, at http://www.un.org/esa/population/migration/turin/Symposium_Turin_files/P11_Katseli.pdf (March 18, 2011).

care, but also create an appetite for consumption in favor of investment.⁷⁸ Overall, in the Caribbean and in Central America, remittances make up a significant portion of GDP. In Haiti and Honduras, for example, remittances make up 25 percent of GDP. At the same time, these remittances do not contribute to the long-term growth of receiving countries. Ultimately, while remittances may help reduce poverty in the short term, over the long term, they damage communities by removing laborers, sometimes even highly skilled workers, from the local economy and by disrupting families and weakening local social structures. This “outflow” can bleed human capital and reduce the overall economic growth potential of the country.⁷⁹

Further, in Latin America, when a man leaves his family, the family enters a time of “informal negotiations” about who will assume the role as “representative of the household.”⁸⁰ Often it is the mother, the wife, or the eldest son. When a woman seeks to fill this role, she must overcome engrained cultural and social challenges, especially when it comes to access to the labor market.⁸¹ These obstacles may often limit the ability of the household representative to support the family.

The damaging effects of partial-family migration are also of serious concern. The absence of a single family member, such as when a father leaves a family, can cause an acute vacuum within the family. For a wife losing her husband, or a child losing

his father, the psychological impact can be enormous. A young boy may well base his philosophy on education, work, and personal responsibility on his father’s actions, which may eventually result in him emulating the father’s illegal migration.⁸²

Family members left behind must also face the risk of losing their loved ones forever, without ever finding out what happened. If an illegal immigrant is killed, his family members may never know his fate, only that the remittances have stopped and that they are now without financial support.

The U.S. Response

The human tragedy of illegal immigration has been called a humanitarian crisis by groups from the American Civil Liberties Union to the Immigration Policy Center.⁸³ Rather than proposing serious solutions for securing the border and combating violence and human smuggling, however, this designation has been used to draw the wrong conclusion—that the U.S. needs less, not more, border enforcement.

It is likely that increased border security has, to some degree, created a “funnel effect” among illegal migration routes.⁸⁴ The U.S. Border Patrol itself has admitted that some of this change in illegal immigration patterns has stemmed from increased tactical infrastructure along the border, as the now largely complete border fence pushes illegal immigrants toward less populated and more dangerous areas.⁸⁵

78. *Ibid.*

79. Dilip Ratha and Sanket Mohapatra, “Increasing the Macroeconomic Impact of Remittances on Development,” The World Bank, Development Prospects Group, November 2007, at http://www.dilipratha.com/index_files/G8Berlin.pdf (April 27, 2011).

80. Katseli, Lucas and Xenogiani, “Effects of Migration on Sending Countries”

81. *Ibid.*

82. *Ibid.*

83. Jimenez, “Humanitarian Crisis,” and Raquel Rubio-Goldsmith *et al.*, “A Humanitarian Crisis at the Border: New Estimates of Death Among Unauthorized Immigrants,” Immigration Policy Center *Policy Brief*, February 1, 2007, at <http://www.immigrationpolicy.org/special-reports/humanitarian-crisis-border-new-estimates-deaths-among-unauthorized-immigrants> (May 24, 2011).

84. Raquel Rubio-Goldsmith *et al.*, “The ‘Funnel Effect’ and Recovered Bodies of Unauthorized Migrants Processed by the Pima County Office of the Medical Examiner, 1990–2005,” Binational Migration Institute, October 2006, at <http://www.derechoshumanosaz.net/images/pdfs/bmi%20report.pdf> (May 24, 2011).

85. Chad C. Haddal, Yule Kim, and Michael John Garcia, “Border Security: Barriers Along the U.S. International Border,” Congressional Research Service *Report for Congress* RL33659, March 16, 2009, at <http://www.fas.org/sgp/crs/homesecl/RL33659.pdf> (May 24, 2011).

Indeed, of the total border deaths, some 75 percent can be attributed to an escalation of deaths in the Arizona desert, with deaths in the Tucson sector—spanning 262 miles of the border between Arizona and Mexico—increasing from 11 in 1998 to 216 in 2005.⁸⁶

But the answer to this tragic problem is to continue the process of integrating the border resources—manpower, infrastructure, technology, and federal cooperation with state and local law enforcement—into a cohesive enterprise that can discourage illegal immigration, combat drug cartels and other criminal operations, and subsequently decrease the levels of violence and human smuggling.

The Bush Administration began major investments in border security in 2006. This increased emphasis on security and included more manpower, nearly 700 miles of fencing, new physical and technological infrastructure, and other technological deployments that were meant to secure border gaps. While this was yeoman's work toward making the southern border more secure, gaps still persist and the Obama Administration needs to develop a new strategy to finish the job. For instance, efforts should be made to delineate investments for a number of technologies that can supplement the work of the Border Patrol.

Yet, the Obama Administration continues to claim that the border is “more secure than ever.” This comes as the Administration has *cancelled* key border technologies like SBInet, a series of cameras and sensors meant to give the Border Patrol an operational picture of the border. It is essential that the Obama Administration fix its requirements process so that further technological investments will give the Border Patrol the best bang for its border-security buck.

Deeply concerning is that the Administration continues to erode interior enforcement efforts that would deter illegal immigrants from risking their

lives to enter the U.S. illegally, pushing for amnesty instead. The lax enforcement of immigration laws acts as a significant magnet for those looking for jobs in the United States. Amnesty would only act as a further incentive for illegal entry and also overwhelm security measures at the border. Alternatively, by taking steps to close border gaps while getting serious about interior enforcement, the U.S. can create an active deterrent to would-be illegal immigrants.

The U.S. must also combine this effort with stronger cooperation between U.S. and Latin American law enforcement agencies. Cooperative efforts such as Border Enforcement Security Task Forces (BEST) should be expanded. BESTs bring together local, state, federal, and foreign law enforcement, thereby helping to encourage collaboration and support measures to strengthen the border against security threats and criminal smuggling, while also decreasing illegal immigration and encouraging legitimate commerce.

Anti-Smuggling

Beyond the mere physical border security measures, the U.S. must maintain a robust anti-human-smuggling strategy. Immigration and Customs Enforcement (ICE), the primary U.S. agency charged with dismantling human-smuggling and human-trafficking networks has seen “an increase in hostage-taking, incidents of extortion by force or by threat of harm, use of firearms by human smugglers, and deadly roll-over car accidents involving smuggled aliens.”⁸⁷ Smugglers’ often complete disregard for human life makes ICE’s mission of the utmost importance.

ICE works to dismantle the infrastructure of human-smuggling networks. Its STAMP (Smugglers and Traffickers Assets, Moneys and Proceeds) program, for one, targets smuggling organizations’ profits.⁸⁸ The program focuses on anti-money-laun-

86. Jimenez, “Humanitarian Crisis.”

87. James Dinkins, “Enhancing DHS’ Efforts to Disrupt Alien Smuggling Across Our Borders,” testimony before the Subcommittee on Border, Maritime and Global Counterterrorism, Committee on Homeland Security, U.S. House of Representatives, July 22, 2010, at <http://www.hsdl.org/?view&doc=127580&coll=limited> (June 2, 2011).

88. Department of Homeland Security, “Project STAMP: Smuggler and Trafficker Assets, Monies and Proceeds,” February 8, 2011, at http://www.dhs.gov/files/programs/gc_1297182316667.shtm (May 24, 2011).

dering measures and seizing criminal assets to combat the estimated \$6.6 billion human-smuggling enterprise. STAMP also follows money trails left by smuggling networks in order to identify and locate members.⁸⁹

Other programs and operations have worked to dismantle the transportation infrastructure of these human smuggling networks. One example is ICE's "Operation In Plain Sight." In cooperation with Mexico's Secretaria Seguridad Publica (SSP), ICE investigated transportation shuttle companies thought to be involved in moving illegal aliens north from Nogales, Mexico, to the Phoenix and Tucson areas, and then on to cities as far north as Chicago and New York. The operation resulted in the arrest of 47 suspects and implicated several high-level members of smuggling organizations in Phoenix, Tucson, Nogales, and northern Mexico.⁹⁰

Public Diplomacy

Both along the southwest border and in locations along the path north, signs and warnings of the dangers of illegal migration abound. U.S. Customs and Border Protection operates the Border Safety Initiative (BSI) along the southern frontier. Begun in June 1998 and operating in every sector along the southwest border, BSI seeks to both educate individuals on the dangers of illegal immigration and ensure the safety and security of those entering the United States, regardless of immigration status.⁹¹

In addition to posting signs and billboards, the U.S. has collaborated with countries throughout Latin America and the Caribbean to employ mass media and public relations campaigns targeted at educating citizens about the dangers of illegal immigration.

In the Dominican Republic, for example, the U.S. collaborated with the Dominican government to create a media campaign featuring recorded interviews of individuals who lost family members at sea.⁹² As part of the BSI, the Border Patrol also operates the "No Más Cruces en la Frontera" (No More Crossing on the Frontier, or NMC) program. Launched in 2004, No Más Cruces reaches out to citizens throughout Latin America through television, radio, and printed public service announcements. Similar to the Dominican campaign, NMC seeks to educate and inform individuals of the dangers of illegal immigration and of hiring smugglers.⁹³

As part of NMC, the U.S. has released a CD to local radio stations throughout Mexico titled *migracorridos* (*migra* being a slang term for U.S. immigration agents and *corridos* referring to traditional Mexican folk songs). The songs on the CD narrate the perils and hazards encountered by Mexican illegal immigrants on their journey to the United States.⁹⁴ These programs have been well received in Mexico.

Following the February deaths in San Diego sector, the U.S. Border Patrol proposed collaboration with Mexican officials to sponsor public service

89. United Nations Office on Drugs and Crime, "The Globalization of Crime: A Transnational Organized Crime Threat Assessment," 2010, at http://www.unodc.org/documents/data-and-analysis/tocta/TOCTA_Report_2010_low_res.pdf (April 15, 2011).

90. Department of Homeland Security, "'Operation In Plain Sight' - Targeting Arizona Smuggling Organizations," U.S. Immigration and Customs Enforcement *Fact Sheet*, April 15, 2010, at <http://www.ice.gov/doclib/news/library/factsheets/doc/plain-sight.doc> (April 15, 2011), and "Human Smuggling Network Busted," Reuters, April 15, 2010, at <http://www.reuters.com/article/2010/04/15/us-usa-crime-smugglers-idUSTRE63E6AK20100415> (April 15, 2011).

91. U.S. Customs and Border Protection, "Border Safety Initiative Overview," at http://www.cbp.gov/linkhandler/cgov/newsroom/highlights/ice/breakout/awareness/antonio_ruiz.ctt/antonio_ruiz.pdf (April 15, 2011), and Michael J. Fisher, "Enhancing DHS' Efforts to Disrupt Alien Smuggling Across Our Borders," testimony before the Subcommittee on Border, Maritime and Global Counterterrorism, Committee on Homeland Security, U.S. House of Representatives, July 22, 2010, at <http://www.hsd.gov/?view&doc=127580&coll=limited> (April 14, 2011).

92. Watts, "Caribbean Maritime Migration."

93. U.S. Customs and Border Protection, "Border Safety Initiative Overview."

94. Carlos Ceresole, "US Uses Songs to Deter Immigrants," BBC News, February 15, 2009, at <http://news.bbc.co.uk/2/hi/7879206.stm> (March 17, 2011).

announcements in Mexico. Such announcements illustrate the dangers of illegal immigration before individuals begin their journey.⁹⁵

Reforms in Mexico and Central America

Over the past several years, programs to support judicial and law enforcement reform have received greater levels of support from the U.S. government. Under the umbrella of the Merida Initiative, the Central America Regional Security Initiative (CARSI), and the Caribbean Basin Security Initiative (CBSI), U.S. agencies support a wide variety of programs geared toward institutional reform. A portion of the total \$1.3 billion appropriated for the Merida Initiative in Mexico since its creation is intended to provide technical assistance to law enforcement and training to improve vetting processes. Further, at least \$207 million of the FY 2011 aid appropriated under Merida is specifically to be used to improve judicial efficiency and effectiveness, coordinate efforts to improve prosecutorial ability, and improve court and prison management.⁹⁶

Modeled after the Merida Initiative, CARSI includes similar provisions for institutional reform. In addition to providing training and technical support to law enforcement officials in seven Central American countries, CARSI also funds community-policing programs to build local confidence in police forces. In Guatemala, for example, the U.S. Agency for International Development and the Bureau of International Narcotics and Law Enforcement Affairs have developed a pilot program called Villa Nueva to increase public trust in law enforcement. In order to address the 90 percent impunity rate in Central America, CARSI also allots aid for identifying weaknesses in the judiciary and improving investigative capacity.⁹⁷ Developed in 2010, the CBSI establishes parallel programs in Haiti, the Dominican Republic, and other countries in the region.

What the U.S. Should Do

In order to combat the problem of illegal immigration and reduce the toll on human lives, the United States must take a comprehensive approach of increasing border security and improving legal immigration procedures and public diplomacy, as well as fostering reforms and greater efforts to combat human smuggling in Latin America. Such an approach should entail:

- **Enhanced border security.** The Department of Homeland Security and Congress should define a variety of solutions capable of responding to the multiple threats faced at the border ranging from illicit drugs to illegal migration. This should include investments in technologies such as unmanned aerial vehicles (UAVs) and cameras or sensors that would give the Border Patrol enhanced monitoring and detection capabilities. Furthermore, cooperation between the U.S. and Mexican law enforcement through Border Enforcement Security Taskforces and related Merida Initiative programs are essential. At the same time, Congress and the Administration should also ensure that the U.S. Coast Guard has adequate vessels and personnel to fulfill its missions and interdict illegal immigrants at sea.
- **Anti-human-smuggling components incorporated into justice and law enforcement reform in Mexico and Central America.** The U.S. should continue programs that assist the reform and professionalization of Mexican and Central American law enforcement agencies and strengthen judicial reform to reduce impunity, combat corruption, and advance the rule of law. As currently proposed, the extension of the Merida Initiative (Merida 2.0) focuses on illicit drug trafficking and border infrastructure. Given the growing interconnections between drug and

95. Elizabeth Aguilera, "Border Crossing Deaths Prompt Public Warnings," Sign On San Diego, March 5, 2011, at <http://www.signonsandiego.com/news/2011/mar/05/deaths-illegal-immigrants-spur-agency-create-publi/> (May 24, 2011).

96. Peter J. Meyer and Clare Ribando Seelke, "Central America Regional Security Initiative: Background and Policy Issues for Congress," Congressional Research Service Report for Congress R41731, March 30, 2011, at <http://www.fas.org/sgp/crs/row/R41731.pdf> (April 27, 2011).

97. Clare Ribando Seelke, "Mérida Initiative for Mexico and Central America: Funding and Policy Issues," Congressional Research Service Report for Congress R40135, April 19, 2010, at <http://wilsoncenter.org/news/docs/Merida%20Initiative%20for%20Mexico%20and%20Central%20America.pdf> (April 27, 2011).

human trafficking, it should also include an anti-human-smuggling component and target activities that both facilitate and exploit the illegal movements of immigrants.

- **A holistic and region-wide approach to combating human- and drug-smuggling and -trafficking networks.** The U.S. should focus on developing a comprehensive and cohesive strategy for combating the transnational criminal organizations that engage in drug trafficking and human trafficking in the Mexico–Central American corridor and the Caribbean. As before, Congress should continue to press the Obama Administration to integrate its four key regional security programs—the Merida Initiative, Plan Colombia, CARS, and CBSI—into a single strategy aimed at the full range of illegal threats from narcotics trafficking and terrorism to illegal migration. It should recognize that while would-be illegal immigrants may be the victims of organized crime, they are also committing a crime by trying to enter the U.S. illegally.
 - **Rejection of amnesty proposals.** Granting amnesty to the millions of illegal immigrants in the United States would only make the country's problems with illegal immigration worse. The United States learned this lesson in 1986 when Congress granted a mass amnesty to the nearly 3 million illegal immigrants in the U.S. at the time. This amnesty only served as an incentive for illegal immigration, encouraging a whole new wave of people to come here illegally. The Administration must reject calls for amnesty and instead employ measures to deter migrants from crossing U.S. borders illegally.
 - **Programs to stem the “push-pull effect” that fosters illegal immigration.** Illegal immigration largely results from the “push-pull effect” caused by slow economies in Latin America and the need for workers in the United States. In order to stem this tide, the United States should implement a market-based temporary-worker pilot program to meet the American demand for workers, giving U.S. businesses access to a reliable, rotating workforce from abroad. Such a program would meet the needs of the American economy and also quell the drive for illegal immigration. Further, fostering free-market economic reforms in Latin America would help to strengthen the economic opportunities of the region and reduce the need for individuals to seek employment abroad in order to support themselves and their families.
 - **Strengthened interior enforcement measures in the U.S.** Since taking office, the Obama Administration has eroded key interior enforcement measures, including abandoning “Social Security No-Match,” which notified employers when they hired workers whose personal information did not match Social Security records and informed them of their legal obligations, and fostering changes that have weakened the 287(g) program, which allows Immigration and Customs Enforcement to train state and local police to enforce federal immigration laws. Likewise, the Administration has also reduced prosecutions of non-criminal aliens within the United States. These acts undermine efforts to deter illegal immigration, essentially sending the message that once here it is easy to find employment and stay. To ensure a comprehensive approach to illegal immigration, the Administration must commit to enforcing existing immigration laws.
 - **Active public diplomacy to deter illegal immigration.** The Department of Homeland Security should work with the Department of State to develop and conduct analysis based on deportations and patterns of illegal migration in order to target public diplomacy campaigns that deter those activities. Active public diplomacy should explicitly warn targeted audiences of the dangers and legal consequences of illegal immigration to the U.S. and should be directed at high-density areas of illegal out-migration in Mexico, Central America, and the Caribbean. Programs such as CBP's No Más Cruces have been well received in host nations and serve to educate and inform individuals of the dangers of illegal immigration and of hiring criminal smugglers. At the ambassadorial level, U.S. diplomats should make informational campaigns and activities aimed at reducing illegal migration an important objective for the success of their missions.
- Illegal immigration is dangerous not only to the illegal immigrants themselves, but costly to societ-

ies and nations as a whole. Cost-free migration to the U.S. is no longer possible. The dream of a better life via illegal migration is increasingly an illusion. Criminal organizations are increasingly adept at and entirely ruthless in exploiting the vulnerabilities of illegal immigrants. Neighboring nations linked by the North American Free Trade Agreement (NAFTA) and the Dominican Republic–Central American Free Trade Agreement (CAFTA-DR) to the world's largest market have unique advantages, but need to exploit them with enhanced economic freedom, entrepreneurship and expanded government and private investment. Developing individual accountability and responsibility, building trust in judicial

and law enforcement institutions, and reducing the extensive power of organized crime are crucial elements in combating human smuggling and putting an end to this tragic and increasingly devastating cycle.

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Background

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Want Real Homeland Security? Give State and Local Governments a Real Voice

Matt A. Mayer and Sheriff Lee Baca

Abstract: *Nearly a decade after 9/11, the U.S. government continues to approach homeland security from the viewpoint of protecting the United States from a conventional military attack by an outside enemy. This model places the vast majority of responsibility for preventing and responding to any attack on the federal government—and it is dangerously outdated. New threats facing the country require an updated, more inclusive approach. State and local governments need real input in the policymaking process; after all, it is states and localities that are experienced in responding to localized attacks. Heritage Foundation national security expert Matt Mayer and Los Angeles County Sheriff Lee Baca explain why and how American homeland security policy must change in order to respond to today's threats and challenges.*

The current—pre-9/11—homeland security policy model is not working. Although groups such as the Project on National Security Reform have broadly criticized the current model, those criticisms have not focused specifically on the failure to truly include state and local governments in the policy arena. At best, those efforts have continued to promote the failed model that merely gives states and localities a “venue,” but still no voice.

It is clear that this—and any—Beltway-driven policy apparatus:

- Fails to properly accommodate the views of state and local governments;

Talking Points

- The current—pre-9/11—homeland security policy model is not working. The post-9/11 world replaced the nation-state threat embodied by the Soviet Union with non-state actors like al-Qaeda, and replaced intercontinental ballistic missiles with suicide bombers.
- This shift shrank the role of the federal government, and placed much larger responsibilities on state and local governments.
- Any Washington-centric policy approach fails to embody the principle of federalism in homeland security policy—and fails to include the experience and resources of states and localities.
- If Americans want 21st-century homeland security policies to reflect the collective experience and resources of the nation's first responders and preventers, those men and women must be represented when a new policy is developed.
- Failure to provide such inclusion at the national policy table will result in more policies that unnecessarily burden states and localities, and that undermine the constitutional roles of all levels of government.

This paper, in its entirety, can be found at:
<http://report.heritage.org/bg2467>

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- Fails to put the vast experiences of state and local governments to use;
- Fails to acknowledge the resource advantages of state and local governments; and,
- Most fundamentally, fails to understand that U.S. homeland security policy must embody the principle of federalism.

Part of addressing these shortfalls must include giving state and local governments a better seat at the national policymaking table. States and localities must have a say when homeland security policies are proposed, developed, discussed, released, and acted upon. This kind of collaboration is one important key to building the national homeland security enterprise the nation needs.

The Current Model

Before 9/11, providing for homeland security primarily involved protecting the United States from external conventional attack. This model rested on the premise that any strike by an enemy would involve military weaponry, thereby placing the vast majority of responsibility for preventing and responding to a strike on the federal government—largely by way of the Defense Department and outward-facing departments and agencies, such as the State Department and the Central Intelligence Agency. The role for state and local governments was simply to prepare for a potential attack and to respond to a foreign military strike as they would to a catastrophic natural disaster. This role largely involved putting in place local civilian defense councils that conserved resources, organized response capabilities, and practiced air raid drills.

The post-9/11 paradigm replaced the nation-state threat embodied by the former Soviet Union with non-state actors like al-Qaeda, and replaced intercontinental ballistic missiles with suicide bombers on airplanes and trains. This shift shrunk the role of the federal government and placed much larger responsibilities on state and local governments.

To deal with this new threat, the federal government created the Homeland Security Council (HSC) and the Department of Homeland Security (DHS). DHS also established a Homeland Security Advisory Council (HSAC) as well as other task forces and advisory bodies that included state and local representation. In addition, as is required by other federal agencies, DHS uses instruments, such as the “notice of proposed rule making,” to provide an opportunity for state and local governments to comment when it adds, removes, or changes a regulation. Finally, DHS has initiated various efforts, such as creating new outreach offices and state and local working groups, to increase its stakeholder outreach. During the Quadrennial Homeland Security Review, DHS established a platform to allow state and local first responders and preventers to offer their thoughts and suggestions.¹

These changes and initiatives, however, did not fundamentally alter the national policymaking structure in Washington, D.C. The HSC and DHS did not fully and fairly represent the equities and resources outside of the federal government. In 2009, the HSC was folded into the National Security Council. That change led to an improved interagency approach with a revitalized, reorganized, and integrated National Security Council that now treats domestic and international security concerns in a more holistic manner. While improving integration on security issues among the policymaking staffs is a step in the right direction, without adequate input on state and local perspectives this consolidation has also further solidified a Washington-centric approach to the policymaking process.

Today, when a staff member at DHS (or any other federal entity) has a new policy idea, he will draft a policy paper. The policy paper will be circulated internally to a growing group of federal employees at DHS who will revise it. Once the policy paper receives approval from the executive team at DHS, the paper enters the interagency policy structure for revisions through the Interagency Policy Committees (IPCs).

1. While DHS should be commended for its outreach effort, the process for prioritizing, gathering, assessing, and integrating stakeholders was immature, inefficient, and of doubtful value. The authors commend the recommendations in the report by a National Academy of Public Administration panel that analyzed the outreach. See Franklin S. Reeder *et al.*, “A National Dialogue on the Quadrennial Homeland Security Review,” National Academy of Public Administration, April 2010, at <http://napawash.org.previewc40.carrierzone.com/wp-content/uploads/2010/08/QHSRFinalReport.pdf> (September 8, 2010).

The interagency policy structure is composed of representatives from all federal departments and agencies. Often, any agency or department has the ability to stop a policy from being approved, since consensus is required. Eventually, the policy will gain final approval at the desired level (not all policy must reach the President's desk). Once approved, the policy is rolled out.

At some point, usually late, in this process, the policy is circulated to state and local government representatives. This circulation could be broad or narrow depending on the issue. Those representatives will then send back comments, revisions, and suggestions to DHS. Unlike federal agencies or departments, state and local governments have no direct engagement in the policy process, and therefore no ability to stop policies they receive from being enacted. In fact, any comment, revision, or suggestion they provide can be totally ignored by the drafters.

Two Examples of How the Current System Works (or Doesn't)

Review, But No Veto Power. On February 28, 2003, President George W. Bush issued Homeland Security Presidential Directive 5 (HSPD-5): Management of Domestic Incidents.² Despite specifically noting that the “objective of the United States Government is to ensure that *all levels of government across the Nation* have the capability to work efficiently and effectively together, using a national approach to domestic incident management,” the implementation of HSPD-5 involved little to no state and local participation. (Emphasis added.)

One of the key elements of HSPD-5 was the development of a National Response Plan (NRP), which would take the place of the existing Federal Response Plan.³ HSPD-5 specifically failed to include state and local governments as entities with which DHS needed to consult. HSPD-5 stated that:

(16) The Secretary [of DHS] shall develop, submit for review to the Homeland Security

Council, and administer a National Response Plan (NRP). The Secretary shall consult with appropriate Assistants to the President (including the Assistant to the President for Economic Policy) and the Director of the Office of Science and Technology Policy, and other such Federal officials as may be appropriate, in developing and implementing the NRP. This plan shall integrate Federal Government domestic prevention, preparedness, response, and recovery plans into one all-discipline, all-hazards plan. The NRP shall be unclassified. If certain operational aspects require classification, they shall be included in classified annexes to the NRP.

(a) The NRP, using the NIMS [National Incident Management System], shall, with regard to response to domestic incidents, provide the structure and mechanisms for national level policy and operational direction for Federal support to State and local incident managers and for exercising direct Federal authorities and responsibilities, as appropriate.

(b) The NRP will include protocols for operating under different threats or threat levels; incorporation of existing Federal emergency and incident management plans (with appropriate modifications and revisions) as either integrated components of the NRP or as supporting operational plans; and additional operational plans or annexes, as appropriate, including public affairs and intergovernmental communications.

Given the broad function that the NRP would have over the response to domestic incidents, it defies comprehension why state and local governments would not be consulted meaningfully on its development.

After almost two years, DHS managed to release the NRP in December 2004.⁴ As a foreshadowing of

2. Homeland Security Presidential Directive 5: “Management of Domestic Incidents,” February 28, 2003, at http://www.dhs.gov/xabout/laws/gc_1214592333605.shtm (September 8, 2010).

3. Federal Emergency Management Agency, “Federal Response Plan,” April 1999, at <http://www.au.af.mil/au/awc/awcgate/frp/frpintro.htm> (September 8, 2010).

the dysfunction between DHS and the Federal Emergency Management Agency (FEMA) that would contribute to the failed response to Hurricane Katrina, DHS Secretary Tom Ridge replaced FEMA with a newly formed and relatively small Headquarters Integration Staff as the primary drafter of the NRP. So, not only did the federal government fail to meaningfully consult with state and local governments, it also minimized the role that the primary federal entity responsible for working with state and local governments during an incident had in developing the NRP.

Further demonstrating the lack of any meaningful role by state and local governments in the adoption of the NRP is the fact that the officials who approved the NRP do not include a single non-federal representative.⁵ The Department of Education, an entity with no role whatsoever in domestic incident response, is a signatory to the NRP, while FEMA is not. Not one governor or mayor signed it.

Not surprisingly, when the first real test of the NRP occurred after Hurricane Katrina struck the Gulf Coast, not only did FEMA, under the leadership of Michael Brown, ignore the NRP, but Louisiana Governor Kathleen Blanco and New Orleans Mayor Ray Nagin also failed to comply with the response plan. This failure resulted in widespread confusion on operations, communications, and protocols.

On March 22, 2008, the federal government replaced the NRP with the National Response Framework (NRF). As is typically the case with new directives, DHS circulated drafts of the NRF for public comment. But, once again, DHS was under no obligation to make any changes to the

draft NRF based on comments from state and local governments.

No Consultation and No Veto Power. In order to help combat America's swelling illegal immigration population, Immigration and Customs Enforcement (ICE) launched a program in January 2006 based on the authority provided in Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996.⁶ Section 287(g) authorizes the federal government to enter into Memorandums of Agreement (MOAs) with state and local law enforcement entities that allow those entities to enforce federal immigration laws.⁷

The 287(g) program proved popular with state and local law enforcement agencies. With limited financial resources, ICE entered into 66 MOAs with state and local law enforcement agencies. ICE trained more than 1,000 officers who then helped identify roughly 130,000 illegal immigrants who could be deported.⁸

Despite the popularity of 287(g) with state and local entities, DHS—under the leadership of former Arizona governor Janet Napolitano, who issued a record number of vetoes on Arizona illegal immigration legislation—altered the program: On July 9, 2009, the Obama Administration announced innocuous-sounding plans to make the MOAs “more uniform.” But there are substantive changes that go to the heart of the program and will disrupt any real attempt to enforce the law. As highlighted in a previous Heritage Foundation paper,⁹ the changes include:

Forcing local law enforcement agencies to pursue all criminal charges. The new MOAs would require law enforcement to prosecute

4. U.S. Department of Homeland Security, “National Response Plan,” December 2004, at <http://www.iir.com/global/FusionCenter/NRPbaseplan.pdf> (September 8, 2010).

5. *Ibid.*, pp. v–viii.

6. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Public Law 104–208, September 30, 1996, at http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=104_cong_public_laws&docid=f:publ208.104.pdf (September 8, 2010).

7. *Ibid.*, p. 547.

8. Immigration and Customs Enforcement, “Updated Facts on ICE’s 287(g) Program,” April 12, 2010, at http://www.ice.gov/pi/news/factsheets/section287_g-reform.htm (September 13, 2010). [possible change tk]

9. Matt A. Mayer and Jena Baker McNeill, “Time to Stop the Rush for ‘Amnesty’ Immigration Reform,” Heritage Foundation *Background* No. 2385, March 18, 2010, at <http://www.heritage.org/research/reports/2010/03/time-to-stop-the-rush-for-amnesty-immigration-reform>.

illegal immigrants taken into custody for all initial offenses. In practice, if law enforcement discovers that a person in custody is illegally in the U.S., the agency will often start removal proceedings instead of going through a costly and lengthy criminal process that would produce the same result. Requiring criminal prosecution would deplete the resources of local jurisdictions for no practical or legitimate reason.

Limiting the use of immigration checks to those arrested for major offenses. The new MOAs attempt to limit the use of immigration checks to those arrested for major offenses. However, most illegal immigrants who have been identified under the program commit misdemeanors, not felonies. Mohammad Atta, one of the 9/11 hijackers, was pulled over in a traffic stop two days before the 9/11 attacks. If the officer had inquired about Atta, he might have discovered that Atta was in the country illegally and might have prevented his participation in the attacks.

Questioning the credibility and professionalism of state and local law enforcement. The announced changes insinuate that ICE should do more to prescribe how Section 287(g) participants use their authority. However, Americans have traditionally trusted local law enforcement officers to enforce U.S. criminal laws. In contrast, the Obama Administration's changes would question the decisions of law enforcement to a degree that would dissuade them from participating in the program.

Even worse than the substantive changes was the procedural component: These changes were made without any input by state and local governments. Because the vast majority of illegal immigrants reside outside Washington, D.C., these changes were made without concern for the enormous

financial and criminal impact that illegal immigrants have on states and localities.

A system that places all policy power in the hands of the federal government simply does not work when the vast majority of resources and impacts are in states and localities.

Policymaking: Disconnected from Resources

Unlike during the Cold War, when the federal government had the soldiers and weapons used to deter and, in some cases, fight the enemy or the enemy's proxy, the domestic resources needed to prevent and respond to a terrorist attack are primarily possessed by state and local government and outside Washington, D.C.

Far more people employed by state and local governments are involved in domestic security than people employed by the federal government. In fact, "[w]hen firefighters and emergency management personnel are included [with law enforcement personnel], the state and local personnel advantage is roughly 2,200,000 to 50,000."¹⁰ As for funding domestic security, Heritage research concluded that:

[T]he eight-year combined budget for the DHS and DOJ [Department of Justice] is roughly \$323 billion. The total eight-year homeland security budget (law enforcement, the fire service, and emergency management) for just the 26 states and District of Columbia and the 85 cities and counties that comprise the top 43 jurisdictions that are eligible for federal Urban Areas Security Initiative (UASI) funds due to the risk of a terrorist attack is at least \$220 billion, or 68 percent of the combined DHS and DOJ budget. With the homeland security budgets of the remaining 24 states and thousands of cities and counties combined with the state military affairs budgets, state and local homeland security spending certainly exceeds federal spending.¹¹

10. Matt A. Mayer, "An Analysis of Federal, State, and Local Homeland Security Budgets," Heritage Foundation *Center for Data Analysis Report* No. 09-01, March 9, 2009, at <http://heritage.org/Research/Reports/2009/03/An-Analysis-of-Federal-State-and-Local-Homeland-Security-Budgets>.

11. *Ibid.*

Despite the fact that states have more personnel and provide more funding for homeland security, the policy structure that arose after September 11, 2001, perpetuated the exclusively federal national security model, which means that the federal policy tail wags the far larger state operational dog.

Given the wide array of 21st-century risks, this structure makes no sense since it disconnects those with the primary responsibilities, personnel, resources, and, most critically, experience from developing the policies under which they will have to work. If Americans want a truly national homeland security enterprise, they must empower the state and local governments that largely make up that enterprise to fully partake in it.

State and Local Governments at the National Policy Table

Giving state and local government an opportunity to comment only after policy documents have been discussed, drafted, edited, and distributed broadly within the federal government simply is not working. Likewise, having agencies filter and edit the input of state and local concerns into the Interagency Policy Committees distorts rather than informs the policymaking process. This approach lessens the level of transparency that should exist between the three levels of government involved in the nation's national security enterprise.

In March 2009, National Security Advisor General James Jones proposed transparency as a principle to guide the interagency process. General Jones stated that “the United States must integrate its ability to employ *all* elements of national power in a cohesive manner.”¹² This transparency and integration must be extended to state and local partners.

On January 11, 2010, President Obama signed an executive order establishing the Council of Governors. The council's purpose is to advise and review Defense Department policies on “such matters as involving the National Guard of the various States; homeland defense; civil support; synchronization

and integration of State and Federal military activities in the United States; and other matters of mutual interest pertaining to National Guard, homeland defense, and civil support activities.”¹³ The establishment of the council presented a recognition that the current system of consultation must be improved. Similar initiatives may be applicable for homeland-security-related matters. In addition, there must be appropriate representation of state and local perspectives in the formulation of homeland security policy in the National Security Council.

Establishing a National Enterprise

Ultimately, the right solution is to establish a true homeland security enterprise. Protecting America at home is a national mission that requires the concerted effort of the entire nation, including state and local governments, the private sector and nongovernmental organizations, local communities, families, and individuals. Many of the most vital tasks are conducted most effectively in a decentralized manner. The national enterprise must facilitate cooperation, innovation, resiliency, flexibility, and adaptability—not promote rigid Washington-centric solutions.

Americans face threats—naturally occurring and deliberate—that can, will, and do target all elements of society. It is therefore incumbent upon all elements of society to work together to counter these threats. To be more agile, U.S. bureaucracy must foster better decision making in Congress and in the interagency process, support the development of a new generation of professionals, and facilitate information-sharing throughout all elements of the enterprise. Furthermore, to close the gaps where terrorists hide, Americans must empower individuals and communities to be prepared and extend international cooperation throughout U.S. homeland security activities. In a 2008 report, a task force chaired by the Center for Strategic and International Studies and The Heritage Foundation identified the following critical tasks for developing a national enterprise:

12. General James Jones, “Memorandum on the 21st Century Integration Process,” The White House, March 18, 2009.

13. Press release, “President Obama Signs Executive Order Establishing Council of Governors,” The White House, January 11, 2010, at <http://www.whitehouse.gov/the-press-office/president-obama-signs-executive-order-establishing-council-governors> (September 8, 2010).

- **Foster** a national culture of preparedness by focusing on building self-reliant communities and individuals;
- **Shift** to focus on building and sustaining a resilient national infrastructure;
- **Expand** international cooperation throughout homeland security programs;
- **Develop** a framework for domestic intelligence; and
- **Establish** national programs to improve professional development at all levels of governance on security and public safety.¹⁴

Accomplishing and enabling these tasks requires national policies that better reflect the requirements of the entire homeland security enterprise.

A key step in building the national enterprise will be establishing more robust state and local representation within the executive branch that puts the principle of federalism into practice, allowing the participation in the formation of policy that directly affect all levels of government on vital security issues. Additionally, rather than have their views filtered and edited through current consultation processes such as the HSAC, state and local advisors on policy must be given the opportunity equal to federal agencies within the IPC. They should be allowed to contribute to policy and strategy formulation and provide the impact analysis that is routinely absent from the current process.

The President should issue an executive order that gives states and localities a seat at the federal policy table on homeland security issues. Enhancing state and local input requires avoiding simply adding even more bureaucracy to an already bloated government apparatus. This policy group should be kept small and within the executive office of the President. The group should work directly with the National Security Council and be included in appropriate Interagency Policy Committees.

To ensure that the people assigned to this group are able to adjust to how things work in Washing-

ton, D.C., to gain the experience necessary to have a meaningful impact, and to reduce the inefficiencies inherent to rapid turnover, they should be detailed to this group for multiyear terms. Because state and local budgets are already tight, funding should come from the yearly federal appropriations.

The presidential directive should specifically lay out the process and criteria for selection. This process should be rigorous, fair, non-partisan, and transparent. The members of the policy group should be required to have a significant amount of experience in protecting their communities so they can apply the greatest amount of collective experience possible. Once an individual's term expires, he or she should return to the state or local entity and provide unique insight into the federal process.

If Americans want 21st-century homeland security policies to reflect the collective experience and resources of the nation's first preventers and first responders, they must ensure that those men and women are represented when a new or amended policy is developed, debated, drafted, revised, and released. Failure to provide such inclusion at the national policy table will result in more policies that are so awkward to implement that they are ignored, more policies that place unnecessary mandates and requirements on states and localities, more policies that undermine the constitutional roles for all levels of government, and more policies that fail to adhere to this country's federalist principles.

This change to the national homeland security enterprise reflects a 21st-century process, increases the ultimate efficacy of national policy, and reflects the balance of power and real roles and responsibilities across government entities. The time to make this change is now.

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14. David Heyman and James Jay Carafano, "Homeland Security 3.0: Building a National Enterprise to Keep America Safe, Free, and Prosperous," Heritage Foundation *Special Report* No. 23, September 18, 2008, at <http://www.heritage.org/Research/Reports/2008/09/Homeland-Security-30-Building-a-National-Enterprise-to-Keep-America-Safe-Free-and-Prosperous>.

Security and Federalism: Protecting America from Outside the Beltway. *Lee Baca* is sheriff of the Los Angeles County Sheriff's Department, the largest in the U.S., with a budget of \$2.4 billion. He leads a staff of 18,000 and provides protection to 40 incorporated cities, 90 unincorporated communities, nine community

colleges, hundreds of thousands of daily rail commuters, and 4 million people in the greater Los Angeles area. Sheriff Baca also manages the nation's largest local jail system, which houses 20,000 prisoners, and serves as the Director of Homeland Security–Mutual Aid for California Region I, which serves 13 million people.

ISSUE BRIEF

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Schumer–Corker–Hoeven Amendment Fails on Securing the Border and Halting Illegal Immigration

Robert Rector and Jessica Zuckerman

On Friday, Senators Bob Corker (R–TN) and John Hoeven (R–ND), joined by Senator Charles Schumer (D–NY), introduced an amendment to the Senate’s comprehensive immigration reform bill (S. 744). The amendment, which when incorporated into the bill ballooned it to nearly 1,200 pages, is touted as putting teeth into the border security provisions of the Gang of Eight’s amnesty bill.

In public discussions the phrase “border security” is generally shorthand for not only protecting the nation’s sovereignty but also stopping or greatly reducing future illegal immigration into the U.S. The Schumer–Corker–Hoeven amendment would do neither. While Senator Corker has claimed that his amendment should “put to rest” the nation’s security concerns along the border, the reality is that the amendment is far from a “game changer.”

False Promises on Security and Immigration. The authors of the amendment assert that, under the revised legislation, amnesty recipients could not move forward to obtain green cards and full access to the welfare/entitlement state unless specific “triggers” are met. Remarkably, the “triggers” in the amendment do not require a reduction in the

number of illegal immigrants entering the country in future years. Nor do they have to be in place before an initial amnesty is granted to millions of illegal immigrants under the bill.

Under the amended S. 744, the number of future illegal immigrants entering and residing in the country can actually increase and amnesty recipients would still receive green cards and become eligible for citizenship. All this would come years after these illegal immigrants receive the initial registered provisional immigrant status.

The main trigger in S. 774 asserts that some 10 years in the future, the Secretary of the Department of Homeland Security (DHS) will certify that he/she has put in place technology and infrastructure that may at some future time provide “effective control” of the border.¹ Critically, even 10 years after enactment, DHS does not have to actually achieve “effective control”; it merely has to assert that it has established a system that might achieve control at some point in the future.

Effective control in S. 744 has two components: “persistent surveillance” and an “effectiveness rate of 90 percent.”² Persistent surveillance is undefined in the bill and is therefore meaningless.

An “effectiveness rate of 90 percent” means that at least 90 percent of attempted border crossings would be apprehended or turned back. Note again that even 10 years after enactment, DHS does not have to actually achieve an apprehension rate of 90 percent but merely assert that a plan to achieve it is “deployed and operational.” Moreover, since the number of attempted border crossings is unknown, the 90 percent apprehension rate would be nebulous even if it were achieved.

This paper, in its entirety, can be found at <http://report.heritage.org/ib3974>

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Another trigger requires that a detailed scheme of technology and infrastructure prescribed in section 5(a) of the bill must also be deployed and operational before green cards will be given to amnesty recipients. But paragraphs (4) and (5) of this section empower the Secretary to waive all of the detailed requirements, rendering the detailed border control plan spelled out by the amendment's authors meaningless.

Establishing Real Border Security Metrics.

Instead, there is a fair and objective way to measure the number of illegal immigrants entering the country: the Census Bureau's annual American Community Survey (ACS).

Each year, DHS calculates the number of illegal immigrants residing in the U.S. using a well-established and widely accepted "residual" methodology. The residual method works as follows. First, DHS determines the number and characteristics of the legal immigrants who should be inside the country according to the number of visas actually issued. Second, the number and characteristics of all immigrants appearing in the ACS is determined. Immigrants in the survey in excess of the number of visas issued are deemed to be illegal. This method is currently used to produce the widely used estimate that there are at least 11.5 million illegal immigrants currently in the U.S.

Critically, the ACS identifies the year that an illegal immigrant entered the country according to the self-report of the immigrants themselves. Therefore, in the future, the ACS will enable DHS to identify the number of illegal immigrants who have entered the country each year after 2013.

Of course, the ACS is not a perfect measure. There are clearly a large number of illegal immigrants who reside in the U.S. but do not appear in the ACS. But the ACS at least offers an objective minimum measure of the net inflow of illegal immigrants based on an established methodology.

A Better Way Forward. Any bill that starts by giving amnesty to millions who are unlawfully present will only encourage greater illegal immigration, thus making border security even more difficult. There is a better way forward—a practical, fair, and responsible path to address the nation's broken borders and immigration mess without a massive, bloated comprehensive immigration reform law, and the ACS can be used as a demonstrable measure of its effectiveness.

This path includes as the first priority real measures that would put border security first. To secure the border, the U.S. should use targeted and true investments in infrastructure, technology, and assets to enhance the efforts of U.S. border agents and the Coast Guard. Additionally, the U.S. should pursue greater cooperation with Mexico and support local law enforcement in border security efforts. The right path also enforces U.S. law, including ensuring that strong employment verification systems are in place to prevent the employment of unlawful labor.

Critically, these and other reforms would then be tested by the ACS, providing the U.S. with proof of their success or failure.

Far from a Game Changer. Congress should stop business as usual and actually take a close look at the bills they are considering. Far from the "breakthrough" its proponents claim it is, the Schumer-Corker-Hoeven deal is full of loopholes and false promises and would do little to solve the nation's border security and immigration challenges.

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1. The Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, Section 3(c) (2)(A)(i)(II), page 4.
2. *Ibid.*, Section 3(a)(3).

BACKGROUND

No. 2786 | MARCH 28, 2013

Encouraging Lawful Immigration and Discouraging Unlawful Immigration

David S. Addington

Abstract

America recognizes the importance of lawful immigration. Such immigration provides economic and cultural benefits both to the United States and to the immigrants. In contrast, unlawful immigration challenges America's ability to protect its borders and preserve its sovereignty. Congress should search for appropriate ways to encourage lawful immigration and prevent unlawful immigration, through careful step-by-step actions to address the wide variety of immigration issues, rather than through one-size-fits-all comprehensive legislation. Congress should not adopt failed policies of the past, such as an amnesty, which discourages respect for the law, treats law-breakers better than law-followers, and encourages future unlawful immigration. When Congress implements step-by-step the proper policies, American will benefit greatly from the resulting lawful immigration.

From its inception, the United States of America has recognized the vital importance of lawful immigration to the nation. Such immigration brings important economic and cultural benefits both to the United States and to the immigrants. Americans rightly incorporate into their lives and celebrate the values of America, including individual freedom, limited government, and free enterprise, and beckon others to join us. Lawful immigration greatly benefits both America and the lawful immigrants, while unlawful immigration presents challenges to America's ability to protect its borders and preserve its sovereignty.

KEY POINTS

- America recognizes that lawful immigration provides economic and cultural benefits both to America and to lawful immigrants
- America also recognizes that unlawful immigration presents challenges to America's ability to protect its borders and preserve its sovereignty.
- Congress should pursue a measured set of approaches tailored to a wide variety of immigration issues, rather than comprehensive, all-or-nothing, and one-size-fits-all legislation.
- Congress should not adopt failed policies of the past, such as amnesty, which discourages respect for the law, treats law-breakers better than law-followers, and encourages future unlawful immigration.
- When Congress implements step-by-step the proper policies, American will move closer to having the economic and cultural benefits and rewards of lawful immigration, without the burdens and challenges of unlawful immigration.

This paper, in its entirety, can be found at <http://report.heritage.org/bg2786>

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Welcoming Lawful Immigration. In 1776, the Declaration of Independence, in speaking of the tyranny the thirteen American colonies had suffered under King George III of Great Britain, said:

The history of the present King of Great Britain is a history of repeated injuries and usurpations, all having in direct object the establishment of an absolute Tyranny over these States. To prove this, let Facts be submitted to a candid world.

The Declaration’s submission of facts about the king’s tyrannical conduct included that:

He has endeavoured to prevent the population of these States; for that purpose obstructing the Laws for the Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands.

After the representative of George III stated in the Treaty of Paris in September 3, 1783, that “His Brittanic Majesty acknowledges the said United States . . . to be free sovereign and independent states,” the victorious Revolutionary War commander in chief General George Washington wrote on December 2, 1783, to an association of Irish immigrants in New York City:

The bosom of America is open to receive not only the Opulent and respectable Stranger, but the oppressed and persecuted of all Nations And Religions; whom we shall wellcome to a participation of all our rights and privileges, if by decency and propriety of conduct they appear to merit the enjoyment.

When the delegates of the states met in Philadelphia in the summer of 1787 to draft the Constitution that conventions of the people of the several states later ratified, they included among the enumerated powers of the federal Congress the power “[t]o establish an uniform Rule of Naturalization,” which would set forth the conditions under which immigrants could become citizens of the United States. Thus, at its very beginning, the United States of America recognized the importance to the nation of lawful immigration.

America continues to recognize the vital importance of lawful immigration. As President Ronald Reagan said in 1986:

Since 1820, more than 52 million immigrants have come to the United States from all over the world. They have sought and found a new and better life for themselves and their children in this land of liberty and opportunity. The magnet that draws them is freedom and the beacon that guides them is hope. America offers liberty for all, encourages hope for betterment, and nurtures great expectations. In this free land a person can realize his dreams—going as far as talent and drive can carry him. In return America asks each of us to do our best, to work hard, to respect the law, to cherish human rights, and to strive for the common good.

The immigrants who have so enriched America include people from every race, creed, and ethnic background. Yet all have been drawn here by shared values and a deep love of freedom. Most brought with them few material goods. But with their hearts and minds and toil they have contributed mightily to the building of this great Nation and endowed us with the riches of their achievements. Their spirit continues to nourish our own love of freedom and opportunity.¹

In contrast to lawful immigration, which benefits America greatly, unlawful immigration challenges the ability of the United States to protect its borders and preserve its sovereignty.

Lawful immigration greatly benefits both America and the lawful immigrants, while unlawful immigration presents challenges to America’s ability to protect its borders and preserve its sovereignty.

Congress Should Proceed Carefully, Step-by-Step, Instead of with One-Size-Fits-All Comprehensive Legislation. The complexities involved in encouraging lawful immigration and

detering unlawful immigration call for a measured set of approaches tailored to a wide variety of immigration issues, rather than comprehensive, all-or-nothing, and one-size-fits-all legislation.² Those approaches “can move forward on many fronts at the same time, focusing on some commonsense initiatives that begin to address the practical challenges of our immigration system.”³ The U.S. should reform its immigration system through a careful, step-by-step process that welcomes lawful immigrants, encourages their full participation in American life, and expands opportunity. The process also must prevent unlawful immigration, encourage respect for law, secure America’s borders, and preserve America’s sovereignty.⁴ The Heritage Foundation has described this step-by-step process for a problem-solving approach to immigration issues, such as reform of the lawful immigration system, visa reforms, lawful temporary worker arrangements, and strong border and interior enforcement.⁵

The Congress of the United States has the power to determine by law whether and on what terms citizens of other countries may enter the United States. The Supreme Court has held that the power to admit or exclude such aliens is an incident of the sovereignty and independence of the United States. The Congress may exercise that power, by enactment of civil and criminal laws, and has done so. Despite U.S. efforts to enforce its laws, substantial numbers of aliens are unlawfully in the United States.

Congress Has Broad Power to Address both Lawful Immigration and Unlawful Immigration. Congress possesses plenary authority to regulate entry of aliens into the United States. In 1977, the Supreme Court said:

This Court has repeatedly emphasized that “over no conceivable subject is the legislative power of Congress more complete than it is over” the admission of aliens. Our cases “have long recognized the power to expel or exclude aliens as a fundamental sovereign attribute exercised by the government’s political departments largely immune from judicial control.”⁶

Congress has broad authority to enforce the policies it sets by law on whether and on what conditions aliens may enter the United States.⁷ All civil or criminal proceedings must afford the requisite due process of law.⁸

Amnesty Is Not the Answer to Unlawful Immigration. On occasion, proposals arise that would grant amnesty to aliens who have entered the country unlawfully, or who entered lawfully but whose authorization to remain has expired. The term “amnesty” is often used loosely with reference to aliens unlawfully in the United States. Sometimes it refers to converting the status of an alien from unlawful to lawful, either without conditions or on a condition such as a payment of a fee to the government. Sometimes it refers to granting lawful authority for an alien unlawfully in the U.S. to remain in the U.S., become a lawful permanent resident, or even acquire citizenship by naturalization, either without conditions or on a condition such as payment of a fee to the government or performance of particular types of work for specified periods. Amnesty comes in many forms, but in all its variations, it discourages respect for the law, treats law-breaking aliens better than law-following aliens, and encourages future unlawful immigration into the United States.

Amnesty comes in many forms, but in all its variations, it discourages respect for the law, treats law-breaking aliens better than law-following aliens, and encourages future unlawful immigration into the United States.

Presidents may issue pardons for offenses against the United States, whether issued to an individual for an offense or to a class of people for an offense they have in common.⁹ Although the President may pardon for crimes, including immigration crimes, aliens unlawfully in the U.S., the pardon does not constitute a grant of authority to remain in the United States, and the alien would remain subject to removal.¹⁰ Congress, however, has the power to enact laws that both forgive an alien’s past crimes and change an alien’s immigration status from unlawful to lawful.¹¹ For example, when Congress enacted the Immigration Reform and Control Act (IRCA) of 1986 to deal with the large numbers of aliens unlawfully in the U.S. at that time, Congress included two broad amnesty programs.

The first IRCA amnesty program generally required the Attorney General to adjust to the status

of lawful temporary permanent residence aliens unlawfully in the U.S. who had been in the U.S. since January 1, 1982, with subsequent adjustment to lawful permanent residence.¹² The second IRCA amnesty program generally required the Attorney General to adjust to the status of lawful “special agricultural workers” aliens unlawfully in the U.S. who performed 90 days of qualifying agricultural work during the 12 months preceding May 1, 1986, and who could qualify for immigrant status, with subsequent adjustment of their status to that of lawful permanent residence.¹³ Over 2.5 million aliens unlawfully in the U.S. availed themselves of the IRCA amnesties to attain legal status.¹⁴

With respect to the IRCA amnesty programs, the House committee originating the legislation said “a one-time legalization program is a necessary part of an effective enforcement program”¹⁵ When the Senate considered the final legislation, a Senator from Texas asked the floor manager of the legislation, a Senator from Wyoming, a question about amnesty:

. . . [O]ne of the things that has concerned me having looked at the problem on our borders, is that there may be those in other countries who will say that since we granted amnesty once maybe we will do it again. And rather than sign up to be on this list of 1.9 million people that have the dream of someday being able to come here, maybe people will just come on across the border thinking it will happen again.

So I ask my colleague, as one who has worked 6 years on this bill, and who clearly is going to have much to say about changes that will occur in the future, is it the clear position of the distinguished chairman that under no circumstances will there be another blanket amnesty in the future?

The Senator from Wyoming responded:

. . . I can assure the Senator from Texas that as long as I am involved in it that will be exactly the message that will be sent, that this is it. This is a generous Nation responding; instead of going hunting for you and going through the anguish of that in the cities and communities of America, this is it. It is one time.¹⁶

When Congress enacted the IRCA amnesty programs in 1986 for aliens unlawfully in the U.S., the population of aliens unlawfully in the U.S. was an estimated 3.2 million.¹⁷ In January 2011, that population was an estimated 11.5 million.¹⁸

Grants of amnesty, regardless of the form of the reward they give to aliens who knowingly entered or remain the U.S., discourage respect for the law, treat law-breaking aliens better than law-following aliens, and encourage future unlawful immigration into the United States. If America suddenly awards legal status to aliens unlawfully in the United States, it will treat them better than aliens abroad who follow America’s immigration procedures and patiently await their opportunity to get a visa authorizing them to come to the United States. And, of course, if America suddenly awards legal status to aliens unlawfully in the U.S., it will, as the IRCA amnesty proved, spur more aliens to enter or remain unlawfully in the United States, in the confident expectation that Congress will continue enacting future amnesties that provide aliens unlawfully in the U.S. a shortcut to legal status. The government should pursue a measured set of approaches to a wide variety of immigration issues, but in all events exclude amnesty for aliens unlawfully in the United States.

When Congress enacted the IRCA amnesty programs in 1986 for aliens unlawfully in the U.S., the population of aliens unlawfully in the U.S. was an estimated 3.2 million. In January 2011, that population was an estimated 11.5 million.

Conclusion: Congress Should Encourage Lawful Immigration and Prevent Unlawful Immigration. For more than two centuries, America has encouraged and benefitted from lawful immigration. Congress should continue to search for appropriate ways to encourage lawful immigration, reducing the burdens of the immigration process on both the government and lawful immigrants, and making it easier for both America and the lawful immigrants to enjoy the economic and cultural benefits that result from lawful immigration. Congress also should continue to search for

appropriate ways to prevent unlawful immigration and secure America's borders. As Congress moves forward, it should not adopt failed policies of the past, such as amnesty, which discourages respect for the law, treats law-breakers better than law-followers, and encourages future unlawful immigration. When Congress implements step-by-step the proper policies, America will benefit greatly from the arrival on America's shores of lawful immigrants who, as Ronald Reagan said, will find "a new and better life for themselves and their children in this land of liberty and opportunity."

—*David S. Addington is the Senior Vice President for Legal and Judicial Policy at The Heritage Foundation.*

Endnotes

1. President Ronald Reagan, Proclamation 5510 (July 2, 1986).
2. See Matthew Spalding, Jessica Zuckerman, James Jay Carafano, *Immigration Reform Needs Problem-Solving Approach, Not Comprehensive Legislation*, Issue Brief No. 3833, The Heritage Foundation (January 17, 2013), available at <http://report.heritage.org/ib3833>; James Jay Carafano, *Amnesty Legislation Still the Wrong Answer for Responsible Immigration Reform*, The Heritage Foundation, WebMemo No. 3327 (July 27, 2011), available at <http://report.heritage.org/wm3327>.
3. Matthew Spalding, ed. *America's Opportunity for All*, The Heritage Foundation (2013), p. 112, available at <http://opportunity.heritage.org/americas-opportunity-for-all/>.
4. See, for example, Edwin Meese III and Matthew Spalding, *Where We Stand: Essential Requirements for Immigration Reform*, Backgrounder No. 2034, The Heritage Foundation (May 10, 2007), available at http://s3.amazonaws.com/thf_media/2007/pdf/bg2034.pdf.
5. See, for example, Edwin Meese III and Matthew Spalding, *The Principles of Immigration*, Backgrounder No. 1807, The Heritage Foundation (October 19, 2004), available at http://s3.amazonaws.com/thf_media/2004/pdf/bg1807.pdf; Meese and Spalding, *Permanent Principles and Temporary Workers*, Backgrounder No. 1911, The Heritage Foundation (March 1, 2006), available at http://s3.amazonaws.com/thf_media/2006/pdf/bg1911.pdf; Meese and Spalding, *Where We Stand: Essential Requirements for Immigration Reform*, Backgrounder No. 2034, The Heritage Foundation (May 10, 2007), available at http://s3.amazonaws.com/thf_media/2007/pdf/bg2034.pdf; Matthew Spalding, Jessica Zuckerman, and James Jay Carafano, *Immigration Reform Needs Problem-Solving Approach, Not Comprehensive Legislation*, Issue Brief No. 3833, The Heritage Foundation (January 17, 2013), available at http://thf_media.s3.amazonaws.com/2013/pdf/ib3833.pdf; and Jessica Zuckerman, *Senate Immigration Reform: Another Misguided Call for Comprehensive Legislation*, Issue Brief No. 3845, The Heritage Foundation (January 30, 2013), available at http://thf_media.s3.amazonaws.com/2013/pdf/ib3845.pdf.
6. *Fiallo v. Bell*, 430 U.S. 787, 792 (1977) (citations omitted) (quoting *Oceanic Navigation Co. v. Stranahan*, 214 U.S. 320, 339 (1909) and *Shaughnessy v. Mezei*, 345 U.S. 206, 210 (1953)). Recently, in *Arizona v. United States*, 132 S. Ct. 2492, 2498 (2012), the Supreme Court identified the source of the power of Congress to control the admission or exclusion of aliens as follows: "The Government of the United States has broad, undoubted power over the subject of immigration and the status of aliens. This authority rests, in part, on the National Government's constitutional power to 'establish a uniform Rule of Naturalization,' and its inherent power as sovereign to control and conduct relations with foreign nations." (citations omitted).
7. Congress has, for example, specified criminal penalties for entering the U.S. at any time or place other than as designated by immigration officers (8 U.S.C. 1325(a)) and for re-entering the U.S. without prior permission after having been denied admission, excluded, deported, or removed (8 U.S.C. 1326(a)). The U.S. government can prosecute aliens who commit either of these crimes, subject to a statute of limitations that generally requires their prosecution within five years after the date of the crime (18 U.S.C. 3282(a)). There is no federal statute making an alien's mere presence within the United States, without authorization to remain, a crime. So, for example, an alien who entered lawfully on a temporary visa, and remains in the country after expiration of the visa, is in the country unlawfully, but is subject only to civil exclusion proceedings and not criminal prosecution, unless the alien engages in some other way in criminal conduct. *Arizona v. United States*, 132 S. Ct. 2492, 2505 (2012) ("As a general rule, it is not a crime for a removable alien to remain in the United States."); *Ortego-Melendres v. Arpaio*, 836 F. Supp.2d 959, 971 (D. Ariz. 2011) ("Being present in the country without authorization to remain 'is only a civil violation.' . . . An alien who 'overstays a valid visa or otherwise remains in the country after the expiration of a period authorized by the Department of Homeland Security,' therefore, although he may be subject to deportation, has violated no criminal statute."), *affirmed* 695 F.3d 990, 1000 (9th Cir. 2012) ("We have long made clear that, unlike illegal entry, mere unauthorized presence in the United States is not a crime.").
8. The Fifth Amendment to the U.S. Constitution provides that no person shall "be deprived of life, liberty, or property, without due process of law." That constitutional protection extends to all persons present in the United States, including aliens. *Zadvydas v. Davis*, 533 U.S. 678, 693 (2001) ("It is well established that certain constitutional protections available to persons inside the United States are unavailable to aliens outside of our geographic borders. But once an alien enters the country, the legal circumstance changes, for the Due Process Clause applies to all 'persons' within the United States, including aliens, whether their presence here is lawful, unlawful, temporary, or permanent." (citations omitted)).
9. Section 2 of Article II of the Constitution grants to the President the "Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment." When a President grants pardons to a class of people for an offense they have in common, the grant is often referred to as an "amnesty," although the term is an informal one without legal consequences separate from the term "pardon." To illustrate, in his Christmas Day proclamation in 1868, President Andrew Johnson granted "to all and every person who directly or indirectly participated in the late insurrection or rebellion, a full pardon and amnesty for the offence of treason against the United States, or of adhering to their enemies during the late civil war . . ." The Supreme Court concluded that the word "amnesty" used in the Johnson proclamation was surplusage, as "[a]ll the benefits which can result to the claimant from both pardon and amnesty would equally have accrued to him if the term 'pardon' alone had been used in the proclamation of the President." *Knott v. United States*, 95 U.S. 149, 152-53 (1877).

10. *U.S. ex rel. Brazier v. U.S. Commissioner of Immigration at Port of New York*, 5 F.2d 162, 164 (2d Cir. 1924) (“They were not, and could not be, pardoned from deportation. A pardon is for a crime . . . ; *inter alia*, it avoids or terminates punishment for that crime, but deportation is not a punishment, it is an exercise of one of the most fundamental rights of a sovereign . . . , a right which under our form of government is exercised by legislative authority.”) Under 8 U.S.C. 1182(a)(6)(A)(i), “[a]n alien present in the United States without being admitted or paroled, or who arrives in the United States at any time or place other than as designated by the Attorney General, is inadmissible.” And, under 8 U.S.C. 1227(a)(1)(A) “[a]ny alien who at the time of entry or adjustment of status was within one or more of the classes of aliens inadmissible by the law existing at such time is deportable.” Further, under 8 U.S.C. 1227(a)(1)(B) “[a]ny alien who is present in the United States in violation of this chapter or any other law of the United States, or whose nonimmigrant visa (or other documentation authorizing admission into the United States as a nonimmigrant) has been revoked under section 1201(i) of this title, is deportable.” For aliens lawfully in the United States who are convicted of certain crimes, such as crimes involving moral turpitude, that make them subject to removal, a federal statute (8 U.S.C. 1227(a)(2)(A)(vi)) provides that a presidential pardon for those convictions waives removal based on those convictions.
11. *Brown v. Walker*, 161 U.S. 591, 601 (1896) (“The act of congress in question, securing to witnesses immunity from prosecution, is virtually an act of general amnesty, and belongs to a class of legislation which is not uncommon either in England (2 Tayl. Ev. § 1455, where a large number of similar acts are collated) or in this country. Although the constitution vests in the president ‘power to grant reprieves and pardons for offenses against the United States, except in cases of impeachment,’ this power has never been held to take from congress the power to pass acts of general amnesty, and is ordinarily exercised only in cases of individuals after conviction, although, as was said by this court in *Ex parte Garland*, 4 Wall. 333, 380, ‘it extends to every offense known to the law, and may be exercised at any time after its commission, either before legal proceedings are taken, or during their pendency, or after conviction and judgment.’”).
12. 8 U.S.C. 1255a.
13. 8 U.S.C. 1160. See *McNary v. Haitian Refugee Center, Inc.*, 498 U.S. 479, 483 (1991).
14. Ruth Ellen Wasem, “Unauthorized Aliens Residing in the United States: Estimates Since 1986,” Congressional Research Service, Report No. RL33874 (December 13, 2012), p. 1.
15. Report to Accompany H.R. 3810 of the 99th Congress, the Immigration Reform and Control Act of 1986, Report 99-682 (Part 1), Committee on the Judiciary, U.S. House of Representatives, (July 16, 1986), reprinted in 1986 U.S. Code Cong. & Ad. News 5649, 5653, 1986 WL 31950.
16. 132 Cong. Rec. S16879-01, 1986 WL 788854 (October 17, 1986) (colloquy between Senator Gramm of Texas and Senator Simpson of Wyoming during consideration of conference report on IRCA).
17. Ruth Ellen Wasem, “Unauthorized Aliens Residing in the United States: Estimates Since 1986,” Congressional Research Service, Report No. RL33874 (December 13, 2012) (Summary).
18. Michael Hofer, Nancy Rytina, and Bryan Baker, “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011,” Office of Immigration Statistics, Department of Homeland Security (March 2012), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

Comparison of Amnesty Provisions: 1986, 2007, and 2013

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| <p><i>Temporary Legal Status</i></p> | <p>Immigration Reform and Control Act of 1986</p> <ul style="list-style-type: none"> • Gave unlawful immigrants who entered the U.S. before 1982 (and had lived in the U.S. continuously since that date) “Temporary Resident Status.” Status authorized travel and employment. Status lasted 31 months and could not be extended. The alien would not be removed if an adjustment of status application had been filed before the end of the 31st month. | <p>Comprehensive Immigration Reform Act of 2007 (as amended)[#1150], compromise between Senators Reid and Kennedy)</p> <ul style="list-style-type: none"> • Created a new Z- nonimmigrant visa category for individuals who were then in the U.S. in undocumented status. • To qualify, an individual must have been physically present in the U.S. continuously since January 1, 2007; admissible under immigration law; and employed on the date of filing an application. • Children under 18, spouses, and elderly parents of eligible workers also qualified. • Good for an initial four years and renewable indefinitely. <ul style="list-style-type: none"> ○ For first renewal must have demonstrated studies in English language and U.S. civics. ○ For second renewal, must have demonstrated | <p>Border Security, Economic Opportunity, and Immigration Modernization Act of 2013 S. 744</p> <ul style="list-style-type: none"> • Creates a “registered provisional immigrant” (RPI) status which grants eligible unlawful aliens legal status and work authorization. RPI status is initially valid for 6 years and is renewable indefinitely. • Applicants for an extension must demonstrate that they were regularly employed during the past 6-year period, are not likely to become a public charge, and possesses an average income or resources not less than 100 percent of the federal poverty level. • \$1,000 penalty assessed to those over 21. |
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Comparison of Amnesty Provisions: 1986, 2007, and 2013

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| <p><i>Legal Permanent Resident Status</i></p> | <ul style="list-style-type: none"> • 18 months after receiving temporary legal status, the temporary legal resident has 1 year to apply for legal permanent residency. | <p>proficiency in English and civics by passing the naturalization exam.</p> <ul style="list-style-type: none"> • Penalty of \$1,000. • Z-visa holders would become eligible to apply for LPR status during a 5-year period starting on the date that all visa backlogs that existed before May 1, 2005, had been cleared. • Green cards awarded according to merit-based system established in the bill. • \$4,000 penalty assessed. | <ul style="list-style-type: none"> • Provides that those granted RPI status can adjust their status to LPR once border security provisions are met and provided that they were “regularly employed” as a RPI, demonstrate that they are not likely to become a public charge and possesses an average income or resources not less than 125 percent of the federal poverty level, and are pursuing English language and civics education. • LPR status cannot be granted until the Secretary of State certifies that visas have been granted to all those lawful immigrants who applied for visas prior to the passage of the bill. • \$1,000 penalty assessed to those over 21. |
| <p><i>Naturalization</i></p> | <ul style="list-style-type: none"> • No special provisions for naturalization. | <ul style="list-style-type: none"> • No special provisions. However, bill created new offices and programs much like S. 744. | <ul style="list-style-type: none"> • Streamlines the naturalization process for unlawful immigrants by stipulating that an alien with LPR status who was eligible for work |

Comparison of Amnesty Provisions: 1986, 2007, and 2013

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| | | | <p>authorization for not less than 10 years before gaining LPR status may be naturalized after being lawfully admitted as an LPR for 3 years.</p> <ul style="list-style-type: none"> o Current law requires that applicants for naturalization have resided in the U.S. as LPRs for five years. INA Sec. 316. [8 U.S.C. 1427]. |
| <p>Agriculture Worker</p> | <ul style="list-style-type: none"> • Allowed aliens who had performed 90 man-days of labor between May 1, 1985, and May 1, 1986, to apply for temporary legal status within an 18-month period that started 6 months after the passage of the bill. • Such aliens could apply for LPR status in two groups: <ul style="list-style-type: none"> o Group 1: Aliens who had worked for 90 man-days for each of the past 4 years ('83, '84, '85, '86) could apply for LPR status 1 year after receiving temporary status. o Group 2: Aliens who didn't meet the requirements of Group 1 | <ul style="list-style-type: none"> • If an alien could demonstrate at least 863 hours or 150 agricultural work days during the 24-month period ending on December 31, 2006, the individual could obtain a newly created Z-A visa. • Could receive LPR status under the newly created merit-based system provided: <ul style="list-style-type: none"> o Alien had performed at least 5 years of agricultural employment in the U.S. for at least 100 work days a year during the 5-year period from the date of enactment; or o Performed at least 3 | <ul style="list-style-type: none"> • Creates special "blue card" program that grants work authorization and lawful status to formerly unlawful agricultural workers. <ul style="list-style-type: none"> o After 5 years, regardless of the implementation of border security measures, "blue card status" can be adjusted to LPR status. o No alien may remain in "blue card" status 8 years after "blue card" regulations are published. o \$100 penalty assessed to those over 21. |

Comparison of Amnesty Provisions: 1986, 2007, and 2013

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| | <p>could apply for LPR status 2 years after receiving temporary status.</p> | <p>years of agricultural employment for at least 150 work days per year during the 3-year period beginning on the date of enactment; or</p> <ul style="list-style-type: none"> ○ During the 4-year period following enactment had worked for at least 150 work days for 3 years and 100 work days during the remaining year. ○ Must pay tax liabilities, learn English, and pay a \$400 fine. ○ All backlogs that existed before May 1, 2005, must have been cleared. | |
| <p>DREAM Act</p> | <ul style="list-style-type: none"> • No special provisions. | <ul style="list-style-type: none"> • 3 years after the bill's enactment the Secretary would have been able to adjust to LPR status those who were eligible for or hold a Z-visa who had maintained physical presence in the U.S. since January 1, 2007, and: <ul style="list-style-type: none"> ○ Was under 30 years of age at date of enactment; ○ was under 16 at the time of entry; | <ul style="list-style-type: none"> • Provides that immigrants granted RPI status who were younger than 16 years old when they originally entered the U.S., have earned a high school diploma or GED, and have completed at least 2 years at an institution of higher education or 4 years in the armed services can be adjusted to LPR status after 5 years. • No upper age limit on eligibility. |

Comparison of Amnesty Provisions: 1986, 2007, and 2013

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| | | <ul style="list-style-type: none"> o had obtained a high school diploma or GED; o had not left the U.S. for more than 365 days unless in military service; and o Had completed a degree at an institution of higher education in the U.S. or 2 years in a bachelor's degree program or higher or served two years in the military. | <ul style="list-style-type: none"> • Allows the Secretary to create streamlined procedures for Deferred Action for Childhood Arrivals (DACA) recipients. |
| <p><i>Border Security and Other Triggers</i></p> | <ul style="list-style-type: none"> • No triggers present. <ul style="list-style-type: none"> o Generally called for an increase in border patrol, but no specific provisions. | <ul style="list-style-type: none"> • In order to grant legal status to an individual (except relating to Z-visas and the admission of Y aliens) or adjust one's immigration status to LPR, the Secretary must have certified that the following were funded, in place, and in operation: <ul style="list-style-type: none"> o CBP had hired 18,000 agents; o U.S. had installed at least 200 miles of vehicle barriers, 370 miles of fencing, 70 ground-based radar and camera towers along the southern land border, and deployed 4 UAV's | <ul style="list-style-type: none"> • Requires that DHS commence the implementation of a Comprehensive Southern Border Security Strategy and a Southern Border Fencing Strategy, along with the implementation of a mandatory employment verification system and the use of an electronic exit system at air and sea ports, before the Secretary can begin processing applications for RPI status. • Requires that the Comprehensive Southern Border Security Strategy is deployed and operational, the Southern Border Fencing Strategy is implemented with |

Comparison of Amnesty Provisions: 1986, 2007, and 2013

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| | <p>and supporting systems;</p> <ul style="list-style-type: none"> o All removable aliens apprehended crossing the southern border were being detained, except where mandated by law or due to humanitarian circumstances, and that ICE had the resources to maintain this practice, including resources to detain up to 27,500 noncitizens per day on an annual basis; o DHS had in place identification tools to prevent the hiring of unauthorized workers, including: <ul style="list-style-type: none"> ▪ strict standards for identification documents that must be presented in the hiring process, must contain a photograph or other biometric identifier, or be compliant with the REAL ID Act where appropriate; ▪ An electronic employment | <p>at least 700 miles of pedestrian fencing on the southern border, a mandatory employment verification system is implemented, the electronic exit system is in use at all international land and sea ports of entry, and at least 38,405 full time U.S. Border Patrol agents are deployed on the southern border in order for those with RPI status to be adjusted to LPRs.</p> <ul style="list-style-type: none"> o Requirements, however, can be waived where litigation, a disaster, or act of God has prevented any of the above, or its implementation has been declared unconstitutional, or 10 years has passed since the bill was enacted. |
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Comparison of Amnesty Provisions: 1986, 2007, and 2013

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| <p><i>Grounds for Ineligibility of Criminal Aliens</i></p> | <ul style="list-style-type: none"> • Conviction for 3 or more misdemeanors or any felony made an alien inadmissible for temporary and LPR status. Also, anyone who assisted in the persecution of others on the basis of race, religion, nationality, or political views was denied temporary status. | <p>eligibility verification system; and</p> <ul style="list-style-type: none"> ○ Secretary was receiving, processing, and adjudicating in a timely manner applications for Z-visa status, including all background and security checks. | |
| | | <ul style="list-style-type: none"> • Having ordered, incited, assisted, or otherwise participated in the persecution of an individual, based on race, religion, political opinion, etc. • Have been convicted of one felony, one “aggravated felony” (as redefined within the bill), three or more misdemeanors, one “crime of violence,” or one crime of reckless driving or DUI where the crime resulted in injury. • Secretary of Homeland Security, however, had broad waiver authority. | <ul style="list-style-type: none"> • Conviction for a felony, aggravated felony, 3 or more misdemeanors, any offense under foreign law that if committed in the U.S. would render the alien inadmissible or removable under the INA, unlawful voting under INA 237(a)(6), and • Reasonable suspicion of terrorist activity. • Secretary of Homeland Security, however, has broad waiver authority and can grant a waiver to individuals who have been convicted of multiple crimes totaling up to an aggregate of 5 years of jail time. While certain crimes such as human trafficking for prostitution or dealing drugs cannot be waived, many others, such as gang crimes and prostitution, can be. |

The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer

Robert Rector and Jason Richwine, PhD

Executive Summary

Unlawful immigration and amnesty for current unlawful immigrants can pose large fiscal costs for U.S. taxpayers. Government provides four types of benefits and services that are relevant to this issue:

- **Direct benefits.** These include Social Security, Medicare, unemployment insurance, and workers' compensation.
- **Means-tested welfare benefits.** There are over 80 of these programs which, at a cost of nearly \$900 billion per year, provide cash, food, housing, medical, and other services to roughly 100 million low-income Americans. Major programs include Medicaid, food stamps, the refundable Earned Income Tax Credit, public housing, Supplemental Security Income, and Temporary Assistance for Needy Families.
- **Public education.** At a cost of \$12,300 per pupil per year, these services are largely free or heavily subsidized for low-income parents.
- **Population-based services.** Police, fire, highways, parks, and similar services, as the National Academy of Sciences determined in its study of the fiscal costs of immigration, generally have to expand as new immigrants enter a community; someone has to bear the cost of that expansion.

The cost of these governmental services is far larger than many people imagine. For example, in 2010, the average U.S. household received \$31,584 in government benefits and services in these four categories.

The governmental system is highly redistributive. Well-educated households tend to be *net tax contributors*: The taxes they pay exceed the direct and means-tested benefits, education, and population-based services they receive. For example, in 2010, in the whole U.S. population, households with college-educated heads, on average, received \$24,839 in government benefits while paying \$54,089 in taxes. The average college-educated household thus generated a fiscal surplus of \$29,250 that government used to finance benefits for other households.

Other households are *net tax consumers*: The benefits they receive exceed the taxes they pay. These households generate a "fiscal deficit" that must be financed by taxes from other households or by government borrowing. For example, in 2010, in the U.S. population as a whole, households headed by persons without a high school degree, on average, received \$46,582 in government benefits while paying only \$11,469 in taxes. This generated an average fiscal deficit (benefits received minus taxes paid) of \$35,113.

The high deficits of poorly educated households are important in the amnesty debate because the typical unlawful immigrant has only a 10th-grade education. Half of unlawful immigrant households are headed by an individual with less than a high school degree, and another 25 percent of household heads have only a high school degree.

Some argue that the deficit figures for poorly educated households in the general population are not relevant for immigrants. Many believe, for example, that lawful immigrants use little welfare. In reality, lawful immigrant households receive significantly more welfare, on average, than U.S.-born households. Overall, the fiscal deficits or surpluses for lawful immigrant households are the same as or higher than those for U.S.-born households with the same education level. Poorly educated households, whether immigrant or U.S.-born, receive far more in government benefits than they pay in taxes.

In contrast to lawful immigrants, unlawful immigrants at present do not have access to means-tested welfare, Social Security, or Medicare. This does not mean, however, that they do not receive government benefits and services. Children in unlawful immigrant households receive heavily subsidized public education. Many unlawful immigrants have U.S.-born children; these children are currently eligible for the full range of government welfare and medical benefits. And, of course, when unlawful immigrants live in a community, they use roads, parks, sewers, police, and fire protection; these services must expand to cover the added population or there will be “congestion” effects that lead to a decline in service quality.

In 2010, the average unlawful immigrant household received around \$24,721 in government benefits and services while paying some \$10,334 in taxes. This generated an average annual fiscal deficit (benefits received minus taxes paid) of around \$14,387 per household. This cost had to be borne by U.S. taxpayers. Amnesty would provide unlawful households with access to over 80 means-tested welfare programs, Obamacare, Social Security, and Medicare. The fiscal deficit for each household would soar.

If enacted, amnesty would be implemented in phases. During the first or interim phase (which is likely to last 13 years), unlawful immigrants would be given lawful status but would be denied access to means-tested welfare and Obamacare. Most analysts assume that roughly half of unlawful immigrants work “off the books” and therefore do not pay income or FICA taxes. During the interim phase, these “off the books” workers would have a strong incentive to move to “on the books” employment. In addition, their wages would likely go up as they

sought jobs in a more open environment. As a result, during the interim period, tax payments would rise and the average fiscal deficit among former unlawful immigrant households would fall.

After 13 years, unlawful immigrants would become eligible for means-tested welfare and Obamacare. At that point or shortly thereafter, former unlawful immigrant households would likely begin to receive government benefits at the same rate as lawful immigrant households of the same education level. As a result, government spending and fiscal deficits would increase dramatically.

The final phase of amnesty is retirement. Unlawful immigrants are not currently eligible for Social Security and Medicare, but under amnesty they would become so. The cost of this change would be very large indeed.

- As noted, at the current time (before amnesty), the average unlawful immigrant household has a net deficit (benefits received minus taxes paid) of \$14,387 per household.
- During the interim phase immediately after amnesty, tax payments would increase more than government benefits, and the average fiscal deficit for former unlawful immigrant households would fall to \$11,455.
- At the end of the interim period, unlawful immigrants would become eligible for means-tested welfare and medical subsidies under Obamacare. Average benefits would rise to \$43,900 per household; tax payments would remain around \$16,000; the average fiscal deficit (benefits minus taxes) would be about \$28,000 per household.
- Amnesty would also raise retirement costs by making unlawful immigrants eligible for Social Security and Medicare, resulting in a net fiscal deficit of around \$22,700 per retired amnesty recipient per year.

In terms of public policy and government deficits, an important figure is the aggregate annual deficit for all unlawful immigrant households. This equals the total benefits and services received by all unlawful immigrant households minus the total taxes paid by those households.

- Under current law, all unlawful immigrant households together have an aggregate annual deficit of around \$54.5 billion.
- In the interim phase (roughly the first 13 years after amnesty), the aggregate annual deficit would fall to \$43.4 billion.
- At the end of the interim phase, former unlawful immigrant households would become fully eligible for means-tested welfare and health care benefits under the Affordable Care Act. The aggregate annual deficit would soar to around \$106 billion.
- In the retirement phase, the annual aggregate deficit would be around \$160 billion. It would slowly decline as former unlawful immigrants gradually expire.

These costs would have to be borne by already overburdened U.S. taxpayers. (All figures are in 2010 dollars.)

The typical unlawful immigrant is 34 years old. After amnesty, this individual will receive government benefits, on average, for 50 years. Restricting access to benefits for the first 13 years after amnesty therefore has only a marginal impact on long-term costs.

If amnesty is enacted, the average adult unlawful immigrant would receive \$592,000 more in government benefits over the course of his remaining lifetime than he would pay in taxes.

Over a lifetime, the former unlawful immigrants together would receive \$9.4 trillion in government benefits and services and pay \$3.1 trillion in taxes. They would generate a lifetime fiscal deficit (total benefits minus total taxes) of \$6.3 trillion. (All figures are in constant 2010 dollars.) This should be considered a minimum estimate. It probably understates real future costs because it undercounts the number of unlawful immigrants and dependents who will actually receive amnesty and underestimates significantly the future growth in welfare and medical benefits.

The debate about the fiscal consequences of unlawful and low-skill immigration is hampered by a number of misconceptions. Few lawmakers really understand the current size of government and the scope of redistribution. The fact that the average household gets \$31,600 in government benefits each

year is a shock. The fact that a household headed by an individual with less than a high school degree gets \$46,600 is a bigger one.

Many conservatives believe that if an individual has a job and works hard, he will inevitably be a net tax contributor (paying more in taxes than he takes in benefits). In our society, this has not been true for a very long time. Similarly, many believe that unlawful immigrants work more than other groups. This is also not true. The employment rate for non-elderly adult unlawful immigrants is about the same as it is for the general population.

Many policymakers also believe that because unlawful immigrants are comparatively young, they will help relieve the fiscal strains of an aging society. Regrettably, this is not true. At every stage of the life cycle, unlawful immigrants, on average, generate fiscal deficits (benefits exceed taxes). Unlawful immigrants, on average, are always tax consumers; they never once generate a “fiscal surplus” that can be used to pay for government benefits elsewhere in society. This situation obviously will get much worse after amnesty.

Many policymakers believe that after amnesty, unlawful immigrants will help make Social Security solvent. It is true that unlawful immigrants currently pay FICA taxes and would pay more after amnesty, but with average earnings of \$24,800 per year, the typical unlawful immigrant will pay only about \$3,700 per year in FICA taxes. After retirement, that individual is likely to draw more than \$3.00 in Social Security and Medicare (adjusted for inflation) for every dollar in FICA taxes he has paid.

Moreover, taxes and benefits must be viewed holistically. It is a mistake to look at the Social Security trust fund in isolation. If an individual pays \$3,700 per year into the Social Security trust fund but simultaneously draws a net \$25,000 per year (benefits minus taxes) out of general government revenue, the solvency of government has not improved.

Following amnesty, the fiscal costs of former unlawful immigrant households will be roughly the same as those of lawful immigrant and non-immigrant households with the same level of education. Because U.S. government policy is highly redistributive, those costs are very large. Those who claim that amnesty will not create a large fiscal burden are simply in a state of denial concerning the underlying

redistributional nature of government policy in the 21st century.

Finally, some argue that it does not matter whether unlawful immigrants create a fiscal deficit of \$6.3 trillion because their children will make up for these costs. This is not true. Even if all the children of unlawful immigrants graduated from college, they would be hard-pressed to pay back \$6.3 trillion in costs over their lifetimes.

Of course, not all the children of unlawful immigrants will graduate from college. Data on inter-generational social mobility show that, although the children of unlawful immigrants will have substantially better educational outcomes than their parents, these achievements will have limits. Only 13 percent are likely to graduate from college, for

example. Because of this, the children, on average, are not likely to become net tax contributors. The children of unlawful immigrants are likely to remain a net fiscal burden on U.S. taxpayers, although a far smaller burden than their parents.

A final problem is that unlawful immigration appears to depress the wages of low-skill U.S.-born and lawful immigrant workers by 10 percent, or \$2,300, per year. Unlawful immigration also probably drives many of our most vulnerable U.S.-born workers out of the labor force entirely. Unlawful immigration thus makes it harder for the least advantaged U.S. citizens to share in the American dream. This is wrong; public policy should support the interests of those who have a right to be here, not those who have broken our laws. ■

Background

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Real Immigration Reform Needs Real Temporary Worker Program

James Jay Carafano, Ph.D.

Temporary worker programs can be a helpful tool for improving the legal means by which a foreigner can come to the United States to work. Previously proposed temporary worker programs have been problematic. Any new temporary worker programs must help, not hinder, immigration reform and border security efforts. Temporary worker programs should be designed not as a substitute for amnesty, but to fill important niches in the national workforce, allowing employers the employees they need to help grow the economy and create more jobs for Americans.

In addition, a new temporary worker program can only be successful if there is a clear strategy for implementation. Based on past experience, the right answer is to start with a pilot program that fills the gaps in existing programs and creates incentives for lawful non-immigrant work in the U.S. instead of illegal presence. An effective pilot program should also pioneer measures to strengthen security and combat illegal immigration.

The Path to True Immigration Reform

No single aspect of immigration reform, whether workplace enforcement or border security, will solve the problem of the nation's broken borders. The federal government has failed in one of its basic functions to control who enters the country, and has no accountability for those already in the U.S. A snapshot of the immigration crisis in America shows approximately 11 million illegal aliens living in the country, and con-

Talking Points

- Congress and the Administration, rather than continuing with past failed strategies of "comprehensive" immigration reform, should implement a serious step-by-step strategy for immigration and border-security reform.
- This step-by-step approach should begin with improving border security, enforcing existing immigration laws, streamlining existing visa programs, and piloting a realistic temporary worker program.
- An innovative temporary worker program is a helpful tool for improving the legal means by which foreigners can fill important niches in the national workforce.
- A program is necessary that does not exacerbate illegal entry, and should include enforcement of the temporary nature of the program, a quota that meets employer needs, and a fast-track system for applications.
- Proper and effective implementation of the temporary worker program is critical for its success; lack of implementation of existing immigration laws has largely caused the downfall of the current immigration system.

This paper, in its entirety, can be found at:
www.heritage.org/Research/Immigration/bg2229.cfm

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tinuing demand by some employers for an illegal, shadow workforce. Successful immigration reform will require a strategy that includes:

- **Securing the border.** A secure border alone will not solve the illegal immigration issue. Ensuring that no single individual will ever cross any inch of the U.S. border is not plausible with the government's limited resources. Securing the border will make crossing much more difficult and costly, thus reducing the incentives for people to enter illegally. Congress and the federal government should continue to invest in building infrastructure at the border, adding border patrol agents, and collaborating with local and state entities.¹
- **Enforcing the immigration and workplace laws.** As long as there are no real disincentives, people will continue to break the law in order to come to the United States. Enforcing existing immigration laws, deporting illegal aliens when detected, and fining those who employ illegal workers will provide some real disincentives.² A report by the Center for Immigration Studies shows that since the government began diligently enforcing existing laws in the summer of 2008, the illegal alien population in the U.S. has shrunk by 1.3 million.³
- **Promoting economic development in Latin America.** The constant growth in illegal immigration to the U.S. is partly due to the "push-pull" effect. Slow economies in Latin America coupled with America's need for workers drives up the advantages of illegal entry. This can only be dimin-

ished when Latin American economies grow and jobs are available in the home countries.⁴

- **Reform immigration services.** Immigration reform is only possible if U.S. Citizenship and Immigration Services (USCIS) is effective and efficient. USCIS must be reformed to meet the needs of Americans, protect the interest of the nation, and be able to expand to adapt to surges in demand. A national trust fund should be created for USCIS programs that do not charge fees, as well as a revolving fund for infrastructure and workforce enhancements.⁵
- **Improving legal avenues for immigrants.** As the government makes it more difficult to enter the U.S. illegally, there must be a greater emphasis on improving legal methods of entry. The United States' visa programs have shown time and time again that they are not capable of meeting the needs of employers or employees. If we are to require that migrants come to the U.S. legally, we must ensure that the system works.

Elements of a Temporary Work Visa

Improving the legal options for immigrants is a crucial part of immigration reform and includes reforming programs for existing visas, such as the H-2A, as well as creating new and innovative temporary worker programs.⁶ Ideally, any temporary worker program should accomplish the following: meet the needs of the users, ensure the security of the American public, and respect the rule of law and sovereignty of the United States. Any new program

1. James Jay Carafano, Brian W. Walsh, David B. Muhlhausen, Laura P. Keith, and David D. Gentili, "Better, Faster, and Cheaper Border Security," Heritage Foundation *Backgrounder* No. 1967, September 6, 2006, at <http://www.heritage.org/Research/HomelandSecurity/bg1967.cfm>.
2. Robert Rector, "Reducing Illegal Immigration Through Employment Verification, Enforcement, and Protection," Heritage Foundation *Backgrounder* No. 2192, October 7, 2008, at <http://www.heritage.org/Research/Immigration/bg2192.cfm>.
3. Steven A. Camarota and Karen Jensenius, "Homeward Bound: Recent Immigration Enforcement and the Decline in the Illegal Alien Population," Center for Immigration Studies, July 2008, at http://www.cis.org/trends_and_enforcement (January 7, 2009).
4. Israel Ortega and James M. Roberts, "Mexico Needs Reforms," *Latin Business Chronicle*, June 3, 2008, at <http://www.latinbusinesschronicle.com/app/article.aspx?id=2468> (January 7, 2009).
5. James Jay Carafano, "Naturalization, Citizenship, and Presidential Elections: Lessons for 2008," Heritage Foundation *Backgrounder* No. 2147, June 23, 2008, at <http://www.heritage.org/Research/HomelandDefense/bg2147.cfm>.
6. James Sherk and Diem Nguyen, "Next Steps for Immigration and Border Security Reform: Restructuring the Work Visa," Heritage Foundation *Backgrounder* No. 2190, September 30, 2008, at <http://www.heritage.org/Research/immigration/bg2190.cfm>.

must not exacerbate the illegal immigration problem, and thus should include these basic elements:

- **A temporary worker program should be for workers who are still in their home countries, waiting to come to the U.S.** New programs cannot grant amnesty to illegal aliens in the U.S., as this would clearly undermine any attempt at immigration reform. This program cannot facilitate illegal entry. Those who are here illegally must return to their home countries in order to qualify for the program.⁷
- **Ensure respect for American citizenship by protecting the temporary nature of the program.** The program should be temporary in nature. After working in the U.S. for the time allowed under the program, for example, four years, participants should be required to spend a specified amount of time in their home country before participating in the program again. There should be a limited number of times a participant can renew membership in the program. In addition, the immigration status of participants should not be changed during the program. The temporary worker program should not become a path to citizenship. Of course, temporary worker status should not be an impediment to applying for U.S. citizenship.
- **Children of participants.** It should be made clear that the children of program participants born in the United States during program participation will not be guaranteed U.S. citizenship. This should be confirmed as part of the bilateral agreement.
- **Numerical limit.** There must be a yearly quota on the number of visas allotted each year that is sufficient to meet the need—no more, no less. The number of temporary workers should be contingent on whether past temporary workers did, in fact, return home.
- **Create a fast-track system.** Getting workers into the U.S. in a timely manner is equally important. Having a faster application process for proven participants is a great benefit to employers who frequently use seasonal workers. It also maintains the consistency of the program by acting as an incentive for participants to abide by program rules. The fast track can also be used for visa holders who have been personally sponsored by employers.
- **No prevailing wages.** Temporary worker programs should not have prevailing-wage requirements, which result in a reduction of labor market flexibility and increases regulatory burdens.⁸
- **Security and health checks first.** The U.S. government is responsible for keeping dangerous people out of our country. It is, therefore, necessary to complete security and health checks before the visa holders enter the country.
- **Create a biometric registry.** The temporary worker program should have a registry of all participants. A single registration card should be administered that could be used at border checkpoints for registration, entry, and exit. The card and registry database should contain biometric information.
- **Performance bonds.** Employers should post bonds that are redeemable if the worker has followed certain program rules, such as leaving the country after the program has ended.
- **Security bonds.** Employers should post security bonds for each temporary worker. The bonds would cover potential costs, such as emergency medical costs.
- **Establishing an exit system.** Overstays comprise a majority of those living in this country illegally. Developing an exit system is crucial. Employees should be encouraged to exit with incentives, such as having their application fast-tracked the next time they apply for the program. Exits of visa holders should be tracked with a biometric registry.⁹

7. Edwin Meese III, "An Amnesty by Any Other Name..." *The New York Times*, May 25, 2006, at <http://www.heritage.org/Press/Commentary/ed052406a.cfm>.

8. James Sherk, "Senate Immigration Bill Marred by Prevailing Wage Provision," Heritage Foundation *WebMemo* No. 1475, May 29, 2007, at <http://www.heritage.org/Research/Immigration/wm1475.cfm>.

9. James Jay Carafano, "Checking Out! A Proposal for Land Border Exit Checks to Improve Visa Management," Heritage Foundation *WebMemo* No. 1909, April 30, 2008, at <http://www.heritage.org/Research/HomelandSecurity/wm1909.cfm>.

- **No entitlements for visa holders.** Since the participants of the program are citizens of another country, they do not qualify for entitlement privileges. The temporary worker program should not create entitlements for participants, nor should participants qualify for Social Security, Medicare, welfare, or free education services.
- **Bilateral agreements.** Participation in the program requires a bilateral agreement between the United States and the potential employee's home country. In order to enter into an agreement, the home country must meet certain requirements. The agreements should clarify the citizenship status of participants and their children as well as facilitate their return to their home country at the end of the program. In addition, the agreement should establish a counterterrorism and information-sharing relationship.¹⁰ No bilateral agreement should be made with countries whose citizens may pose serious national security threats as determined by the Departments of State and Homeland Security, such as nations that are designated state sponsors of terrorism.

Creating New Methods

Having the right elements does not guarantee success. The downfall of our immigration system has largely been due to lack of implementation of immigration laws in the workplace. Proper implementation is vital to a successful temporary worker program. Implementation strategy will determine whether or not a temporary worker program will succeed.

In order to establish new temporary worker programs, the federal government must demonstrate that it is already successfully implementing measures for internal law enforcement and border security. Identity documents should be made secure by provisions, such as REAL ID, and a workplace enforcement system, such as E-Verify, should be fully funded. New infrastructure and security provi-

sions for the temporary worker program should be implemented *before* granting visas. This includes the biometric registry database and biometric card, an exit system, and the sharing of criminal information with participating countries.

Temporary worker programs should not replace existing visa programs. Existing programs cater to a significant-sized population, and there is an established process. These programs should be improved and streamlined.

Reforms to existing programs alone will not be enough. As these reforms are implemented, remaining shortfalls will become more apparent. A temporary worker program should be created to employ new methods and to fill the gaps that reformed visa programs still cannot address. A temporary worker program should start as a pilot test.

Benchmarks for expansion should be set for the pilot test. For example, there should be a maximum rate of overstays in the program, which the pilot program cannot exceed.

The American people know that current immigration policy falls short. A temporary worker program is a small piece of immigration policy's complicated puzzle, and needs to help, not hinder, the ability of the American government to keep its citizens safe. Above all, a successful temporary worker program should protect national security, ensure the rule of law, and protect American sovereignty. Congress and the Obama Administration would do well to follow the components outlined here.

Next Steps

Rather than repeat Congress's failed strategy of "comprehensive" immigration reform—a self-serving attempt to pass an ineffective bill bloated with appeasements for every special-interest group—Congress and the Administration should implement a serious step-by-step strategy to immigration and border-security reform that begins with:

10. The Visa Waiver Program is a good model of such bilateral agreements. In order for countries to become members of the visa waiver program, they must first meet a number of criteria and sign agreements with the United States that include security cooperation, such as sharing lost and stolen passport information. See James Jay Carafano, "Visa-Waiver Reform Can Make America More Secure," *The Examiner*, May 24, 2007, at http://www.examiner.com/a-745367-James_Jay_Carafano_Visa_waiver_reform_can_make_America_more_secure.html (January 7, 2009).

- Continuing to improve border security and enforcement of existing immigration laws;
- Streamlining and expanding immigration services and existing visa programs; and
- Piloting a practical, realistic temporary worker program that enhances security, promotes economic growth, and respects citizenship and sovereignty.

These are the right steps for serious immigration and border security reform.

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ISSUE BRIEF

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STEM Jobs Act: Next Step for High-Skilled Immigration Reform

Jessica Zuckerman and Landon Zinda

Last week, the U.S. House of Representatives passed the STEM Jobs Act of 2012 (H.R. 6429). The bill, which has received bipartisan support, would allocate 55,000 visas toward high-skilled immigrants holding master's or doctoral degrees from U.S. educational institutions. The legislation would also do away with the Diversity Visa (DV) program, better known as the "green card lottery," which has been plagued by fraud and welcomes a much higher degree of low-skilled labor.

Currently, far too many immigrants educated here in the U.S. are forced to return to their home countries upon graduation. This makes little sense, particularly for science, technology, engineering, and math (STEM) workers. A STEM-educated workforce is vital to the security and prosperity of the U.S.

However, the STEM Jobs Act would also reopen and lower the wait time for the visa category that allows spouses and children of permanent legal residents to be admitted to the country while awaiting approval of their green card applications. With the majority of family chain immigrants predominantly low-skilled laborers, this provision would likely raise welfare costs and poverty. Rather than

increasing the fiscal drain on American taxpayers, Congress should consider reform of the STEM visa process on its own merits.

Need for High-Skilled Immigration. American businesses are struggling to fill high-skilled employment opportunities. STEM jobs grew at over three times the pace of non-STEM jobs between 2000 and 2010 and are expected to grow almost twice as fast by 2018. Business groups have spent years urging Congress to reform the visa system in order to fill these empty positions.

Enhancing the ability of high-skilled workers to enter the U.S. would be an asset to the nation's economy as well as its indebted government. Nevertheless, only 13 percent of individuals who receive green cards receive them based on economic considerations, whereas two-thirds of all green cards distributed have been granted for the purpose of family reunification. Further, foreign citizens who have been educated in the U.S. and are eager to contribute to the American economy are simply being sent home.

As a sovereign nation, the U.S. has the right to choose who enters its borders and comes to live and work here in order to promote its interests. To improve the U.S. economy, the U.S. should fill employment vacancies with people who are talented, U.S.-educated, and interested in working here. If the U.S. does not prioritize these high-skilled workers for visas, they will find employment elsewhere, leaving the U.S. less able to compete on the global stage.

The STEM Jobs Act. Amending the Immigration and Nationality Act, the STEM Jobs Act would make 55,000 visas available to:

This paper, in its entirety, can be found at <http://report.heritage.org/ib3792>

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- Qualified immigrants who hold doctorate degrees in STEM fields from U.S. universities and have agreed to work in the field for at least five years, or
- Where visas remain, individuals who hold master's degrees in STEM fields and bachelor's degrees in STEM fields or in the biological or biomedical sciences and have also agreed to work for at least five years in the field.

In both cases, applicants must have completed their STEM master's and doctorate courses while physically present in the U.S. Further, such visas may not be awarded unless the Secretary of Labor certifies that there are not sufficient numbers of American workers to fill needed STEM jobs.

While the act would increase the number of visas available to STEM workers educated in the U.S., it would not increase the overall number of immigrants admitted to the country each year. To do so, the bill would eliminate the DV program, which makes available 55,000 visas annually to randomly selected applicants from countries with a low rate of immigration into the United States. Known to be plagued by fraud and abuse, the DV program requires only that applicants:

- Have completed a high school education or the equivalent, and
- Have two years of work experience over the past five years in any occupation that requires at least two years of training or experience.

Instead of perpetuating a visa system that is weighted toward low-skilled immigrants, the new STEM visa program would help bring in high-skilled workers in the areas of math, science, and engineering and meet the growing needs of the economy.

Included in the most recent version of the legislation, however, is a provision under which spouses and children of all permanent legal residents—not just those granted STEM visas—would be admitted to the country if their green card applications have

taken over a full year to process. Previously, family members of permanent legal residents could be granted non-immigrant V visas and allowed to enter the U.S. while awaiting the approval of their green card applications after three years and if they applied on or before December 21, 2000. This provision would not only reopen the V visa category but also lower the wait to one year, effectively helping to facilitate family chain migration.

This is of particular concern given the fact that family chain migration is predominantly low-skilled. According to the most recent data available from the New Immigrant Survey, 60 percent of family chain immigrants have only a high school degree or less; 38 percent lack a high school degree. By contrast, only 10.3 percent of native-born Americans lack a high school degree.

While overall immigration represents a net fiscal positive to the government budget in the long term, immigrants with low education levels are likely to be a fiscal drain on other taxpayers. Past Heritage research has found that that low-skilled immigrant households take in \$30,160 in benefits, education, and services, compared to the approximately \$9,000 they contribute to the economy.¹

Keeping America Free, Safe, and Prosperous. Efforts to increase visas for STEM workers educated in the U.S. and eliminate the DV program are a positive step toward making the nation's immigration system more responsive to the needs of the economy and improving the inadequate U.S. visa system. This proposal, however, should be considered on its own merits and not get bundled with other legislation to make it politically palatable.

Congress should seriously consider these sound reforms while working toward a border and immigration policy that will keep the United States free, safe, and prosperous.

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Robert Rector and Christine Kim, "The Fiscal Cost of Low-Skilled Immigrants to the U.S. Taxpayer," Heritage Foundation *Special Report* No. 14, May 22, 2007, <http://www.heritage.org/research/reports/2007/05/the-fiscal-cost-of-low-skill-immigrants-to-the-us-taxpayer>.

TESTIMONY

DECEMBER 7, 2011

Next Steps for the Visa Waiver Program

James Jay Carafano, Ph.D.

Testimony before Subcommittee on Immigration Policy and Enforcement Committee on the Judiciary United States House of Representatives

December 7, 2011

My name is Dr. James Jay Carafano. I am the Deputy Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Director of the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation. The views I express in this testimony are my own, and should not be construed as representing any official position of The Heritage Foundation.

Thank you for the opportunity to appear before the committee today and address this vital subject. According to the Congressional Research Service, in “FY2009, 16.2 million visitors entered the United States under this program [the Visa Waiver Program], constituting 50.5% of all overseas visitors.” That makes the Visa Waiver Program arguably the nation’s most important visa program. Getting it right ought to be a top priority for the Congress and the President.

In my testimony today, I would like to concentrate on what I see as three key issues in addressing the next steps for the Visa Waiver Program: (1) decoupling the requirement for a biometric exit registry for those leaving the U.S. at port of entry from management issues related to the Visa Waiver Program; (2) adopting visa overstay rates rather than visa refusal rates as the metric to determine qualification for and participation in the Visa Waiver Program; and (3) ensuring high-security standards while promoting the participation of additional qualified countries. I would like to address these three issues in turn.

My responsibilities at The Heritage Foundation comprise supervising all of the foundation’s research on public policy concerning foreign policy and national security. Homeland security has been a particular Heritage research priority. The foundation produced the first major assessment of domestic security after 9/11.[1] Over the past decade, we have assembled a robust, talented, and dedicated research team. I have the honor and privilege of leading that team.

Heritage analysts have studied and written authoritatively on virtually every aspect of homeland security and homeland defense. The results of all our research are publicly available on the Heritage Web site at www.heritage.org. We collaborate frequently with the homeland security research community, including the Center for Strategic and International Studies (CSIS), the Aspen Institute, the Center for National Policy, the Hudson Institute, the George Washington University Homeland Security Policy Institute, and the Strategic Studies Institute and Center for Strategic Leadership at the Army War College.

This paper, in its entirety, can be found at <http://www.heritage.org/research/testimony/2011/12/next-steps-for-the-visa-waiver-program?ac=1>

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Heritage analysts also serve on a variety of government advisory efforts, including task forces under the Homeland Security Advisory Council and the Advisory Panel on Department of Defense Capabilities for Support of Civil Authorities. Our research programs are nonpartisan, dedicated to developing policy proposals that will keep the nation safe, free, and prosperous.

I am particularly proud of The Heritage Foundation's long and substantive record of research on visa management and related security and immigration. This effort reflects the foundation's commitment to advancing public policies that enhance our security by thwarting terrorist travel; encouraging economic growth by promoting the legitimate exchange of goods, peoples, services, and ideas among free nations; and fostering a free and open civil society—all at the same time.

The Visa Waiver Program: Progress and Problems

The Visa Waiver Program allows for visa-free travel—for leisure or business—for up to 90 days among member states. It encourages commerce, tourism, and professional and cultural interchange between allies. Best of all, it enhances security. Countries participating in the Visa Waiver Program must meet higher-than-normal standards in combating terrorism and in law enforcement, border control, document security, and reporting information on lost and stolen passports. More important, they agree to share much more security-related information about travelers than what we get from the standard visa process. This information sharing helps identify and track suspected terrorists and their supporters, international criminals, and visitors who overstay their allotted time in country.

After 9/11, as part of its mission to strengthen our national security, the Department of Homeland Security restructured the program both to beef up the security requirements and to bring more countries into the program. Nine new countries were brought into the improved Visa Waiver Program. Now, however, current law prevents adding new countries with a visa refusal rate greater than 3 percent until Homeland Security develops and implements a system to biometrically track the departure of foreign visitors, a program that will likely never happen and has nothing to do with the Visa Waiver Program.

Requirement for Biometric Exit Outdated

As you well know, the directive for implementing biometric exit—recording of a uniquely identifiable intrinsic physical characteristic (most often fingerprints) at the point of departure from the United States at land, sea, or airport point of entry—predates 9/11. After almost two decades, the federal government has failed to implement this Congressional mandate. Regardless of what merits the framers of the requirement believed biometric exit would have served in the past, either as an immigration management tool, a criminal enforcement measure, or a counterterrorism initiative, the need for this program needs to be reassessed in light of current requirements.

From a counterterrorism perspective, it is difficult to justify the expense of biometric exit. When this program was originally conceived, there were few effective tools for tracking terrorist travel. Today, there are many. It is clear that the U.S. has become a much harder target for transnational terrorism than it was before 9/11. Law enforcement agencies have foiled at least 43 terrorist plots since the attacks on New York and Washington in 2001.^[2] Increasingly, we find that these plots are “homegrown,” in part because it has been more difficult for transnational terrorist groups to organize operations overseas and dispatch operatives to the United States.

Even where we have seen the requirement for tracking suspects trying to exit the United States in “real time,” we have seen where these tasks can be conducted effectively using existing enforcement tools. No case is more illustrative than the apprehension of Faisal Shahzad, the Times Square bomber, who was placed on a terrorist watch list, identified, and arrested attempting to flee the country on an international flight less than two days after the aborted attack.

From the perspective of both immigration and criminal enforcement, biometric exit would be a very limited tool. Federal authorities lack the resources to investigate every lead such a system might produce. Furthermore, by itself, a report that an individual had failed to register an exit and potentially was unlawfully present in the United States would have scant utility in prioritizing law enforcement resources. Such a report might simply be a false-positive—the individual's status might

have changed. The report alone would provide no assessment of risk.

In terms of both immigration and criminal enforcement, biographical data (name, date of birth, and country of origin) provide suitable data for most enforcement activities. For immigration purposes, the most useful information is trends in overstays from individual countries and classes of users. This information would help to identify accurately where consular officers and officers at the port of entry ought to focus their efforts. Likewise, it would help to identify where U.S. visa policies toward individual countries ought to be reassessed. In addition, for most high-priority immigration violation or criminal investigations, biographical data ought to be sufficient.

In particular, for the management of the Visa Waiver Program where the issue concerns general compliance with visa policies rather than specific individual cases, biographical data should be more than sufficient to provide the U.S. government the information it needs to manage the program effectively.

Given the costs of implementing comprehensive biometric exit, the fiscal constraints that will likely be imposed on the Department of Homeland Security in the years ahead, and the department's many priorities, the biometric exit mandate can no longer be justified. It is past time to repeal the requirement. Decoupling the mandate for biometric exit from the authority of the government to add new countries is a logical first step.

Overstay vs. Refusal Rates

As a qualification for the Visa Waiver Program, “refusal rates”—the percentage of visa applications denied by consular officers—have been used to determine a country's eligibility to participate in the program. The rates were interpreted as a measure of the propensity to “overstay,” to remain unlawfully in the United States beyond the 90-day period authorized under the Visa Waiver Program.

There is ample evidence to suggest, however, that refusal rates are not an optimum metric for assessing the potential to overstay. For example, if an individual submits five visa applications in a year and all are denied, they are all counted toward the refusal rate—thus inflating the rate. While it is true that if a subsequent application is approved in the same year, the previous refusals are not counted against the rate, the reality is that often, as the number

of refusals climbs, the likelihood of a subsequent approval does not. Furthermore, individuals may be denied visas for reasons other than a propensity to overstay (including, for example, health-related issues and criminal concerns).

With the advances in biographical exit records management, it would be far more prudent to rely directly on visa overstay rates as an appropriate metric for qualifying for VWP. Strengthening biographical exit records management and compliance, as well enhancing and ensuring compliance with the Electronic System for Travel Authorization (ESTA) ought to be the Department of Homeland Security's priorities. While it would also be prudent to invest more in improving automated entry-exit of existing biographical data, it is time to make the switch from refusal to overstay rates.

Furthermore, it should be remembered that even under the Visa Waiver Program, the U.S. retains mechanisms to deter likely overstays. Individuals, for example, can be denied authorization to travel to the U.S. when they register under the ESTA. Additionally, CBP officers at the port of entry may make determinations of inadmissibility such as seeking work without proper legal certification.

Expanding the Ranks

For both security and economic reasons, it makes sense to judiciously add more countries to the family of the Visa Waiver Program nations.

From a security perspective, the U.S. obtains far more and more useful information for immigration and criminal enforcement and effective counterterrorism from partner Visa Waiver Program countries than from those where visas are required.

From an economic perspective, boosting international travel ought to be a priority. Inbound travel to the U.S. already supports almost 2 million American jobs. The value of global travel is expected to double over the next 10 years to over \$2 trillion. Unfortunately, right now, the U.S. share of that business is shrinking. For example, the U.S. share of long-distance travel is down considerably over the past decade.

If the trend line continues, the U.S. could be shedding jobs in this sector of the economy rather than adding them. On the other hand, if America recaptured its fair share of international travel, by some estimates over an additional 1 million jobs could be created over the next decade.

The most effective way to encourage travel is through the Visa Waiver Program. In some countries, wait times for visas have ballooned to unreasonable lengths. *The Wall Street Journal*, for example, recently reported that in Brazil, the wait times for these interviews run up to four months. It is far more cost-effective to expand VWP than to add the infrastructure that would be required to speed visa processing and management. Expanding VWP will not only allow for bringing in more qualified nations, it will also permit the Departments of State

and Homeland Security to shift resources to countries where the demand for visas is outstripping the US government's capacity to issue them in a timely and effective manner.

Thank you for the opportunity to speak today on this important issue. I urge the Congress to decouple the Visa Waiver Program from the biometric exit program, rethink the metrics for qualification for the Visa Waiver Program, and urge the Administration to expand the program to qualified nations as rapidly as practical.

Executive Memorandum

No. 1015
November 22, 2006



Published by The Heritage Foundation

State and Local Law Enforcement's Key Role in Better, Faster, Cheaper Border Security

James Jay Carafano, Ph.D., and David B. Muhlhausen, Ph.D.

Congress recently passed the Secure Fence Act of 2006, which requires the federal government to gain operational control of the U.S. southern border within 18 months. Achieving this goal will require the cooperation of state and local law enforcement in the border communities of Texas, New Mexico, Arizona, and California. However, Congress and the Administration need to provide better tools for integrating and supporting efforts to make the U.S.–Mexican border area safe, secure, and prosperous.

A Call to Action. The Secure Fence Act's most critical component is the mandate for quickly gaining control of the border. Doing it fast is just sound strategy. Yet, by themselves, most of the law's measures (e.g., more manpower and fences) will likely fail because implementation will take months or years, allowing the hundreds of thousands of people seeking to enter the U.S. to find ways to circumvent these measures.

An effective strategy must focus on speed. It should disrupt the current illegal migration patterns quickly and dramatically, leaving legal migration as the only viable option. This strategy should have three components: dominant and persistent enforcement, rapid and robust deployment, and legal alternatives for south–north

migration. The Secure Fence Act does not address any of these requirements.

Thus, while the sense of Congress is right, the tools that it has provided are inadequate. Adding more Border Patrol agents will take much longer than 18 months. Deploying more National Guard forces would strain an already overtaxed military. Army troops are also an expensive answer and not ideally suited to the mission. Adding additional capacity by contracting private-sector services could boost the

Border Patrol's capabilities, but contractors are not suitable for every law enforcement task.

The Administration should continue to build a more robust professional border security force to safeguard the air, land, and sea on the southern border. This should include a mix of professional cadre in the Department of Homeland Security (DHS) and the flexibility to supplement them with contractor

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- An effective immigration strategy would disrupt the illegal migration patterns quickly and dramatically, leaving legal migration as the only viable option.
 - Enhanced local law enforcement in border communities is key to gaining operational control of the border within 18 months.
-

This paper, in its entirety, can be found at:
www.heritage.org/research/immigration/em1015.cfm

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support where practical. However, a “bridging” capability is needed now to gain operational control of the border within the 18-month time limit.

The Role of State and Local Law Enforcement.

Enhanced law enforcement in border communities in the form of more robust community policing should be a key component in building the bridging capability. Local law enforcement officers are ideal because they often have the best intelligence on threats in their areas, are most familiar with the local people and geography, and are trained experts in community policing techniques.

The value of community policing is primarily to deter the types of crime that are associated with illegal human trafficking along the border (e.g., trespassing, theft, and document forgery), not to enforce federal immigration laws. Deterring this criminal activity will in turn make the federal government’s challenge of policing the border more manageable.

State and local governments will support these programs because they have a vested interest in making their communities more safe and secure. In addition, since the focus of their efforts is deterring crime—not arrest, prosecution, and incarceration—these programs should not substantially increase the burden on state and local judicial and penal systems. The federal government should support their efforts because they contribute directly to a federal mission. This recommendation is an important policy shift away from the federal government’s tendency to subsidize routine local law enforcement through wasteful and ineffective programs such as the Office of Community Oriented Policing Services (COPS) toward enlisting local law enforcement to help secure the nation’s borders.

The Way Ahead. The Administration should:

- **Revise** its homeland security grant criteria to increase emphasis on law enforcement capabilities (e.g., communications and equipment) that support policing in border communities and to allow grants to cover personnel costs (e.g., overtime pay) for border security activities.
- **Make** funding state and regional intelligence fusion centers in the border communities a priority. These centers will act as focal points for sharing and analyzing information on home-

land security and criminal activity among federal, state, and local entities.

- **Encourage** local and state law enforcement to participate in federal Border Enforcement Security Task Forces along the southern border.
- **Work** closely with state and local law enforcement to develop requirements for the Secure Border Initiative.

In addition, Congress should:

- **Allow** states and cities participating in Section 287(g) programs (compacts with the DHS that enable state and local law officers to assist in federal immigration enforcement) to fund their participation with homeland security grants.
- **Require** the DHS to draft a strategy for implementing Section 287(g) nationwide, with first priority given to the border states, and to create a national training center to teach lessons learned and best practices.
- **Encourage** accountability in how local law enforcement uses homeland security grants by giving the DHS Office of Inspector General sole authority to freeze DHS funding to local law enforcement grantees that misuse grants until they repay the misallocated funds.

Conclusion. Federal support for border security policing should be viewed as a short-term bridging program to secure the border now. Congress should resist the temptation to turn these grants into a pork-barrel program allocated through earmarks. To fund these efforts, Congress and the Administration should plan to allocate about \$400 million per year over three years out of the projected spending on homeland security grants. Few other uses of these funds could have a more immediate, practical, and useful impact on the national effort to make America more safe, free, and prosperous.

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ISSUE BRIEF

No. 3517 | FEBRUARY 24, 2012

White House Takes Wrong Step with Immigration Enforcement

Matt A. Mayer

The Obama Administration has decided to kill one of America's most successful interior enforcement programs to combat illegal immigration. This decision will undermine state and local law enforcement, encourage additional illegal immigration, and make America less secure.

In the first seven years after Immigration and Customs Enforcement (ICE) started using the authorities under Section 287(g) of the Immigration and Naturalization Act (INA), more than 60 state and local agencies entered into Memoranda of Agreement (MOAs) resulting in roughly 1,000 law enforcement officers being "deputized" to enforce federal immigration law. Even more important, over 120,000 individuals were identified as illegal immigrants under the program.

Section 287(g). In 1996, Congress created Section 287(g) programs as an amendment to the INA. For six years, ICE failed to use the powers authorized in Section 287(g). Starting in 2002, ICE started allowing state and local law enforcement agencies to enter into MOAs.

Under Section 287(g), law enforcement entities entered into agreements with ICE to "act in the stead

of ICE agents by processing illegal aliens for removal." Before they could participate, state and local law enforcement officers would sign MOAs with ICE and undergo a five-week training course, background check, and mandatory certifications.

Section 287(g) was a solid improvement in terms of enforcing immigration laws. Before it was created, a state or local law enforcement officer who apprehended an individual who could not demonstrate legal presence in the U.S. would simply notify ICE and wait for them to come and take the individual. In practice, this meant most illegal immigrants went free and immigration laws were not enforced.

For participating cities and states, Section 287(g) has been a critical tool for enforcing America's immigration laws, because it has become a force multiplier for the under-resourced ICE.

The First Attack on 287(g). In its first attack on this successful program, on July 9, 2009, the Obama Administration announced plans to make the MOAs "more uniform." However, the announced changes went to the heart of the program and disrupted any real attempt to enforce the law.

The first change required local law enforcement to pursue all criminal charges against those individuals who are apprehended. In practice, and for good reason, law enforcement would often start removal proceedings if they found someone to be illegally present instead of going through a costly and lengthy criminal process that would end in the same result. Requiring criminal prosecution put a severe drain on the resources of the local jurisdictions—and for no legitimate reason.

The second change limited the use of immigration checks to those who are arrested for "major"

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offenses. But most illegal immigrants who commit crimes commit misdemeanors, not felonies. Given that one of the 9/11 hijackers, Mohammad Atta, was pulled over in a traffic stop (a minor offense) two days before the 9/11 attacks, there is significant benefit to checking the immigration status of all individuals who are arrested. Had the officer inquired about Atta, he might have found that Atta was in the country illegally and therefore might well have prevented his participation in the attacks.

The implicit insinuation of the July 2009 changes was that local law enforcement agencies routinely abused their powers under Section 287(g). Signaling that they would be second-guessed by ICE dissuaded many agencies from participating in the program.

The Second Attack: Heritage Prediction Comes True. The Heritage Foundation predicted¹ in July 2009 that these changes would result in a reduction in the number of local law enforcement agencies interested in using Section 287(g). Sure enough, as recently reported, not one local law enforcement agency has signed an MOA since August 2010, and only two agencies signed MOAs after the July 2009 changes in the program. Media reports indicate that ICE will not sign any more MOAs and will move to “terminate” the “least productive” MOAs. Notably, the last three-year MOA will end in November 2012, thereby ending the program in its entirety.

To replace the work done under Section 287(g), the Obama Administration will focus on the Secure

Communities program. Secure Communities is essentially a database tool for sending information to ICE about illegal immigrants who are arrested by state and local law enforcement and for helping ICE to prioritize resources. The Obama Administration has stated that it will focus on illegal immigrants in jails and prisons who have committed serious felonies.

Secure Communities, while a useful tool, is only a complementary aspect of a broader immigration enforcement system. With the elimination of the Section 287(g) program, that broader immigration enforcement system will get weaker.

Moving Forward on 287(g). It is clear that the Obama Administration, along with its legal assault on state and local immigration enforcement laws, does not respect the rights of states or the important role they play in curbing illegal immigration. Congress can reassert its legislative and oversight authority to preserve the ability of state and local law enforcement agencies to use the Section 287(g) program. For instance, Congress can reverse the burdensome regulatory changes made in July 2009 and continue to fund the program. Many local law enforcement agencies may decide not to use the program, but Congress can help ensure that those that do can continue to do so.

Matt A. Mayer is a Visiting Fellow at The Heritage Foundation, president of Provisum Strategies, and author of Homeland Security and Federalism: Protecting America from Outside the Beltway.

1. Jena Baker McNeill and Matt A. Mayer, “Section 287(g) Revisions: Tearing Down State and Local Immigration Enforcement One Change at a Time,” Heritage Foundation WebMemo No. 2543, July 14, 2009, at <http://www.heritage.org/research/reports/2009/07/section-287g-revisions-tearing-down-state-and-localimmigration-enforcement-one-change-at-a-time>.

WebMemo



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July 10, 2009

Homeland Security Department Guts Workplace Enforcement

James Jay Carafano, Ph.D.

This week, the Department of Homeland Security (DHS) announced it plans to kill some responsible, reasonable workplace verification rules. As a result, the department will perform less—not more—workplace checks.

This announcement undercuts the claim that the department is interested in “smart and tough” immigration enforcement. Effective workplace enforcement is vital, as employment is the principal draw for illegal immigrants to come to the United States. They come here for the jobs. Enforcing workplace laws is a vital component to create disincentives to unlawful immigration. Congress should not authorize or fund efforts to scale back workplace enforcement.

What DHS Did: Giving the Green Light to Employers to Hire Unauthorized Aliens. Homeland Secretary Janet Napolitano announced today that the department intends to rescind the 2007 Social Security No-Match Rule, a rule designed to clarify the obligations employers had with respect to knowingly hiring unauthorized aliens.

No-match letters are not new and are a tested component of the Social Security system, in use for nearly 30 years. The Social Security Administration (SSA) is required to track workers’ wage histories and collects this information from the W-2 forms that employers submit each year for each employee. Each year, the SSA receives 8–11 million W-2 forms containing names and Social Security numbers that do not match the information in its records. In 1994, SSA started sending no-match letters to

employers who submitted 10 or more W-2 forms that could not be matched to SSA records or who have no-matches for more than one-half of 1 percent of their workforces. The majority of the individuals named in the no-match letters sent to employers are aliens unauthorized to work in the United States.

Under the Immigration Reform and Control Act of 1986 (IRCA), it is illegal to “knowingly” employ an alien unauthorized to work in the United States. However, some employers were uncertain as to whether receiving a no-match letter amounted to constructive knowledge that an employee was unauthorized to work. Many employers took advantage of this uncertain state of affairs and did little or nothing upon receipt of a no-match letter.

Therefore, in August 2007, the Immigration and Naturalization Service (INS) promulgated a formal rule on no-match letters to ensure greater uniformity of enforcement and to clarify the definition of “constructive knowledge.” The rule carved out a safe harbor for employers who receive no-match letters and spelled out what employers must do upon receipt of a no-match letter.

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www.heritage.org/Research/HomelandSecurity/wm2535.cfm

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The new rule and guidance were an attempt to inform employers of their obligations under IRCA and of the risk they run by turning a blind eye to their employees' false or forged credentials. Anti-enforcement groups were quick to protest, admitting that this new approach would actually have an impact on illegal employment. They sued, and in October 2007 a federal court issued a preliminary injunction against enforcement of the rule on the grounds that DHS did not sufficiently justify its change in policy among other things.

Subsequently, DHS provided its justification for the change in policy and amended the proposed rule in compliance with the court's order. There is every reason to believe that the Administration would ultimately succeed in court if it pressed forward with this lawsuit. The amended proposed rule would become law, and employers would have the specific guidance they need to be in compliance with IRCA.

What DHS Did Wrong. Instead, the department said it will no longer seek to issue revised no-match letters and rely solely on a "more modern and effective E-Verify system." Through E-Verify, participating employers can instantly check the work eligibility status of new hires through a secure online service that compares information from an employee's I-9 form against SSA and DHS databases. This service is provided free to employers (though the individual companies must bear the cost of providing the infrastructure and people to enter the data). The system has proven to be quite effective, and SSA and DHS continue to work to improve service, reliability, and privacy protections.

The department also announced "the Administration's support for a regulation that will award federal contracts only to employers who use E-Verify to check employee work authorization." This is unobjectionable and in fact merely a continuance of the previous Administration's plans and not a new initiative.

E-Verify is an excellent program. It is, however, not mandatory for all employers. Thus, the first consequence of not issuing no-match letters—and failing to allow DHS to check the no-match data compiled by SSA to identify employers who habitually scoff workplace at immigration laws—is that

DHS will be doing less workplace enforcement, not more. In addition, it is not fully clear whether this Administration will fully comply with the intent of the previous Administration to apply E-Verify to all federal contract employees.

If, for example, E-Verify were applied only to new employees hired specifically for the contract work, then for instance, if a construction firm hires an unlawfully present individual and then one week later assigns him to work on a federal contract project, this unlawful individual would be considered an "existing employee" not subject to E-Verify. This Administration must craft the E-Verify rules to apply to all existing employees working for the federal government (a rule in place in the Bush Administration) *and* under federal government contracts; otherwise the result would be less work place enforcement, not more. That is unacceptable.

Legalese. The DHS press release stated that the department was abandoning "no-match" because it had been challenged in the courts and an injunction was issued by District Judge Charles Breyer. This statement is at odds with an announcement last year by the department when it proposed a revised rule on issuing no-match letters. Then, the department argued "additional detail provided in the proposal is enough to have the injunction lifted." In fact, the Bush Administration amended the proposed rule consistent with Judge Breyer's ruling, and there is every reason to believe that he would be forced to lift the stay if this Administration pushed the issue in court with him. Conversely, the press announcement did not note that the department's efforts to have E-Verify apply to federal contractors has also been challenged in court. Indeed, any efforts at real workplace enforcement are likely to be challenged in the courts. Offering court challenges as an excuse to make bad public policy is unacceptable as well.

Moving Forward. One hundred percent verification of workplace enforcement is already a requirement by law. In order to curtail illegal immigration, this statute should finally be enforced by moving toward requiring all employers to use E-Verify to confirm the employment eligibility of all new hires and current employees.

Government policy should be based on the principles of *empowerment*, *deterrence*, and *information*.

It should empower honest employers by giving them the tools to determine quickly and accurately whether a new hire is an authorized worker. It should hold employers free from penalty if they inadvertently hire an illegal worker after following the prescribed procedures.

Government should perform this verification in the most efficacious manner possible, one that is cost-effective; protects individual data and privacy; minimizes the burden on employers; and addresses concerns over security, public safety, and enforcement of workplace and immigration laws. Nothing less is acceptable. E-Verify is an important component of this effort and must be authorized as a permanent program and fully funded by the Congress and its use expanded by the government as practicable. Until E-Verify is more broadly adopted throughout the U.S. workforce, E-Verify must be complemented by a robust no-match letter process that assists employers by specifically spelling out their obligations. By rescinding the 2007 no-match letter amended rule, the Administration is effectively saying that it will not enforce the law against employing illegal immigrants for the overwhelming bulk of U.S. employers. It is giving employers of unauthorized aliens legal cover and an excuse not to follow IRCA. The new policy is an “open door” to hiring illegal immigration at a time of near record-high unemployment among American workers.

Rather than kill 2007 amended rule on “no-match” letters, a far better policy would be to retain the letter option and, in addition, for the SSA to routinely share no-match data directly with DHS. This can be done in a manner that does not risk individual employees’ sensitive information or civil liberties. With this data, DHS could more efficiently target employers who willfully hire unlawfully present labor.

Congress Must Act. The right approach to immigration enforcement is to combine “no-match” letters and greater data sharing between DHS and SSA with a reasonable and robust E-Verify program. The outline of the plan announced by DHS today may in the not too distant future leave America with neither. Consequently, Congress should:

- Reject the plan announced by DHS to abandon the 2007 amended “no-match” letter rule;
- Establish in law the authority for SSA and DHS to routinely and appropriately share SSA data in a manner that respects and safeguards personal information and the right to privacy;
- Permanently authorize E-Verify and fund DHS to continue to expand and improve the program;
- Require the department to issue a report explaining what is meant by “smart and tough enforcement” and each component of its workplace and immigration enforcement strategy;
- Direct the General Accountability Office to evaluate the department’s workplace enforcement strategy; and
- Defer major immigration or border security enforcement reform legislation until the Administration implements a comprehensive, suitable, feasible, and acceptable policy for workplace and immigration enforcement.

It is the responsibility of Homeland Security to enforce the law in a manner that is both reasonable and effective. This week’s announcement fails that test. Congress should not let it stand.

—James Jay Carafano, Ph.D., is Assistant Director of the Kathryn and Shelby Cullom Davis Institute for International Studies and Senior Research Fellow for National Security and Homeland Security in the Douglas and Sarah Allison Center for Foreign Policy Studies at The Heritage Foundation.

ISSUE BRIEF

No. 3642 | JUNE 19, 2012

Illegal Immigration: House Sends Strong Signal with Increased Funding for Section 287(g) Program

Matt A. Mayer

On June 7, the House of Representatives passed H.R. 5855, the 2013 U.S. Department of Homeland Security Appropriation legislation. A key element of the 2013 appropriation bill is the significantly increased appropriation for the Section 287(g) program from \$5.4 million in 2012 to over \$68 million in 2013.

With the decision by the U.S. Supreme Court on Arizona's Senate Bill 1070 coming any day, it is important for Congress to send a message that, regardless of that decision, states and localities will have a role to play in tackling America's illegal immigration problem.

Section 287(g). In 1996, Congress created Section 287(g) programs, which allow state and local law enforcement entities to enter into agreements with ICE to "act in the stead of ICE agents by processing illegal aliens for removal." Before they could participate, state and local law enforcement officers would sign Memoranda of Agreement (MOAs) with ICE and undergo a five-week training course, background check, and mandatory certifications.

Section 287(g) was a solid improvement in terms of enforcing immigration laws. Before it was created,

a state or local law enforcement officer who apprehended an individual who could not demonstrate legal presence in the U.S. would simply notify ICE and wait for them to come and take the individual. In practice, this meant that most illegal immigrants went free and immigration laws were not enforced.

However, for the first six years of the program, ICE failed to use the powers authorized in Section 287(g). It was not until 2002 that ICE began entering into MOAs with state and local law enforcement agencies.

For participating cities and states, Section 287(g) has been a critical tool for enforcing America's immigration laws, because it has become a force multiplier for the under-resourced ICE. In the first seven years after ICE started using the authorities under Section 287(g), more than 60 state and local agencies entered into MOAs resulting in roughly 1,000 law enforcement officers being "deputized" to enforce federal immigration law. Even more important, over 120,000 individuals were identified as illegal immigrants under the program.

Earlier this year, the Obama Administration moved to kill the Section 287(g) program.

Leaving States in the Cold. Through its legal attack on immigration enforcement programs in Arizona and Alabama, the Obama Administration is taking the position that the Constitution gives the federal government sole authority over illegal immigration. This sole authority preempts states from enacting any legislation addressing illegal immigration problems.

Congress clearly provided state and local governments with the ability to leverage Section 287(g) to enforce federal immigration law. Yet the

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Obama Administration has gone beyond its executive branch power to enforce the law by ending the Section 287(g) program.

Beyond its erroneous understanding of the Constitution, the Obama Administration's flawed stance would mean that the federal government could cease all border security operations and that states and localities would be forced to stand by idly as millions of illegal immigrants put severe strains on their welfare, health care, infrastructure, and educational systems.

Until Congress repeals Section 287(g) or ceases to fund it, the Obama Administration is obligated to enforce the law.

Moving Forward on Section 287(g). Although not a panacea in itself to America's illegal immigration problem, Section 287(g) is one of the most useful and efficient tools to curtail illegal immigration. It is clear that the Obama Administration, along with its legal assault on state and local immigration enforcement laws, does not respect the rights of states or the

important role they play in curbing illegal immigration. Nor does it acknowledge Congress's ability to allow states to assist the federal government with immigration enforcement.

With its recent vote, Congress reasserted its legislative authority to preserve the ability of state and local law enforcement agencies to use the Section 287(g) program. Many local law enforcement agencies may decide not to use the program, but the House action to ensure that those that do can continue to do so is a strong signal to the Obama Administration. It is now up to the Senate to act and follow up on the House's good work in funding Section 287(g).

—*Matt A. Mayer is a Visiting Fellow at The Heritage Foundation, president of Provisum Strategies, and author of Homeland Security and Federalism: Protecting America from Outside the Beltway and Taxpayers Don't Stand a Chance: Why Battleground Ohio Loses No Matter Who Wins (and What to Do About It).*

Background

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Better, Faster, Cheaper Border Security Requires Better Immigration Services

James Jay Carafano, Ph.D., and Matt A. Mayer

The recent announcement by the U.S. Citizenship and Immigration Services (USCIS) agency that it intends to implement a sharp increase in fees for its services has engendered an equally sharp debate. The Administration argues that the hikes are essential for keeping the agency solvent and improving services. Critics contend that the increases will put these services out of reach of those who need them most, many of whom are already poorly served by the USCIS.¹

The debate misses the point. While the USCIS is seriously trying to improve customer service by increasing fees, more fundamental reforms are required to make the agency an efficient and effective partner in providing the immigration services and enforcement that the nation needs to remain safe, free, and prosperous. Three fundamental reforms are needed:

1. A different funding model for the USCIS,
2. A comprehensive overhaul of the agency's service support enterprise, and
3. Much better integration of USCIS programs with immigration enforcement and border control efforts.

A Nation of Immigrants

More than any other nation in history, the United States and its system of equal justice and economic freedom beckon not only to the downtrodden and the persecuted—all those “yearning to breathe free”—but also to those who seek opportunity and a better

Talking Points

- Having the USCIS provide fast, responsive, and accurate services is critical to an effective strategy for enhancing border security, particularly on the U.S.–Mexican border, which accounts for most of those who enter the United States illegally.
- Currently, the majority of USCIS operations are funded by user fees. This method of funding for the USCIS is unfair and inefficient. Instead, Congress should appropriate funds to pay for the programs that do not charge a fee.
- The USCIS still has not managed to overcome outdated practices, inefficiencies, and inadequate technology. The result is an unprecedented backlog of applications and petitions. The process needs to be modernized to ensure that the USCIS can provide security and adequate customer service.
- The USCIS needs to integrate its activities with those of many other federal agencies so that it can conduct interagency operations essential for providing both better services and better security.

This paper, in its entirety, can be found at:
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future for themselves and their posterity. Immigration is an important part of the U.S. economy and civil society. Through U.S. immigration law, Americans invite individuals from other countries to join them as visitors, workers, students, residents, and/or fellow citizens. The federal government's job is to administer these laws by processing visa petitions, naturalization petitions, and asylum and refugee applications and by performing other immigration-related activities.²

Before 9/11, the Immigration and Naturalization Service (INS) provided these services and conducted enforcement. In the wake of the attacks on New York and Washington, Congress established the Department of Homeland Security (DHS) and assigned immigration enforcement functions to two DHS agencies: Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).³ The USCIS was established as the entity primarily responsible for administering immigration and naturalization adjudication functions and establishing immigration services policies.

As daunting as the agency's workload is today, demands for services will only increase in the future. In his most recent State of the Union address, President George W. Bush again called for a temporary worker program and noted the need "to resolve the status of the illegal immigrants who are already in our country without animosity and without amnesty."⁴ None of this can be done without building an agency far more capable than the current USCIS.

Putting Security First

Improving immigration services directly affects national security. In fact, having a USCIS that provides fast, responsive, and accurate services is a critical component of any effective strategy for enhancing border security, particularly on the U.S.–Mexican border, which accounts for most of those who enter this country illegally. Better immigration services could significantly affect south–north migration flows.

The more than 500,000 individuals that it is estimated enter the United States annually between the U.S. ports of entry strain federal, state, and local enforcement, preventing them from focusing their resources on the most serious criminal and national security risks. Indeed, simply increasing security at the border has not dramatically decreased illegal border crossings.⁵

A strategy to gain operational control of the U.S. southern border should focus on building up the means to limit illegal crossings between the land points of entry, to interdict smuggling by air and sea, to discourage unlawful presence inside the country, and to provide adequate legal alternatives to support south–north migration flows.⁶ Immigration services can serve this strategy in two ways.

First, fast and efficient services will act as incentive for those who wish to come here to opt for legal migration over illegal entry.

Second, an effective immigration service will be better able to screen for criminal or national security threats that attempt to infiltrate through America's legal points of entry.

1. For example, see Lesley Clark and Alfonso Chardy, "Fee Hike Would Hurt Immigrants, Critics of Plan Say," *Miami Herald*, February 1, 2007, p. A1, at www.miami.com/mld/miamiherald/news/16593053.htm (February 21, 2007).
2. Edwin Meese III and Matthew Spalding, "The Principles of Immigration," Heritage Foundation *Background* No. 1807, October 19, 2004, at www.heritage.org/Research/GovernmentReform/upload/70696_1.pdf.
3. For recommendations on coordinating activities between these agencies, see James Jay Carafano, Ph.D., "Integrating Immigration, Customs, and Border Enforcement Should Be a Priority," Heritage Foundation *Executive Memorandum* No. 1006, July 21, 2006, at www.heritage.org/Research/HomelandDefense/upload/em_1006.pdf.
4. George W. Bush, "State of the Union," January 23, 2007, at www.whitehouse.gov/news/releases/2007/01/20070123-2.html (February 21, 2007).
5. David B. Muhlhausen, Ph.D., "Building a Better Border: What the Experts Say," Heritage Foundation *Background* No. 1952, July 17, 2006, at www.heritage.org/Research/Immigration/upload/bg_1952.pdf.
6. James Jay Carafano, Ph.D., Brian W. Walsh, David B. Muhlhausen, Ph.D., Laura P. Keith, and David D. Gentilli, "Better, Faster, and Cheaper Border Security," Heritage Foundation *Background* No. 1967, September 6, 2006, at www.heritage.org/Research/Immigration/upload/bg_1967.pdf.

Putting Services Right

The USCIS needs to provide both better services and better security. The right funding model, organizational processes, and interagency operations are key to ensuring that the agency can do both of these jobs well.

Fixing Funding. By law, Congress requires that most USCIS operations be funded by user fees. While this requirement seems fair and appropriate—those who avail themselves of the agency's services should pay for them—in practice, Congress has created a system that serves neither its customers nor the nation well.

In the DHS appropriation for fiscal year (FY) 2007, Congress provided the USCIS with just under \$182 million, which represents a small fraction of its annual budget.⁷ The remaining funds will come from fees charged for the agency's services. On January 31, 2007, the USCIS announced a proposed fee adjustment as part of its plan to build an immigration service for the future. In the announcement, the USCIS proposed raising the fee on an I-485 (Adjustment of Status to Permanent Resident) from \$325 to \$905, an increase of almost 300 percent. The significantly higher fee is based on eliminating the additional fees (\$475) that applicants must pay as a result of processing delays—delays caused by the USCIS's inability to process applications in a timely fashion.

Using elimination of the existing add-on fees to make the fee increase more palatable is somewhat disingenuous. USCIS processing delays created the original need for the add-on fees. In addition, some applicants make it through the system without having to pay the additional process delay fees. For those applicants, the increase would represent an unjustified substantial increase in their fees. In effect, they would be paying more for the same service.

Moreover, because of the time delays associated with the regular application process, the current USCIS fee model creates incentives for legal immigrants to pay a premium fee to expedite the processing of their applications. The USCIS collected \$202 million in premium fees and \$64 million in regular fees in FY 2004 and \$139 million in premium fees and \$69 million in regular fees in FY 2005.⁸ The substantially higher revenue from premium fees is a disincentive to transforming normal processing to meet the six-month goal articulated by President Bush in 2001.⁹ If the USCIS met President Bush's goal, it would lose the revenue from premium fees because there would be less need to expedite processing if normal processing time were shorter.

This loss would directly affect the asylum, refugee, and military naturalization programs, which currently do not charge fees for services. Because the USCIS does not collect any fees in these programs, it must subsidize them by charging higher fees in other programs.¹⁰ It is unclear whether the proposed fee increase contemplates the loss of the premium fee program funds or the USCIS is also proposing to raise the premium fee. If the proposed fee increase does not include the cost of losing the premium fee program, then the USCIS will be forced to raise fees again or maintain an inefficient system that will ensure a supply of applicants willing to pay a premium fee for expedited processing.

The pay-as-you-go model that Congress has imposed on the USCIS is not working because not everyone is paying and those that are paying are not contributing in an equitable manner. Simply raising fees perpetuates an unfair and inefficient system. Instead, Congress should:

- **Establish a national trust fund to cover the programs for which the USCIS cannot charge**

7. Public Law 109–295.

8. See U.S. Department of Homeland Security, Citizenship and Immigration Services Ombudsman, *Annual Report 2006*, June 29, 2006, p. 48, at www.dhs.gov/xlibrary/assets/CISOmbudsman_AnnualReport_2006.pdf (February 21, 2007).

9. See George W. Bush, "Remarks by the President at INS Naturalization Ceremony," July 10, 2001, at www.whitehouse.gov/news/releases/2001/07/print/20010710-1.html (February 21, 2007).

10. U.S. Department of Homeland Security, Citizenship and Immigration Services Ombudsman, *Annual Report 2006*, p. 2.

a fee (e.g., **amnesty applications and naturalization of military personnel**). It makes no sense for Congress to require the USCIS to process applications or petitions of immigrants without providing the funds to cover the costs of those activities. More critically, it is fundamentally unfair for Congress to place the burden of those costs on the backs of other immigrants seeking entry into America, many of whom can barely afford to pay for their own costs.

- **Use the fees to support the main purpose for which they are collected.** Rather than being used to fund the majority of USCIS operations, fees should be used to support services like legal immigration, naturalization, and assimilation, thereby strengthening the naturalization process.
- **Critically examine calls to increase fees.** At a time when the United States is making a concerted effort to encourage those who wish to come to this country to use legal means, substantially raising fees might achieve the unintended consequence of deterring individuals from complying with U.S. immigration laws.

Improving Processes. Despite five years of effort and over \$500 million, the USCIS still has not managed to overcome outdated practices, inefficiencies, and inadequate technology. The result is an unprecedented backlog of applications and petitions.¹¹ Similarly, for security purposes, the USCIS must eliminate such processes as mailing green cards without receipt verification so that multiple green cards are not used for fraudulent or criminal activity.

In terms of the backlog, regardless of how the USCIS continues to reclassify or redefine the problem, a substantial number of applications

and petitions remain that are well beyond the six-month goal set by President Bush. This must change. Part of the problem is due to the inherited backlog that has never been properly addressed. Another aspect of the problem is the USCIS's failure to modernize effectively beyond such legacy systems as the Computer Linked Application Information Management System.

In July 2005, Secretary Michael Chertoff identified these and other problems with USCIS processes, noting that “[r]estructuring this process to enhance security and improve customer service will be an important part of our upcoming agenda.”¹² Regrettably, while much has been done to secure the border and to enhance interior enforcement, not enough has been done to transform the USCIS.¹³

Nor has the USCIS been effective at adapting commercial off-the-shelf technologies available in the private sector that could enable the agency to process applications far more efficiently and effectively. At his confirmation hearing in October 2005, USCIS head Emilio Gonzalez told the Senate Judiciary Committee that the USCIS “wouldn’t be able to handle [a temporary worker program].”¹⁴ Later, Gonzalez criticized the Senate bill on illegal immigration, stating that the USCIS would need up to one year just to register the existing illegal aliens already in the United States.¹⁵

In the FY 2008 DHS budget, the USCIS has proposed spending \$139 million to modernize business infrastructure, an increase of \$39 million over the FY 2007 level. Although the \$39 million increase is vital to reforming the USCIS into an efficient and effective office, it should not be funded by fees.¹⁶ Congress should require the USCIS to:

11. *Ibid.*, p. 44.

12. Michael Chertoff, “Second State Review Remarks,” U.S. Department of Homeland Security, July 13, 2005, at www.dhs.gov/xnews/speeches/speech_0255.shtm (February 21, 2007).

13. U.S. Department of Homeland Security, Office of Inspector General, “U.S. Citizenship and Immigration Services’ Progress in Modernizing Information Technology,” OIG-07-11, November 2006, at www.dhs.gov/xoig/assets/mgmt/rpts/OIG_07-11_Nov06.pdf (February 21, 2007).

14. See CNN, *Lou Dobbs Tonight*, transcript, February 6, 2006, at <http://transcripts.cnn.com/TRANSCRIPTS/0602/06/ldt.01.html> (February 21, 2007).

15. Stephen Dinan, “Immigration Agency Head Slams Senate’s Alien Bill,” *The Washington Times*, June 1, 2006, p. A1, at www.washtimes.com/national/20060601-121820-5787r.htm (February 21, 2007).

- Fund its FY 2008 initiatives through appropriations rather than the revenue of increased fees, and Congress should appropriate the necessary funding.
- Deliver a comprehensive and realistic plan for upgrading its services and information technology and fund the program through annual appropriations.
- Produce a detailed procurement timeline so that this program does not fall behind due to a still-maturing procurement capability at the DHS.¹⁷

Enhancing Interagency Cooperation. To do its job effectively, the USCIS must integrate its activities with many federal agencies including ICE, CBP, the Department of State, the Department of Justice, the Federal Bureau of Investigation, the Department of Labor, and the Social Security Administration (SSA). Building the capacity to conduct interagency operations well is essential to providing both better services and security.

Whether receiving digital transmission of employer “no-match” letters from the SSA to ICE for follow-up investigations or electronically verifying immigration documents for the SSA when an immigrant applies for a Social Security card, the USCIS must have the legal authority, resources, and workforce to ensure that federal agencies are working together, not at cross purposes.¹⁸ Congress can accelerate this process by eliminating impediments that keep federal agencies from cooperating by:

- Permitting information to flow freely among federal agencies, such as sharing of Social Security no-match data.¹⁹

Time for Action

Fixing America’s broken borders will require a comprehensive solution that includes immigration reforms to enforce U.S. laws and create greater incentives for legal migration. Neither of those goals can be achieved without an effective and efficient USCIS. If the USCIS fails once again to meet the challenge, the laws of supply and demand will overtake U.S. immigration laws, and illegal aliens and employers will continue to avoid an overly burdensome, costly, and time-consuming legal process.

The USCIS of tomorrow must be efficient, fair, and flexible, not only to meet the challenges of comprehensive immigration reform, but also to compete globally for immigration talent that developed countries will need to stay competitive in a global economy and to minimize the graying of their workforces. For that to happen, Congress must act to establish a better model to pay for immigration services, to fund the transformation of the USCIS capabilities, and to enable the USCIS to work more effectively as part of an interagency team. The longer Congress waits to address these issues, the longer it will take to deliver the border and immigration security that America needs and deserves.

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16. U.S. Department of Homeland Security, *Budget in Brief: FY 2008*, February 5, 2007, p. 75.

17. For further information on addressing systemic challenges in government information technology programs, see James Jay Carafano, Ph.D., “Homeland Security Spending for the Long War,” Heritage Foundation *Lecture* No. 989, February 2, 2007, at www.heritage.org/Research/HomelandDefense/upload/hl_989.pdf.

18. For recommendations on improving interagency operations in the DHS, see James Jay Carafano, Ph.D., “Missing Pieces in Homeland Security: Interagency Education, Assignments, and Professional Accreditation,” Heritage Foundation *Executive Memorandum* No. 1013, October 16, 2006, at www.heritage.org/Research/HomelandDefense/upload/em_1013.pdf.

19. For example, see James Jay Carafano, Ph.D., “Workplace Enforcement to Combat Illegal Migration: Sensible Strategy and Practical Options,” Heritage Foundation *Lecture* No. 957, August 7, 2006, at www.heritage.org/Research/NationalSecurity/upload/hl_957.pdf.

ISSUE BRIEF

No. 3932 | MAY 8, 2013

Handouts to Lawyers and Special Interest Groups Add to Immigration Bill Costs

By *Hans A. von Spakovsky and Andrew Kloster*

Language in the original Senate immigration bill (that remains in the Sponsor's Amendment) would prove to be a full-employment scheme for immigration lawyers at the expense of the U.S. taxpayer and would provide substantial federal funding for immigrant advocacy groups.¹

In addition, these provisions create open-ended commitments of the U.S. government to aliens applying for various immigration statuses, commitments that could expose the government to costly litigation going forward.

Grants for Legal Assistance. Section 2106 of the proposed bill, entitled "Grant Program to Assist Eligible Applicants," establishes a \$50 million grant program for nonprofit organizations to assist applicants under Sections 245B (registered provisional immigrant status), 245C (upgrade from registered provisional status to lawful permanent resident), and 245D (DREAM Act upgrade from registered provisional status to lawful permanent resident). These grants can be used for legal assistance and effectively commit the Department of Homeland Security (DHS) to providing grants for lawsuits against itself.

Further, Section 2537 of the bill, entitled "Initial Entry, Adjustment, and Citizenship Assistance [IEACA] Grant Program," provides federal funds for eligible nonprofits to "provide direct assistance," including legal assistance, to section 245 (permanent residence under existing law), 245B (registered provisional immigrant status), 245C (upgrade from registered provisional status to lawful permanent resident), and 245F (upgrade for agricultural workers to lawful permanent residence) applicants, as well as applicants seeking to become naturalized citizens.

The bill provides \$100 million for these grants through a new publicly chartered nonprofit, the United States Citizenship Foundation. These grants may be used to provide any assistance the "grantee considers useful to aliens who are interested in applying for registered provisional status," making the use of these funds open-ended and providing a taxpayer spigot for federal funds to flow into the nonprofit advocacy world. In fact, the \$100 million is just for the first five years of the program; Section 2541 authorizes such additional "sums as may be necessary for fiscal 2019 and subsequent years."

Under Section 2212 of the proposed bill, the Legal Services Corporation (LSC)—a federally funded nonprofit that provides legal services for low-income Americans—would be authorized to provide legal services to aliens related to application for Section 2211 "blue card" status (agricultural worker); under Section 2232 for such workers relating to various grievances against their employers; and any Title III, Subtitle F claims, which include a whole litany of various civil rights and employment claims as well as class-action claims. Previously, LSC funding and

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services were reserved by statute for U.S. citizens and aliens with legal status.²

In fact, Section 2104 (“Challenges to the Validity of the System”) specifically authorizes class-action litigation over any “regulation, written policy, or written directive, issue or unwritten policy or practice initiated by or under the authority of the Secretary of Homeland Security.” Thus, immigration lawyers who believe any particular policy or action of DHS is not lenient enough or does not give their clients everything they want will be able to use federal funding to file class-action lawsuits against the government.

Finally, in Section 3503, the U.S. Attorney General is directed to establish an Office of Legal Access Programs to educate aliens within five days of their arrival into custody “regarding administrative procedures and legal rights under United States immigration law and to establish other programs to assist in providing aliens access to legal information.” Furthermore, the programs would be used to identify aliens for consideration by the Attorney General for inclusion in the appointed counsel program.

Appointed Counsel in Immigration Proceedings. This program, found in Section 3502, is entitled “Improving Immigration Court Efficiency and Reducing Costs by Increasing Access to Legal Information.” Previously, aliens were allowed counsel at immigration proceedings “at no expense to the Government.”³ In other words, if the alien could afford to retain his own counsel, he was entitled to representation by that counsel during immigration proceedings.

Under the new proposed language, however, “the Attorney General may, in the Attorney General’s sole and unreviewable discretion, appoint or provide counsel to aliens in” removal (deportation) proceedings. Furthermore, the Attorney General is now *required* to provide counsel for unaccompanied alien children, aliens with serious mental disabilities, and any other alien who “is considered particularly vulnerable when compared to other aliens in removal proceedings, such that the appointment of counsel is necessary to help ensure fair resolution and efficient adjudication of the proceedings.”

This is a very broad standard that places almost no limits on the Attorney General’s discretion to appoint counsel in such cases at taxpayer expense, since it appropriates whatever funds “as may be necessary” from the immigration bill authorization. Thus, the Department of Justice (DOJ) is given a blank check to provide whatever funds it deems appropriate to private immigration attorneys to defend against deportations, but it has no such blank check to fund its own attorneys to bring those deportation actions against aliens.⁴

Providing counsel at taxpayer expense to aliens threatens to open the DOJ up to constitutional lawsuits in at least two ways, notwithstanding the provision that the Attorney General’s decisions are “unreviewable.”

First, there has historically been a presumption that no due process right to counsel exists in the absence of the threat of physical confinement resulting from losing litigation.⁵ The leading case in assessing what procedural process is “due” a

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1. Sponsor’s Amendment to the Border Security, Economic Opportunity, and Immigration Modernization Act of 2013, S. 744, <http://www.judiciary.senate.gov/legislation/EAS13500toMDM13313redline.pdf> (accessed May 8, 2013).
 2. “None of the funds appropriated in this Act to the Legal Services Corporation may be used to provide financial assistance to any person or entity ... that provides legal assistance for or on behalf of any alien, unless the alien is present in the United States and [falls within a limited class of alien with legal status].” Omnibus Consolidated Rescissions and Appropriations Act of 1996, Public Law 104-134, § 504(a)(11). While there is a long-standing presumption against extraterritorial reach of any given statute, the explicit override of this limitation makes it feasible for an LSC grantee to file a class-action lawsuit on behalf of aliens, none of whom is present in the United States, against non-U.S. employers for actions taking place wholly outside the U.S.
 3. 8 U.S.C. § 1362. See also 8 U.S.C. § 1229a(4)(A).
 4. Immigration judges are actually DOJ employees who conduct administrative hearings and trials in enforcements actions prosecuted by DOJ lawyers. This is similar to the type of administrative court system that the Social Security Administration runs for individuals applying for Social Security disability benefits. But citizens contesting a denial of disability benefits in a Social Security administrative hearing are not entitled to taxpayer-funded lawyers. So illegal aliens will be getting lawyers paid for by taxpayers who cannot get their own legal representation paid for if those same taxpayers end up in other administrative courts of the federal government.
 5. See *Lassiter v. Department of Social Services*, 452 U.S. 18, 26 (1981): (“[T]he Court has refused to extend the right to appointed counsel to include prosecutions which, though criminal, do not result in the defendant’s loss of personal liberty.”).

defendant under the Due Process Clauses of the Fifth and Fourteenth Amendments is *Mathews v. Eldridge*, which sets out a three-part test in which a court must balance (1) the private interests at stake, (2) the risk of erroneous decision making, and (3) the governmental interest at stake.⁶

While this balancing is determined by whatever court is hearing a constitutional claim, the immigration bill itself, in Section 3502, arguably makes such a balancing: The Attorney General “shall appoint counsel ... [where] necessary to help ensure fair resolution and efficient adjudication of the proceedings.”

Thus, the bill would send a clear signal to the courts that Congress views appointed counsel as occasionally necessary to ensure fairness and efficiency. While such a determination by Congress would not be binding on any federal court, it would be persuasive evidence and might give rise to weak, albeit colorable claims of due process violations when aliens are denied free lawyers, heaping additional costs on an already burdened federal court system.

Second, aliens denied free counsel might sue the Attorney General and claim that they were denied

equal protection under the Fourteenth Amendment, since they were treated differently than those who received counsel. Further, those aliens could file class actions against the Attorney General under Section 2104 challenging his practices in appointing counsel. Again, these claims are weak, but they are real, and they could cause more litigation headaches for the Attorney General and DHS going forward.

Undocumented Costs. The Heritage Foundation has documented the long-term costs associated with these immigration proposals.⁷ However, the specific bills contain additional costs, using taxpayer money to fund immigration advocacy groups, opening the federal government to future litigation, and funding and providing the lawyers who would sue the government. Such provisions are an unwise and unwelcome special-interest handout.

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6. 424 U.S. 319 (1976).

7. Robert Rector and Jason Richwine, “The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer,” Heritage Foundation Special Report No. 133, May 6, 2013, <http://www.heritage.org/research/reports/2013/05/the-fiscal-cost-of-unlawful-immigrants-and-amnesty-to-the-us-taxpayer>.

BACKGROUND

No. 2813 | JUNE 17, 2013

Advancing the Immigration Nation: Heritage's Positive Path to Immigration and Border Security Reform

The Heritage Foundation Immigration and Border Security Reform Task Force

Abstract

Fixing America's broken southern border and deeply flawed immigration system is often framed as a stark choice between doing nothing or accepting a massive, sweeping, complicated bill that works at cross-purposes to its stated goals. Those are tragic options for the future of freedom, fiscal responsibility, and responsible governance. Americans should demand better. There are practical, effective, fair, and compassionate alternatives—Washington has simply never tried them. For many years, The Heritage Foundation has laid out a problem-solving road map for addressing the obstacles to immigration and border security reform. The principles behind these proposals foster the freedom, security, and prosperity of all Americans in equal measure. Heritage's approach also recognizes that Washington has a responsibility to help resolve the conditions that it helped create, with porous borders, burgeoning transnational crime, and millions living in the shadows. The Heritage path addresses every critical component of immigration and border security reform.

Fixing America's broken southern border and deeply flawed immigration system is often framed as a stark choice between doing nothing or accepting a massive, sweeping, complicated bill that works at cross-purposes to its stated goals. Those are tragic options for the future of freedom, fiscal responsibility, and responsible governance. Americans should demand better.

Today, Washington defaults to turning every big issue into Obamacare—solutions that are labeled politically “too big to fail,” but in practice not only fail to address root problems, but make those

KEY POINTS

- A secure border between the U.S. and Mexico would be an engine for economic growth, facilitating the legitimate exchange of people, goods, and services, as well as an obstacle to transnational crime and human trafficking, and facilitate the accurate and rapid targeting of national security threats.
- All of the measures that could help build this kind of border can be achieved under existing law, fulfilling existing mandates for border security, and the regular order of congressional appropriations. The Heritage Foundation has been advocating them for years—and they do not require comprehensive immigration reform.
- No set of immigration reforms will effectively contribute to the American economy and civil society if Washington does not implement reforms to increase opportunities for economic mobility.
- Key to creating an opportunity society, and of even greater import than addressing immigration, are fundamental reforms in education and welfare so that immigrants have every opportunity for assimilation and success in their new homeland.

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problems worse. Repeating this practice will be a disaster for immigration and border security. Worse, if Americans acquiesce to a “comprehensive” immigration bill they will send Washington yet another signal that they are satisfied with a government that just does “something” rather than demanding governance that actually solves problems.

There are practical, effective, fair, and compassionate alternatives. Washington has simply never tried them. For many years, The Heritage Foundation has laid out a problem-solving road map for addressing the obstacles to immigration and border security reform. The principles behind these proposals have always been about fostering the freedom, security, and prosperity of all Americans in equal measure.¹ In addition, the Foundation’s approach recognizes that Washington has a responsibility to help resolve the conditions that the federal government helped create, with porous borders, burgeoning transnational crime, and millions living in the shadows.

Immigration reform can move forward, focusing on common sense initiatives that begin to address the practical challenges of immigration and border security. The key is to begin by working on the solutions on which everyone can agree rather than insisting on a comprehensive approach that divides Americans. Also, Washington must implement the mandates already on the books, follow through on existing initiatives, and employ the authorities that Congress has already granted before taking on new obligations. What is needed next is a piece-by-piece legislative agenda, implemented step by step that allows transparency, careful deliberation, and thoughtful implementation within responsible federal budgets.

Building a Better and More Secure Border

A secure border between the U.S. and Mexico would be an engine for economic growth, facilitating the legitimate exchange of people, goods, and services. Moreover, it would serve as an obstacle

to transnational crime and human trafficking, and facilitate the accurate and rapid targeting of national security threats. All of the measures that could help to build this kind of border can be achieved under existing law, faithfully fulfilling existing mandates for border security, and the regular order of congressional appropriations. Heritage has been advocating them for years.² As a result of post-9/11 initiatives, in 2007 Heritage concluded that “there already exist on the books numerous laws that, if enforced in a targeted manner, would discourage illegal immigration and the employment of undocumented labor, as well as send the signal that such activities will no longer be overlooked.”³ They do not require complicated feel-good but meaningless metrics, massive new deficit spending, or bargaining amnesty for border security.

Constructing the Right Infrastructure. The Secure Fence Act of 2006 gave the federal government the authority to establish 700 miles of fencing on the U.S.–Mexico border. This mandate was never fully, adequately, or faithfully implemented. This is a serious shortfall. The key to employing the right combination of border obstacles, such as fencing, is careful assessment of operational needs and cost-benefit analysis. Effective border obstacles are expensive to construct and must be constantly monitored and patrolled.

Fencing is especially critical in areas with a low “melting point”—the time it takes for an individual to cross the border and “melt” into a landscape unnoticed. In urban border communities, spending money on physical barriers makes sense because individuals can easily cross the border and sneak quickly into the urban landscape, hiding in a building or stealing a car and driving away. Areas along high-trafficked smuggling routes are also good candidates. These areas are where border crossers are made to slow down, in order to allow the Border Patrol more time to identify and interdict them, and they are of the greatest benefit. Requirements for additional infrastructure should be driven by

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1. Edwin Meese III and Matthew Spalding, “The Principles of Immigration,” Heritage Foundation *Backgrounders* No. 1807, October 19, 2004, <http://www.heritage.org/research/reports/2004/10/the-principles-of-immigration>.
 2. See, for example, “Border Security: The Heritage Foundation Recommendations,” Heritage Foundation *WebMemo* No. 2925, June 3, 2010, <http://www.heritage.org/research/reports/2010/06/border-security-the-heritage-foundation-recommendations>.
 3. James Jay Carafano, “Throwing Money at the Problem No Solution to Immigration and Border Security,” Heritage Foundation *WebMemo* No. 1508, June 15, 2007, <http://www.heritage.org/research/reports/2007/06/throwing-money-at-the-problem-no-solution-to-immigration-and-border-security>.

operational requirements and can be constructed under existing law and funded through the regular appropriations process.

In addition, a meaningful border security strategy would address investing in the infrastructure that facilitates legitimate trade and travel. Hundreds of millions of people cross U.S. borders each year in numbers approaching twice the population of the United States. The overwhelming majority travel through legal points of entry and exit, such as land border crossing points, airports, and harbors. Billions of tons of goods, accounting for a third of the U.S. gross domestic product (GDP), transit America's borders as well. Points of entry and exit must have the physical assets to support screening, inspection, and gathering, evaluating, and sharing of critical information.

Furthermore, adequate infrastructure—including bridges and roads, especially road networks that connect to rail terminals, seaports, and airports—is essential to providing the capacity, redundancy, and flexibility required to ensure that the free flow of trade and travel is not disrupted. This is particularly vital at the small number of transit nodes that handle most of the cross-border traffic.

Tackling the commercial infrastructure challenge does not require comprehensive immigration-reform legislation either. Establishing priorities and providing revenue for these investments is not solely or, in many cases, even primarily a federal responsibility. For example, local governments own most of the 26 motor vehicle crossings on the Texas–Mexico border. Likewise, airports and seaports are owned and operated by a mix of public and private entities. An investment strategy will require more cooperative public-private partnerships, including targeting national transportation trust funds so that they are spent on national priorities rather than pork-barrel projects. Additionally, rather than relying heavily on subsidized public funding of infrastructure, investments should focus on “project-based” financing that shifts the risks and rewards to the private sector.⁴

Supporting Local Law Enforcement. Many local law enforcement authorities on the border, particularly in rural communities, are on the front line of border security. In 2007, responding to reports of a disturbance in Arizona's Pima County, which shares a border with Mexico, officers encountered a grisly scene—two shot dead in a Dodge pickup truck, a woman in the front seat, a man sprawled in the back seat. A while later, officers found a third body, shot in the head and dragged into the desert. The killings, carried out by drug traffickers, were a wake-up call for the Pima County Sheriff's office: Its turf had become the path of least resistance for those trafficking in drugs and people.⁵

Border law enforcement agencies should receive robust federal grants to help address these challenges. Washington has poured billions into homeland security grants, yet it is not at all clear that this spending spree has done much to improve national preparedness or security. Unlike most homeland security grants (which have become exactly what the 9/11 Commission warned against: “pork barrel” funding) or wasteful and ineffective programs, such as the Community Oriented Policing Services (COPS), taxpayers get far more bang for their homeland security bucks if more of the money is channeled where it is really needed—such as cooperative law enforcement initiatives to protect communities along the southern border.⁶ The Department of Homeland Security (DHS) already has a grant program to address this challenge—Operation Stonegarden. It just needs to be robustly funded and aggressively administered.

Taking a Teamwork Approach. Much of the criminal activity that crosses the border involves the use of networks that smuggle people, weapons, drugs, and money—making it a national security concern. Attacking these networks is key to reducing illicit cross-border trafficking. This requires the integrated cooperation of federal, state, local, and tribal authorities. One of the best tools to facilitate that cooperation is the Border Enforcement Security Taskforce (BEST). BEST is a program that couples

4. James Jay Carafano, “Safeguarding America's Sovereignty: A ‘System of Systems’ Approach to Border Security,” Heritage Foundation *Background* No. 1898, November 28, 2005, http://www.heritage.org/research/reports/2005/11/safeguarding-americas-sovereignty-a-system-of-systems-approach-to-border-security#_ftn27.

5. James Jay Carafano, “How to Keep America Safe from Mexico's Drug Wars,” Heritage Foundation *Commentary*, March 30, 2009, <http://www.heritage.org/research/commentary/2009/03/how-to-keep-america-safe-from-mexicos-drug-wars>.

6. James Jay Carafano and David B. Muhlhausen, “State and Local Law Enforcement's Key Role in Better, Faster, Cheaper Border Security,” Heritage Foundation *Executive Memorandum* No. 1015, November 22, 2006, <http://www.heritage.org/research/reports/2006/11/state-and-local-law-enforcements-key-role-in-better-faster-cheaper-border-security>.

U.S. federal, state, and local law enforcement with Mexican law enforcement in order to share information and collaborate on matters such as border crime.⁷ Just this past December, President Barack Obama signed into law the Jaime Zapata Border Enforcement Security Task Force Act, named after the Immigration and Customs Enforcement agent and BEST veteran who was killed in Mexico in 2011. DHS has yet to fully exercise its authorities under this law.

Encouraging Volunteers. Much like state and local governments, private citizens living in border communities recognized the need to take action at the border—border crimes and illegal immigration were having a direct impact on their neighborhoods and daily lives. Border ranchers, for instance, had had enough of illegal aliens destroying and stealing fencing and scaring cattle from watering holes. It is reasonable for private citizens to assist in vital government functions. Citizens can protect their property from crime, deter drug sales, and police border communities.

Legitimate concerns over liability, safety, and civil liberties can be addressed by encouraging a certain level of organization and accountability, which can be achieved through accreditation, official standards, and practical employment concepts consistent with volunteer service. The best way would be to encourage states to organize State Defense Forces (SDFs), volunteer organizations dedicated to assisting the government in a number of activities, including border control. These forces report to and are funded by state governments, are governed by state law, and report to the governor.⁸ California, New Mexico, and Texas already have SDFs. Legislation has been proposed in Arizona to create an SDF.

Support of the Guard. In 2006, President George W. Bush sent 6,000 National Guard troops to the southern border through a program called Operation Jump Start. These troops were deployed under Title

32 (“National Guard”) of the United States Code, which means they served under the operational control of the governors, and were tasked with helping Border Patrol agents. When she served as governor of Arizona, Secretary of Homeland Security Janet Napolitano effectively used these forces to support security on the border. As U.S. Customs and Border Protection (CBP) became more successful in its recruiting efforts and its overall numbers rose, these troops were phased out. Under existing law, however, the Administration can deploy these forces whenever they are needed to supplement manpower or other capabilities needed to reinforce border security efforts. National Guard forces can aid in border security activities through support during annual training periods. These deployments benefit guard units by providing additional training opportunities and can provide support to Border Patrol agents. Activities can be programmed in advance so they facilitate rather than disrupt other training and deployment requirements. During these operations National Guard forces can remain under Title 32 status, which places control of these troops under the command of the state governor.⁹

Adding the Right Technology. While DHS has had a troubled and controversial history adapting technology to the border, such as the deeply flawed implementation of the Secure Border Initiative Network (SBInet), the practices of the past 10 years are more than adequate as an assessment to determine which additional technologies would be the most efficacious. These include small unmanned aerial vehicles (UAVs) carrying a variety of sensors, which can be flown in U.S. airspace without compromising safety or privacy.¹⁰ In the end, SBInet did demonstrate the value of fixed sensors on towers when properly networked with the CBP for interdiction on high-traffic smuggling corridors. Elsewhere, mobile ground sensors and field-deployable biometrics, similar to systems used in Afghanistan, have

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7. Jena Baker McNeill, “15 Steps to Better Border Security: Reducing America’s Southern Exposure,” Heritage Foundation *Backgrounders* No. 2245, March 9, 2009, http://www.heritage.org/research/reports/2009/03/15-steps-to-better-border-security-reducing-americas-southern-exposure#_ftn24.
 8. Jessica Zuckerman, Colonel Martin Hershkowitz, Brigadier General Frederic N. Smalkin, and James Jay Carafano, “Why More States Should Establish State Defense Forces,” Heritage Foundation *Backgrounders* No. 2655, February 28, 2012, <http://www.heritage.org/research/reports/2012/02/why-more-states-should-establish-state-defense-forces>.
 9. McNeill, “15 Steps to Better Border Security.”
 10. Paul Rosenzweig, “Drones in U.S. Airspace: Principles for Governance,” Heritage Foundation *Backgrounders* No. 2732, September 20, 2012, <http://www.heritage.org/research/reports/2012/09/drones-in-us-airspace-principles-for-governance>.
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proven effective for interdiction in remote areas.¹¹ When DHS canceled SBInet in 2011, the department promised to develop a replacement system. This promise has not yet been met. DHS can acquire and employ the technologies to do so under existing budgets through regular appropriations. The department does not require additional congressional authorities to employ them.

Funding for the Coast Guard. An effective border strategy cannot focus exclusively on land borders. As land borders become more secure, drug smugglers and human traffickers will quickly look to sea options. Indeed, there is much evidence that this is already happening. Today, America is being invaded by “pangas”—small, open, outboard-powered boats that are a common fixture throughout Latin American ports. A typical small craft comes packed with a load of 1,500 pounds to 4,000 pounds of marijuana and a platoon of illegal immigrants. Many of those looking to enter the United States unlawfully are not looking for regular work. Often, they are gang members and other offenders with active warrants or criminal records who would not think of trying to slip through a land border crossing unnoticed. Small boat smuggling is a big problem in part because it is easy to hide the wolves among the sheep. There are more than 500,000 small, recreational craft registered in the Southern California area alone.¹²

Maritime efforts must be enhanced in conjunction with land security. The Coast Guard acts as the law enforcement for the high seas; however, it lacks the resources and capacities to do its job as effectively as it could.¹³ The Comprehensive Immigration Reform Bill does not address this challenge. The Coast Guard is funded through regular appropriations. Congress can support the Coast Guard by sufficiently funding the cutters, aircraft, equipment,

and training that it needs to continue to protect America’s seas and waterways.

Cooperating with Mexico. Addressing the challenges of safety, security, and sovereignty from both sides of the southern border is the most effective and efficient way to operationally control it. In 2008, President Bush established the Merida Initiative to facilitate cross-border cooperation on mutual interests of public safety and transnational crime. President Obama, however, has thoroughly failed to follow through and build on this initiative. This stands in sharp contrast to U.S.–Canadian cooperation on the northern border.¹⁴ Mexico is not an unwilling partner: The Mexican government has additional projects on the drawing board that include a new gendarme force that would be able to police rural areas and, potentially, a border patrol. Mexico also stems the flow of Central Americans across its southern border, many of whom have the U.S. as their intended destination.

There are a range of initiatives that could form the basis of a “Merida II,” bringing the U.S. and Mexico closer together. The Obama Administration could develop a broad master plan for U.S.–Mexican relations that coordinates law enforcement, judicial, and military assets to target transnational criminal organizations, gangs, human traffickers, terrorists, and other 21st-century threats to shared security. So, too, the Administration could explore with Mexico specific agreements, protocols, and efforts that draw the two governments closer together in order to regularize and expedite legal movements of people and goods while increasing cross-border disincentives and obstacles to illegal activities, especially illegal migration. These initiatives could be implemented by executive action and do not require comprehensive immigration-reform legislation.¹⁵

11. McNeill, “15 Steps to Better Border Security.”

12. James Jay Carafano, “Small Boats, Big Worries,” *The Washington Examiner*, February 3, 2013, <http://washingtonexaminer.com/james-carafano-small-boats-big-worries/article/2520197> (accessed May 22, 2013).

13. Mackenzie M. Eaglen, James Dolbow, Martin Edwin Andersen, and James Jay Carafano, “Securing the High Seas: America’s Global Maritime Constabulary Power,” Heritage Foundation *Special Report* No. 20, March 12, 2008, <http://www.heritage.org/Research/NationalSecurity/sr20.cfm>.

14. For information on U.S.–Canadian border cooperation, see Jessica Zuckerman, “Beyond the Border: Enhancing Security and Improving Trade Between the United States and Canada,” Heritage Foundation *WebMemo* No. 3433, December 16, 2011, <http://www.heritage.org/research/reports/2011/12/beyond-the-border-enhancing-security-and-improving-trade-between-the-united-states-and-canada>.

15. Ray Walser and Jessica Zuckerman, “U.S.–Mexico Border: Tighter Border Security Requires Mexico’s Cooperation,” Heritage Foundation *Issue Brief* No. 3856, February 20, 2013, <http://www.heritage.org/research/reports/2013/02/us-mexico-border-tighter-border-security-requires-mexico-s-cooperation>.

Enforcing the Law

All sides on the immigration debate concede that workplace and immigration laws must be enforced if the United States hopes to have a long-term sustainable management of migration flows that maintains sovereignty, respects the rule of law, fosters a healthy competitive economy, and brings the hidden population out of the shadows. Heritage has long held that by and large, the federal government does not need new legislative authorities or congressional mandates. What is required is an effective federal implementation strategy that will achieve results at reasonable costs without undermining civil liberties or disrupting the economy.

The right strategy is often called the “broken windows” approach to law enforcement. Focusing on gangs, drug dealers, and violent criminals, as the Administration prefers to do, is important—but not enough. Social scientists James Q. Wilson and George Kelling introduced the “broken windows theory” nearly three decades ago. Its premise was simple: By enforcing laws for “petty” crimes, police can help create a “well ordered” environment that discourages more serious crime. The same approach must be taken to enforce immigration and workplace laws.¹⁶ Anything less is just enforcement “theater.”

Federal-State-Local Cooperation. The Section 287(g) program, already authorized by Congress, is demonstrably the most effective and flexible program for federal, state, local, and tribal law enforcement to cooperate on issues of mutual interest. The Department of Homeland Security, however, has all but abandoned the program in favor of one-size-fits-all initiatives that suit the department’s intent to focus as exclusively as possible on felony-criminal aliens. It is clear that the Obama Administration, along with its legal assault on state and local immigration enforcement laws, does not respect the rights of states or the important role they play in curbing illegal immigration. Congress does not need comprehensive immigration reform to

reassert its legislative and oversight authority to preserve the ability of state and local law enforcement agencies to use the 287(g) program. Congress can reverse the burdensome regulatory changes made in July 2009 and continue to fund the program.¹⁷

Workplace Enforcement. The ability to target employees and employers who intentionally flout workplace laws is important to establishing the seriousness of enforcement efforts. In particular, the ability to deal with a “no match,” in which an employer is notified that the personally identifying information of an employee does match the records of the Social Security Administration (SSA) is important. Congress should call for the Department of Homeland Security to reverse its previous decision to abandon the 2007 amended no-match letter rule. It is the responsibility of Homeland Security to enforce the law in a manner that is both reasonable and effective.

The Department of Homeland Security needs to be able to target employers that willfully hire unlawfully present labor. The SSA should thus be encouraged to routinely share no-match data (personally identifying information removed) directly with Homeland Security. Congress should craft legislation that specifically authorizes such sharing. Allowing this sharing and giving Homeland Security the resources and authority to target large-scale employers in the sectors of the economy where undocumented workers are most present (such as agriculture, services industries, and construction) would provide incentives and enforcement measures to wean employers from the shadow workforce.¹⁸ E-Verify provides an electronic means for employers to check the immigration status of new hires and whether they meet existing employment requirements. The Administration and Congress can, and should, build on the existing program.¹⁹

Checking In and Out of the Country. Laws requiring better management and recording of non-immigrant visa holders when they exit the United

16. James Jay Carafano, “Catching Immigration ‘Criminals’ Is Not Enough,” *The Washington Examiner*, March 15, 2012, <http://washingtonexaminer.com/james-jay-carafano-catching-immigration-criminals-is-not-enough/article/36240> (accessed August 29, 2010).

17. Matt A. Mayer, “White House Takes Wrong Step with Immigration Enforcement,” Heritage Foundation *Issue Brief* No. 3157, February 24, 2012, <http://www.heritage.org/research/reports/2012/02/removal-of-287g-local-immigration-enforcement-weakens-immigration-policy>.

18. James Jay Carafano, “Homeland Security Department Guts Workplace Enforcement,” Heritage Foundation *WebMemo* No. 2535, July 10, 2009, <http://www.heritage.org/Research/HomelandSecurity/wm2535.cfm>.

19. James Jay Carafano, “Next Steps for the Visa Waiver Program,” Heritage Foundation *Testimony*, December 7, 2011, <http://www.heritage.org/research/testimony/2011/12/next-steps-for-the-visa-waiver-program>.

States have existed since the 1990s. An exit system can be a useful tool if managed properly. Where there is a need for tracking terrorist and criminal suspects trying to exit the United States in “real time,” these tasks can be conducted effectively using existing enforcement tools. No case is more illustrative than the apprehension of Faisal Shahzad, the Times Square bomber, who was placed on a terrorist watch list, identified, and arrested attempting to flee the country on an international flight less than two days after this failed attack. In terms of both immigration and criminal enforcement, biographical data (name, date of birth, and country of origin) provide suitable information for most enforcement activities.²⁰ In some cases, comprehensive biometric exits may be suitable for some non-immigrant programs, although such a system would not serve as a silver bullet. Indeed, authorities lack the resources to investigate every lead such a system might produce.

Furthermore, by itself, a report that an individual failed to register an exit and was potentially in the United States illegally would have scant utility for prioritizing law enforcement resources. Such a report might simply be a false positive—the individual’s status might have changed. The report alone would provide no assessment of risk. These limitations should be considered; nevertheless, such initiatives can be accommodated within existing law and authorities.

Serve Those Waiting in Line

Few organizations in the federal government have received poorer marks for efficiency and service than U.S. Citizenship and Immigration Services (USCIS). Currently, there are over 4.4 million people waiting to immigrate to the U.S. lawfully. Some of the applicants have been waiting over *two decades*. The USCIS has little proven capacity to reform or effectively expand operations. In addition, since it operates on a cost-fee basis, much of the burden is off-loaded onto immigrants in the form of higher fees—where applicants pay more and receive less.

Transforming USCIS. The Department of Homeland Security needs a strategic management plan to reform this troubled agency. A serious reform plan must include (1) a different funding model for the USCIS, (2) a comprehensive overhaul of the agency’s service support enterprise, and (3) much better integration of USCIS programs with immigration enforcement and border control. The reform can be implemented through appropriations rather than the revenue of increased fees, and Congress should appropriate the necessary funding. Further, USCIS must deliver a comprehensive and realistic plan for upgrading its services and information technology and fund the program through annual appropriations and produce a detailed procurement timeline so that this program does not fall behind due to a still-maturing procurement capability at DHS.²¹ All these steps should be a prerequisite for considering greatly expanding the mission of the department to process far greater numbers of people.

Making Immigration and Non-Immigration Programs Serve the Economy

Human capital has long been America’s greatest natural resource. For all of its history and long into the future—much of these resources have and will continue to be imported. The issue of “whom” America should import misses the point that this is not a decision that should primarily be determined by Washington. America is a free-market society and labor is part of that market. The market should decide. The government’s job is to facilitate the movement of labor in a manner that keeps America free, safe, and prosperous. Equally as important, for the free-market exchange of labor to work, the United States must become and remain an “opportunity society,” rather than a magnet for trapping low-skilled labor in a cycle of poverty and impoverishment without the opportunity for social mobility or patriotic assimilation. All of these initiatives can be taken without implementing comprehensive immigration reform, providing the United States with all

20. James Jay Carafano and Matt A. Mayer, “Better, Faster, Cheaper Border Security Requires Better Immigration Services,” Heritage Foundation *Backgrounder* No. 2011, February 28, 2007, <http://www.heritage.org/research/reports/2007/02/better-faster-cheaper-border-security-requires-better-immigration-services>.

21. James Sherk and Guinevere Nell, “More H-1B Visas, More American Jobs, a Better Economy,” Heritage Foundation *Center for Data Analysis Report* No. 08-01, April 30, 2008, <http://www.heritage.org/research/reports/2008/04/more-h-1b-visas-more-american-jobs-a-better-economy>.

of the economic benefits of immigration with none of the crippling costs.

Placing a Premium on High-Skilled Labor.

Ultimately, as the U.S. economy continues to recover from the recession, demand for high-skilled foreign workers will only continue to grow. The U.S. can either implement the reforms needed to ensure that America welcomes the best and the brightest to its shores, or America can continue leaving it all to chance and bureaucrats in Washington. Raising the cap on H-1B visas for skilled workers and making non-immigrant visa processing responsive to the needs of the economy would allow American businesses to expand operations here in the United States, creating more jobs and higher wages for American workers. Increasing the H-1B cap would also raise significant tax revenue from highly skilled and highly paid workers.²²

Temporary Worker Programs.

Effective temporary worker programs are part of a modern, dynamic economy. Temporary worker programs can be a helpful tool for improving the legal means by which foreigners can come to the United States to work. Previously proposed temporary worker programs have been problematic due to excessive regulations and inflexibility. Any new temporary worker programs must help, not hinder, immigration reform and border security efforts. Temporary worker programs should be designed not as a substitute for amnesty, but to fill important niches in the national workforce, allowing employers the employees they need to help grow the economy and create more jobs.²³ Instead of federal micromanagement of employers' hiring decisions, Congress should create a system of employer sponsorship for guest workers and allow employers to bid on purchase permits to hire guest workers. This would preserve the flexibility that keeps the U.S. labor market vibrant, ensure

that guest workers have skills that are truly needed, and prevent guest workers from undercutting the wages of American workers.²⁴

Guest worker programs should not be a gateway to citizenship or legal residence, especially for low-wage workers. Guest worker programs should never impose short- or long-term fiscal costs on U.S. taxpayers. It is important that there be a clear mechanism to ensure that guest workers actually return to their country of origin at the end of their work period rather than remaining in the U.S. as illegal immigrants.

Visa Waiver Program. The Visa Waiver Program (VWP), which allows for visa-free visits to the U.S. for up to 90 days for the citizens of member states, provides great economic benefits to the United States as well as additional security measures and effective tools for combating visa overstays. According to the latest figures from the Congressional Research Service, in fiscal year (FY) 2009, 16.2 million visitors entered the United States under the VWP, making up nearly 51 percent of all foreign visitors to the United States during the same period. Frequenting restaurants, shops, and hotels, VWP visitors infused a total of approximately \$100 billion into the U.S. economy in FY 2008, contributing to a travel industry that supports nearly 14 million American jobs. These economic benefits, coupled with the added security provided under the program, should not be ignored.²⁵ Expanding the program to qualified nations ought to be a priority. Congress has successfully provided additional authorities to expand this program in the past without comprehensive immigration reform—it can do so again.²⁶

Dealing with the Shadow Population

The existence of a large shadow population in America is injurious to the rule of law, an excessive

22. James Jay Carafano, "Real Immigration Reform Needs Temporary Worker Program," Heritage Foundation *Backgrounder* No. 2229, January 13, 2009, <http://www.heritage.org/research/reports/2009/01/real-immigration-reform-needs-real-temporary-worker-program>.

23. James Sherk, "A Bureaucratic Nightmare: The Senate's Temporary Guest Worker Program," Heritage Foundation *WebMemo* No. 1525, June 26, 2007, <http://www.heritage.org/research/reports/2007/06/a-bureaucratic-nightmare-the-senates-temporary-guest-worker-program>.

24. Ruth Ellen Wasem, "U.S. Immigration Policy on Temporary Admissions," Congressional Research Service *Report for Congress*, February 28, 2011, <http://www.fas.org/sgp/crs/homsec/RL31381.pdf> (accessed May 22, 2013).

25. Jessica Zuckerman, "The JOLT Act: Right on Visa Waiver, Wrong on Travel Promotion," Heritage Foundation *Issue Brief* No. 3568, April 16, 2012, <http://www.heritage.org/research/reports/2012/04/jolt-act-visa-waiver-program-and-travel-promotion>.

26. David S. Addington, "Encouraging Lawful Immigration and Discouraging Unlawful Immigration," Heritage Foundation *Backgrounder* No. 2786, March 27, 2013, <http://www.heritage.org/research/reports/2013/03/encouraging-lawful-immigration-and-discouraging-unlawful-immigration>.

burden on many local communities, and harmful to civil society. Addressing this issue is an important component of reform. But it is wrong to make it the linchpin of immigration and border security. As a first principle, reform efforts to address this issue should make the problem better not worse. For that reason, amnesty as a core requirement of immigration is a disastrous policy. Amnesty would undermine all other efforts to fix the system and could well leave future generations in the same predicament as millions find themselves in today.²⁷ In addition, amnesty would incur trillions of dollars of federal outlays in the form of long-term benefits to low-skilled workers.

The key to addressing the shadow population is to develop appropriate fair, practical, and compassionate solutions on which everyone can agree—measures that do not require amnesty.

The Obama Administration abused its “prosecutorial discretion” when it stopped enforcing parts of the immigration laws and implemented by regulation what several previous Congresses chose not to legislate. The Administration should defer to Congress to determine long-term solutions that are appropriately tailored and clearly targeted toward the cases to be addressed.²⁸

Creating an Opportunity Society

Regardless of the adjustments that might be appropriate, no set of immigration reforms will effectively contribute to the American economy and civil society if Washington does not implement fundamental reforms to increase opportunities for economic mobility. Key to creating an opportunity society, and of even greater import than addressing immigration reforms, is undertaking fundamental reforms in education and welfare so that the immigrants that do come here have every opportunity for assimilation and success in their new homeland.

Welfare Reform. In 2011 alone, the government spent more than \$927 billion on 79 welfare programs—nearly \$9,000 per year for each poor and low-income person, with the majority of recipients being

U.S.-born citizens and legal immigrants. (Illegal immigrants receive a small portion of welfare benefits.) Means-tested welfare—government aid to poor and low-income people—is now the third-most-expensive government function. Even before the current recession, one out of every seven dollars in total federal, state, and local government spending went to means-tested welfare. Despite such major expenditures, poverty rates have remained virtually unchanged since the 1960s, and the welfare system continues to grow. It is time to reform welfare and make it work *for* the poor, not against them. Welfare programs must be reformed to encourage work, not dependence on government.²⁹

Education Reform. For generations, Americans have correctly understood that a good education is key to pursuing the American Dream. But despite the central importance of education, and massive government spending, American schools, colleges, and universities are underperforming and failing thousands of students across the country every year. Fundamental reforms are required to limit federal intervention in education; to encourage state and local leaders to allow parents control over their share of education funding by letting them to select the right school for their children; and to remove obstacles and give a green light to innovation in school and college educations.³⁰

A Message for Washington

The solution to stopping business as usual in Washington is to tell Washington that Americans deserve better than a flawed legislative answer to tough problems—particularly when it comes to immigration and border security. *Everyone* deserves better. Employers deserve better than having to sift through falsified credentials or risk breaking the law. Families in communities burdened by the impacts of illegal immigration deserve better. Those who played by the rules and are waiting patiently in line for their share of the American Dream deserve better. Those living in the shadows of society deserve better as well. In fact, all who cherish a

27. *America's Opportunity for All*, The Heritage Foundation, 2013, http://thf_media.s3.amazonaws.com/2013/Opportunity/AmOppfAll_Highlights.pdf.

28. *Ibid.*

29. *Ibid.*

30. *Ibid.*

society that is committed to keeping America both a nation of immigrants and a country that respects its laws deserve better. Telling Washington to tackle reforms in a responsible piece-by-piece manner will deliver better governance.

The Heritage path addresses every critical component of immigration and border security reform. None of these initiatives necessitates amnesty, massive new government spending, more government

bureaucracy, giving Washington more control over people's lives, or sacrificing the security or prosperity of the American people. All of the Heritage initiatives contribute to keeping America the most successful immigration nation in the history of the world. This path forward makes Congress do its job and solve problems rather than accept the immigration version of Obamacare. The Heritage path is a path worth considering.

Background

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The Principles of Immigration

Edwin Meese III and Matthew Spalding

More than any other nation in history, our country and its system of equal justice and economic freedom beckons not only the downtrodden and the persecuted—indeed, all those “yearning to breathe free”—but also those who seek opportunity and a better future for themselves and their posterity.

The very nature of the principles upon which the United States is established encourages immigration and promotes the transformation of those immigrants into Americans—welcoming newcomers while insisting that they learn and embrace America’s civic culture and political institutions, thereby forming one nation from many peoples. The result has been a strengthening of our social capital, a deepening of our national patriotism, and a continuing expansion of our general economy. America has been good for immigrants, and immigrants have been good for America.

Over the past several decades, though, immigration policy has become increasingly confused and unfocused. Today, immigration policy is mostly debated at the extremes, between those who want no immigrants and those who want no borders, implying that immigration is an all-or-nothing proposition.

A better approach is for policymakers to step back from the politics and policies of the moment and take the time to deliberate and develop a clear, comprehensive, meaningful, and long-term policy concerning immigration, naturalization, and citizenship that is consistent with the core principles, best traditions, and highest ideals of the United States.

Talking Points

- The principles upon which this nation is established encourage immigration and promote the transformation of immigrants into Americans.
- Over the last few decades, immigration policy has become increasingly confused and unfocused.
- Policymakers should step back from the politics and policies of the moment and develop a clear policy concerning immigration that is consistent with the principles, traditions, and ideals of the United States.
- Four guiding principles of immigration reform are the consent of the governed, patriotic assimilation, national security, and the rule of law.
- In developing a comprehensive policy, policymakers must also consider practical concerns related to national and homeland security, illegal immigration, the welfare state, financial responsibility, and law enforcement.

This paper, in its entirety, can be found at:
www.heritage.org/research/governmentreform/bg1807.cfm

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Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Admittedly, this is no easy task. The purpose of this paper is to provide a few guiding principles, suggest some policy considerations, and propose several first steps for developing such a policy.

Guiding Principles

As policymakers begin a new round of discussions about immigration policy proposals, four general principles ought to guide this discussion and be used to evaluate and judge any specific proposals.

The Consent of the Governed. The United States is a sovereign nation. The very idea of sovereignty implies that each nation has the responsibility—and obligation—to determine its own conditions for immigration, naturalization, and citizenship.

Individuals who are not citizens do not have a *right* to American citizenship without the consent of the American people, as expressed through the laws of the United States. Through those laws, the people of the United States invite individuals from other countries, under certain conditions, to join them as residents and as fellow citizens. Congress has the constitutional responsibility “[t]o establish an uniform Rule of Naturalization”¹ that sets the conditions of immigration and citizenship and to ensure the fairness and integrity of the legal process by which immigrants enter the country legally and, in many cases, become American citizens.

Patriotic Assimilation. The United States has always welcomed immigrants who come to this country honestly, with their work ethic and appreciation of freedom, seeking the promises and opportunities of the American Dream. This is because the founding principles of this nation imply that an individual of any ethnic heritage or racial background could become an American.

However, those same principles also call for—and a successful immigration policy is only possible by means of—a deliberate and self-confident policy to assimilate immigrants and educate them about this country’s political principles, history,

institutions, and civic culture. This may be a nation of immigrants, but it is more accurate to say that this is a nation where immigrants are Americanized, sharing the benefits, responsibilities, and attachments of American citizenship. While the larger formative influence occurs through the social interactions and private institutions of civil society and through public and private education, the federal government has a significant but limited role in ensuring the success of this crucial process.

National Security. Every nation has the right, recognized by both international and domestic law, to secure its borders and ports of entry and thereby control the goods and persons coming into its territory. Americans have always been and remain a generous people, but that does not mitigate the duty imposed on the United States government to know who is entering, to set the terms and conditions of entry and exit, and to control that entry and exit through fair and just means.

This task is all the more important after the events of September 11, 2001. A disorganized and chaotic immigration system encourages the circumvention of immigration laws and is a clear invitation to those who wish to take advantage of our openness to harm this nation. Secure borders, especially in a time of terrorist threat, are crucial to American national security.

The Rule of Law. Immigration is no exception to the principle that the rule of law requires the fair, firm, and equitable enforcement of the law. Failure to enforce immigration laws is unfair to those who obey the law and go through the regulatory and administrative requirements to enter the country legally.

Those who enter and remain in the country illegally are violating the law, and condoning or encouraging such violations causes a general disrespect for the law and encourages further illegal conduct. Forgiving the intentional violation of the law in one context because it serves policy objectives in another undermines the rule of law.

1. U.S. Constitution, Article 1, Section 8, Clause 4.

Amnesty is appropriate only when the law unintentionally causes great injustice or when particular cases serve the larger purposes of the law. Those who break immigration laws should not be rewarded with legal status or other benefits, and they should be penalized in any road to citizenship.

Policy Considerations

The application of principles in practice is not easy. Principles must be applied in ways that take account of previous experiences, particular circumstances, and practical outcomes. Policy decisions should advance principles as much as possible under prevailing conditions. In most cases, policymakers are starting not with a clean slate but with the results of previous policies. They cannot ignore the practical and political realities in which reform must occur.

At this time, Congress is considering several proposals to reform immigration law. Among these proposals is the creation of a temporary worker program that would be open to new foreign workers and to illegal immigrants currently in the United States. Before implementing this or any other such proposal, policymakers must address several practical considerations—in addition to referring back to guiding principles—that raise serious challenges for immigration reform. We are especially concerned about six policy considerations.

National and Homeland Security. Now more than ever, Congress must take steps to ensure that immigration policy—or the lack of immigration policy enforcement—does not undermine national security. Among other things, the new Department of Homeland Security was established to consolidate the previously fragmented functions of immigration and border security and to document non-citizens entering, exiting, and residing in the United States.

A critical element of any reform proposal must be to secure our national borders—addressing the issue from the point of origin, in transit, at the border, and within the United States—and to support ongoing efforts to strengthen the activities, assets, and programs necessary to enhance homeland security. America's immigration system

must be a national strength and not a strategic vulnerability.

Illegal Immigration. The issue of legal immigration is greatly exacerbated by the reality of illegal immigration. The major source of illegal immigration is from illegal border crossings, and most of these illegal immigrants are from Mexico. The other source of illegal immigration is from those individuals who stay in the United States after their non-immigrant visas expire. These are serious problems that policymakers and law enforcement must address.

While recognizing the difficulty and challenge of finding and removing every illegal immigrant in the United States, Congress and the President must take credible steps to reduce illegal immigration in both annual and absolute terms. New reforms should not encourage or exacerbate the problem of illegal immigration. In considering new programs, policymakers must recognize that any program that is vague or unenforceable or that allows temporary visitors or workers to disappear when their legal status expires could mean a larger illegal immigrant community—and a larger public policy problem.

The Welfare State. The United States has a generous welfare, education, and health system, with generous eligibility. Low-skill and elderly immigrants may impose costs on government that exceed taxes paid. The costs of providing welfare assistance to immigrants and education for the children of immigrants are potential concerns.

Unlike previous generations, the perverse incentives of the modern social welfare system—through policies that discourage self-reliance, family cohesiveness, and financial independence—invite poor and low-skill immigrants to enter the ranks of the underclass rather than encourage them to seek the opportunities heretofore associated with achieving the American Dream. Although these troubling incentives in the welfare system are likely to remain for the foreseeable future, policymakers must ensure that the interaction of welfare and immigration policy does not expand the welfare-dependent population, thereby hindering rather than helping immi-

grants and potentially imposing large costs on American society.

Financial Responsibility. Part of the problem of immigration—and part of the solution to that problem—has to do with economic incentives. Getting those incentives right is good for immigrants, good for employers that wish to hire immigrants legally, and good for the larger community. Currently, there is an unbalanced incentive in which an employer of a temporary worker gains the economic benefits but does not bear the potential costs of that person's failure to return to his or her home country (enforcement costs, social services, etc.).

The full potential cost of a legal worker's becoming an illegal immigrant should be carried by the employer. For instance, sponsors of immigrants could be required to demonstrate sufficient financial ability to support the sponsored immigrants, both to prevent them from becoming dependent on welfare and to create an incentive for employers not to hire immigrants who might violate the terms of their immigration status. An experience-rated bond or insurance system for employers of temporary workers would encourage them to uphold the law and to weigh the full costs against the benefits. Congress should consider whether a market solution that enforces liability might ease the problem of illegal immigration more effectively than more regulation of business can.

Enforcement. The federal government has a poor track record in consistently enforcing national immigration laws. For its part, Congress has been unwilling to devote the resources necessary to carry out its own policies. At the same time, recent Administrations seem to be unsure about when to enforce which laws. There are employers and others outside the immigrant community that simply do not want enforcement. The result is a system that is porous, arbitrary, and unpredictable. This weakens the current immigration regime and encourages its circumvention.

What immigration policy needs—as any new program requires—is a clear and determined strategy to enforce all the rules. Immigration reform in

general and any new program in particular must go hand-in-hand with a much stronger approach to violations of our immigration laws. Before proceeding, policymakers must have the political will to insist on the rule of law.

Burden on State and Local Governments. Although immigration policy is primarily a federal responsibility, it is the state and local governments that mostly deal with the practical implications of that policy. On the one hand, as the federal government neglects its obligation to secure America's borders, the states pick up the tab for illegal immigrants who receive various local services and impose local costs. This is a financial and practical burden—and an unfunded mandate—placed on states by a federal government that is unwilling to enforce its own laws.

On the other hand, state and local law enforcement needs to play a larger role in investigating, detaining, and arresting illegal immigrants on civil and criminal grounds. The primacy of the law ultimately depends on officers of the law—at every level of government—being bound to its support and implementation. In considering various proposals to reform immigration policy, Congress must address these and other issues of cooperative federalism.

Recommendations

It will take time and effort to design a comprehensive program of immigration reform and build the political consensus to support and carry out that reform. The principles and policy considerations outlined here—especially those concerning national and homeland security—must govern this reform.

In the meantime, there are several initial steps that can and should be taken now to stabilize immigration policy and begin to reorient it toward its guiding principles. Specifically, the Administration and Congress should:

1. **Better regulate entry and exit.** The vast majority of individuals entering the United States legally are travelers holding nonimmigrant visas of various lengths. In order to keep visas out of the hands of terrorists, the Bush

Administration and Congress have made their issuance and monitoring a leading concern.

There has been much progress in this effort. Nevertheless, many of the deadlines of the Enhanced Border Security and Visa Entry Reform Act—such as the implementation of an integrated entry-exit system—have been missed. These measures and the enforcement of existing visa laws should be a priority for Congress and the Administration. Because of the security aspects of the visa process, Congress should transfer the Office of Visa Services in the State Department to the Department of Homeland Security.²

2. **Strengthen citizenship.** Several things could be done to revive and strengthen the process by which American principles are inculcated in those who seek to become U.S. citizens. The Immigration and Nationality Act (INA) requires that candidates for citizenship demonstrate both an understanding of the English language and “a knowledge and understanding of the fundamentals of the history, and the principles and form of government, of the United States.”

When Congress formed U.S. Citizenship and Immigration Services within the Department of Homeland Security, it created a new Office of Citizenship to promote instruction and develop educational materials on citizenship. These activities ought to be encouraged, reinforced, and expanded. The test taken by candidates for citizenship should be strengthened to focus on core history and civic principles rather than trivia or process. The requirement that applicants understand the English language must be enforced, and English language instruction should be strongly promoted. The

oath of citizenship—the contents of which are described, not specified, in the INA—should be codified in law.³

3. **Step up criminal enforcement.** While there are legitimate enforcement and other concerns about a proactive policy to remove all illegal immigrants, it makes sense at least to take firm action against those who engage in serious crime or blatantly ignore deportation orders.

Interior immigration enforcement is the responsibility of the U.S. Bureau of Immigration and Customs Enforcement (ICE). Currently, that program does not have sufficient manpower and resources to carry out an extensive enforcement program. Until this situation changes, ICE should direct its efforts to be more efficient and effective. In addition to various targeted enforcement efforts, it should focus intensely on finding and deporting criminal illegal immigrants and those who have fled after having been ordered to be deported.

4. **Improve local and state enforcement.** In the normal course of criminal investigations, state and local law enforcement—which is the practical and preferred level for most law enforcement policies—should neither ignore immigration law nor hesitate to cooperate with federal immigration officials as appropriate.

In the case of counterterrorism, more concerted effort is needed. For now, adequate authority for state and local enforcement exists in Section 287(g) of the Immigration and Nationality Act. A pilot program with the State of Florida could serve as a national model and ought to be encouraged.⁴

5. **Prevent document and identity fraud.** Document fraud exists throughout the immigration

2. James Jay Carafano and Ha Nguyen, “Better Intelligence Sharing for Visa Issuance and Monitoring: An Imperative for Homeland Security,” Heritage Foundation *Background* No. 1699, October 27, 2003, at www.heritage.org/Research/HomelandDefense/BG1699.cfm.

3. Matthew Spalding, “Strengthen Citizenship in INS Reform,” Heritage Foundation *Executive Memorandum* No. 809, April 8, 2002, at www.heritage.org/Research/GovernmentReform/EM809.cfm.

4. James Jay Carafano, Ph.D., “No Need for the CLEAR Act: Building Capacity for Immigration Counterterrorism Investigations,” Heritage Foundation *Executive Memorandum* No. 925, April 21, 2004, at www.heritage.org/Research/HomelandDefense/em925.cfm.

system and, if left uncorrected, will continue to be an exposed weakness in our homeland security system.

Congress should follow the recommendation of the 9/11 Commission and set nationwide standards for the issuance of key documents, such as driver's licenses, that are used to establish identity.⁵ These standards should require proof of citizenship or lawful presence in the United States as a prerequisite for such documents. Also, while recognizing legitimate concerns about creating a national identification card, Congress must ensure that Social Security cards are less susceptible to fraud.

6. **Encourage economic freedom abroad.** Most individuals and families that come to the United States legally (and illegally) are seeking economic opportunity. One way to reduce illegal immigration in the long run is to promote economic growth in the nations that these individuals forsake. As long as Mexico's economy does not provide sufficient opportunities to satisfy the country's growing population, many of its citizens will have an incentive to cross our common border illegally in search of work.

The United States should encourage Mexico to reform its economy by ending business monopolies and corrupt practices, allowing foreign investment, reducing regulation, and improving property rights. These are the necessary steps for Mexico to build a strong and stable entrepreneurial, free-market economic system.⁶ To this end, the United States recently initiated the Millennium Challenge Account, a new form of foreign assistance that encourages economic growth by focusing on positive

results rather than the amount of money given to individual countries.⁷

7. **Investigate existing programs.** The United States already has several programs for temporary non-immigrant workers. These programs allow individuals to stay in the country for various lengths of time with an employment-based visa for various occupational purposes.

Although these programs are rather bureaucratic and cumbersome, one option for Congress to consider for addressing the demand for temporary workers is streamlining and adapting existing procedures for granting non-immigrant work visas. There already exists an unrestricted visa classification for temporary or seasonal agricultural workers (H-2A), yet few agricultural employers or farm workers use this visa mechanism. The experience and feasibility of this option ought to be investigated before considering an entirely new program.

8. **Rebuild the Coast Guard.** Although long overlooked, the U.S. Coast Guard's many missions touch on virtually every aspect of maritime and border security. However, the Coast Guard's fleet is old, expensive to operate and maintain, and poorly suited for some homeland security missions.

As a result, underfunding of Coast Guard modernization is a significant problem for the national capacity to enforce immigration laws at sea, in coastal areas, and at many ports of entry. Congress should accelerate spending on Coast Guard modernization and make additional investments in assets that support this essential aspect of border security.⁸

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5. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, D.C.: U.S. Government Printing Office, 2004), at www.9-11commission.gov/report/911Report.pdf (October 8, 2004).
 6. Stephen Johnson and Sara J. Fitzgerald, "The United States and Mexico: Partners in Reform," Heritage Foundation *Background* No. 1715, December 18, 2003, at www.heritage.org/Research/LatinAmerica/BG1715.cfm.
 7. James Jay Carafano and Ha Nguyen, "Homeland Security and Emerging Economies," Heritage Foundation *Background* No. 1795, September 14, 2004, at www.heritage.org/Research/HomelandDefense/bg1795.cfm. See also Marc A. Miles, ed., *The Road to Prosperity: The 21st Century Approach to Development* (Washington, D.C.: The Heritage Foundation, 2004).

Conclusion

Immigration will always be an important issue in the United States, not because the issue is a perennial problem, but because it is inextricably connected to the fundamental principles upon which this nation is founded. Because of that connection, it is imperative that policymakers take the time to think through and implement immigration policies that are consistent with these principles,

the necessities of national security, and the great traditions and compassionate practices of America's ongoing experiment in ordered liberty.

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8. See James Jay Carafano, statement before the Committee on Commerce, Science, and Transportation, U.S. Senate, March 24, 2004, at www.heritage.org/Research/HomelandDefense/tst032404a.cfm.

Background

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Where We Stand: Essential Requirements for Immigration Reform

Edwin Meese III and Matthew Spalding, Ph.D.

America has been good for immigrants, and immigrants have been good for America. Our nation's principles and its system of equal justice and economic freedom invite all those seeking opportunity and the blessings of liberty. The immigrants that come to America have always played an important role in our history—strengthening our social capital, deepening our national patriotism, and expanding our general economy.

Over the past several decades, however, immigration policy has become confused and unfocused to the point that there is widespread and deepening concern that our current policies regarding immigration are not working. Poorly designed policies and weak enforcement of immigration laws have led to disturbing vulnerabilities in our security. Millions of illegal immigrants in our country belie the core principle of the rule of law and belittle the legal naturalization process. Continued large-scale immigration without effective assimilation threatens social cohesion and America's civic culture and common identity.

At the beginning of this national debate, The Heritage Foundation described the principles that should inform immigration policy, suggested some considerations for policymakers, and proposed several first steps in developing such a policy.¹ Since then, several papers have been published applying these principles to particular aspects of the policy debate.² These principles have guided and will continue to guide Heritage Foundation analysis of this question, and they should guide lawmakers and policymakers in evaluating particular proposals that come before them.

Talking Points

- Congress and the President now have another opportunity to craft immigration reform legislation. Given the stakes involved, they should proceed fully cognizant of the immediate and long-term implications of their actions.
- Lawmakers should support comprehensive reform if and when they are confident that the proposed immigration reforms fully and honestly comprehend core American principles.
- They should oppose and, if necessary, the President should veto any reforms or reform packages that do not comport with these principles, are not in the best interests of the United States, and are inconsistent with the great traditions and compassionate practices of America's ongoing experiment in ordered liberty.

This paper, in its entirety, can be found at:
www.heritage.org/research/immigration/bg2034.cfm

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With Congress and the Administration set to consider once again a major immigration reform package, it is necessary to restate these principles and clarify how they should apply to the current debate. For the sake of immigrants and American citizens alike, any meaningful and long-term policy concerning immigration must be consistent with these principles and, thus, with the highest ideals and long-term good of the United States.

The First Priority: National Security

Principle: America's immigration system must be a national strength and not a strategic vulnerability.

Every nation has the right, recognized by both international and domestic law, to secure its borders and ports of entry and thereby control the goods and persons coming into its territory. Americans have always been and remain a generous people, but that does not mitigate the duty imposed on the United States government to know who is entering, to set the terms and conditions of entry and exit, and to control that entry and exit through fair and just means.

It is the responsibility of Congress and the President to ensure that immigration policy and immigration policy enforcement serve our national security. From a national security perspective, preventing illegal entry and reducing unlawful presence in the United States is an imperative. An uncontrolled immigration system encourages the circumvention of immigration laws and is a clear invitation to those who wish to take advantage of our openness to cause this nation harm.

• **Provide comprehensive security.** The United States must have a complete security system—

from the point of origin, in transit, at the border, and within the United States—that strengthens all of the activities, assets, and programs necessary to secure America's borders. Immigration legislation should create an integrated security system that addresses border infrastructure and links border management to all activities involved in cross-border travel and transport, from issuing visas and passports to internal investigations and the detention and removal of unlawful persons.³

- **Allow for operational flexibility.** Over the past ten years, the United States has tripled border spending and manpower as border incursions have skyrocketed. An immigration bill should direct the Department of Homeland Security (DHS) to secure the border and then give it the operational flexibility to achieve that objective. Appropriate new technologies—unmanned vehicles, cameras, sensors, and satellites—should be utilized for this purpose. Wiser investments would include funding cost-effective initiatives that would rapidly increase security at the border, such as using state defense forces and private-sector contractors.⁴
- **Target federal support at the border.** To secure the border, immigration reform legislation should allocate about \$400 million per year over the next three years out of the projected spending on homeland security grants. Congress must resist the temptation to turn these grants into earmarked pork-barrel programs and instead insist that federal support for border security policing be strategically employed as a short-term bridging program to secure the border immediately.⁵
- **Authenticate identification.** Immigration reform should include implementation of the Intelligence Reform and Terrorism Prevention Act of

1. Edwin Meese III and Matthew Spalding, "The Principles of Immigration," Heritage Foundation *Backgrounder* No. 1807, October 19, 2004.
2. See, for instance, Edwin Meese III, James Jay Carafano, Ph.D., Matthew Spalding, Ph.D., and Paul Rosenzweig, "Alternatives to Amnesty: Proposals for Fair and Effective Immigration Reform," Heritage Foundation *Backgrounder* No. 1858, June 2, 2005, and Edwin Meese III and Matthew Spalding, Ph.D., "Permanent Principles and Temporary Workers," Heritage Foundation *Backgrounder* No. 1911, March 1, 2006.
3. James Jay Carafano, Ph.D., "Safeguarding America's Sovereignty: A 'System of Systems' Approach to Border Security," Heritage Foundation *Backgrounder* No. 1898, November 28, 2005.
4. James Jay Carafano, Ph.D., "Senate Immigration Plan Fails to Deliver Comprehensive Border Security," Heritage Foundation *WebMemo* No. 1080, May 16, 2006.

2004 and the REAL ID Act of 2005. These laws do not create a national identification card, but rather establish that when key identification materials, such as driver's licenses (and the documents used to obtain them like birth certificates), are issued at any level of government and used for a federal purpose (such as security checks before boarding commercial passenger planes), these documents must meet national standards of authenticity. Such documents should be issued only to persons living lawfully in the United States. To prevent tampering, counterfeiting, or fraud, and to enhance privacy protections, the laws also establish standard security features concerning identification cards. Congress should appropriate the money to help states establish systems to meet requirements under the REAL ID Act.⁶

- **Implement US-VISIT.** A system for recording entry and exit into and out of the United States is a necessary component of responsibly managing control of the nation's borders. The Administration should implement the congressionally mandated US-VISIT program as quickly and efficiently as possible.⁷
- **Require security checks.** No individual should be allowed to enter the United States unless that individual has passed health, criminal, and national security background checks prior to entry.
- **Insist on a national security trigger.** While recognizing that a temporary worker program would contribute to the task of policing borders and coastlines, a comprehensive plan for integrated border security must be implemented and operational control of the border must be achieved prior to initiating any new programs that substantially increase permanent or temporary workers in the United States. This determi-

nation should be made by the Administration, subject to legislative concurrence.

Uphold the Rule of Law

Principle: The rule of law requires the fair, firm, and consistent enforcement of the law, and immigration is no exception.

Congress and the President must take credible steps to reduce illegal immigration in both annual and absolute terms, and that requires enforcement. Indeed, recent efforts by the Bush Administration demonstrate how targeted enforcement could have a significant effect on illegal immigration into the United States. Federal, state, and local law enforcement must be allowed to enforce immigration law consistent with their legal authority. Federal and state governments must provide law enforcement with the necessary resources to enforce and prosecute these laws, and the federal government should expand programs to assist states and territories in their immigration law enforcement efforts.

- **Increase workplace compliance.** Credible workplace enforcement requires steep employer penalties that will serve as an effective deterrent against violating immigration laws. Without creating a new federal bureaucratic program, the largest employers of unlawful labor and the most egregious violators of immigration laws should be targeted for enforcement. To secure the cooperation of businesses, the tax code should be amended to remove the tax deductibility of wages paid to unauthorized aliens.⁸
- **Strengthen employment verification.** Employers currently verify an employee's right to work by submitting a Social Security number for payroll tax purposes, yet millions of the numbers submitted by employers on earnings reports do

5. James Jay Carafano, Ph.D., and David B. Muhlhausen, Ph.D., "State and Local Law Enforcement's Key Role in Better, Faster, Cheaper Border Security," Heritage Foundation *Executive Memorandum* No. 1015, November 22, 2006.

6. James Jay Carafano, Ph.D., "The Real Importance of REAL ID: A Strategy for Saving the Secure Driver's License Initiative," Heritage Foundation *Executive Memorandum* No. 1024, May 4, 2007.

7. James Jay Carafano, Ph.D., "A Visa Reform Plan for Congress," Heritage Foundation *Executive Memorandum* No. 1001, May 25, 2006; see also James Jay Carafano, Ph.D., Helle C. Dale, and James Dean, "Improve the Visa Waiver Program with Exit Checks for New Participants," Heritage Foundation *WebMemo* No. 1400, March 19, 2007.

8. James Jay Carafano, Ph.D., "Immigration Enforcement and Workplace Verification: Sensible Proposals for Congress," Heritage Foundation *Executive Memorandum* No. 999, April 4, 2006.

not match Social Security Administration master records. Immigration reform must allow sharing of Social Security no-match information in a way that will protect privacy rights while allowing the DHS to target employers who intentionally violate the law by hiring illegal workers and giving the government incorrect information.⁹

- **Maintain state and local enforcement authority.** Under current law, state and local police have the authority to arrest aliens for criminal and civil violations of law. A provision in the Comprehensive Immigration Reform Act of 2006 would have restricted state and local police to arresting aliens for criminal violations of immigration law only, not for civil violations. As a practical matter, such a provision would discourage police departments from playing any role in immigration enforcement. Most police officers (indeed, most lawyers) do not know which immigration violations are criminal and which violations are civil, and this lack of knowledge hinders the effectiveness of local law enforcement of federal immigration law.¹⁰
- **Target criminal enforcement.** Any targeted enforcement efforts should focus with special intensity on finding and deporting illegal immigrants who have committed crimes in the United States or who have fled after having been ordered to be deported. Immigration reform should establish strong penalties for absconding from the enforcement of United States law. Absconding after receiving an order to appear or a removal order should be a punishable crime, and the second such offense should be a felony. Under these reforms, such individuals would thereafter be ineligible for legal visa programs.
- **Facilitate state and local law enforcement.** Immigration reform should expand Section 287(g) of the Immigration Naturalization Act of 1996, which allows the Department of Homeland Security and state and local governments to

enter into assistance compacts. State and local law enforcement officers governed by a Section 287(g) agreement must receive adequate training and operate under the direction of federal authorities. In return, they receive full federal authority to enforce immigration law, thereby shifting liability to the federal government and providing the officers with additional immunity when enforcing federal laws.¹¹

- **Don't make the problem worse.** What immigration policy needs—as any new program requires—is a clear and determined strategy to enforce the rules. Any program that is vague or unenforceable or that allows temporary visitors or workers to disappear when their legal status expires would mean a larger illegal immigrant community—and a larger public policy problem. Immigration reform in general and a temporary worker program in particular must go hand-in-hand with a much stronger approach to violations of our immigration laws. And before proceeding, policymakers must have the political will to insist on the rule of law.

Amnesty Is Not the Answer

Principle: Those who enter, remain in, and work in the country illegally are in ongoing and extensive violation of our immigration laws.

Forgiving or condoning such violations by granting amnesty increases the likelihood of further illegal conduct. Failure to enforce immigration laws is deeply unfair to the millions who obey the law and abide by the administrative requirements to enter the country legally. Disregarding the intentional violation of the law in one context because it serves policy objectives in another undermines the rule of law. The just and reasonable requirement for correcting illegal immigration, in addition to other appropriate penalties, is repatriation, after which individuals may apply for legal entry to the United States without partiality or prejudice.

9. *Ibid.*

10. Kris W. Kobach, "Terrorist Loophole: Senate Bill Disarms Law Enforcement," Heritage Foundation *WebMemo* No. 1092, May 24, 2006.

11. James Jay Carafano, Ph.D., and Laura Keith, "The Solution for Immigration Enforcement at the State and Local Level," Heritage Foundation *WebMemo* No. 1096, May 25, 2006.

- **Defining Amnesty.** Amnesty is an act by which past acts are forgotten and expunged from the record for future purposes. In the context of immigration, amnesty is most commonly defined as granting legal status to a defined group of individuals who are unlawfully present in the United States; that is, overlooking or forgetting the ongoing illegal presence in the United States in favor of adjusting that presence to a legal status. The granting of legal status is still an amnesty even if it is conditional and not automatic or does not lead to citizenship.¹²
- **The 1986 Amnesty.** The Immigration Reform and Control Act of 1986—which legalized individuals who had resided illegally in the United States continuously for five years by granting temporary resident status adjustable to permanent residency—is the most prominent example of an immigration amnesty policy. Additional conditions included a criminal background check, payment of application fees, acquisition of English-language skills, a civics requirement, and signing up for military service. Although passed in good faith, that law failed to curb the influx of illegal immigration.¹³
- **The CIRA Amnesty.** Likewise, the Comprehensive Immigration and Reform Act of 2006 (CIRA) proposed an amnesty for almost all illegal immigrants.¹⁴ This is underscored by that legislation’s fundamental similarity to the Immigration Reform and Control Act of 1986. CIRA would have placed those who have resided illegally in the United States for five years on a similar path to citizenship. As before, amnestied individuals would have to pay a fine, pass a background check, and meet admissibility criteria.
- **Repatriation.** The only fair and reasonable way to resolve this dilemma without granting amnesty is to insist that individuals who are unlawfully present in the country return to their countries of origin and then apply, in line and on par with other applicants, for legal entry to the United States. Any program that does not require unlawfully present individuals to leave the United States and reenter through legal means if they wish to work or reside here will never satisfy the tenets of good immigration law and would provide an incentive for future violation of the law.¹⁵
- **National Trust for Voluntary Return.** If the United States had operationally secure borders and reasonable legal opportunities for visas, green cards, and access to a true temporary worker program, many of those who are unlawfully present would leave willingly, return to their countries of origin, and take the steps that would enable them to come back to the United States to live and work legally. To assist them, immigration reform legislation should establish a National Trust for Voluntary Return—a program of financial assistance to help illegal aliens return to their home countries.¹⁶
- **A Pathway, Not a Shortcut.** Illegal aliens who voluntarily leave the United States, register with authorities before leaving through the US-VISIT program, have no criminal record, and agree to abide by the terms and requirements of the laws of the United States can then apply for legal entry to the United States as lawful visitors, temporary workers, or legal residents without partiality or prejudice. Individuals who are in the United States illegally should receive no such benefits or advantages while they remain in the United States.

Strengthen Citizenship

Principle: Each nation has the responsibility—and obligation—to determine its own conditions for immigration, naturalization, and citizenship.

12. Meese *et al.*, “Alternatives to Amnesty: Proposals for Fair and Effective Immigration Reform.”

13. Edwin Meese III, “An Amnesty by Any Other Name...,” *The New York Times*, May 25, 2006.

14. Kirk A. Johnson, Ph.D., “The Senate Compromise on Immigration: A Path to Amnesty for Up to 10 Million,” Heritage Foundation *WebMemo* No. 1030, April 6, 2006.

15. Meese *et al.*, “Alternatives to Amnesty: Proposals for Fair and Effective Immigration Reform.”

16. James Jay Carafano, Ph.D., “Immigration Enforcement: A Better Idea for Returning Illegal Aliens,” Heritage Foundation *Executive Memorandum* No. 1011, September 7, 2006.

Congress has the constitutional responsibility “[t]o establish an uniform Rule of Naturalization” that sets the conditions of immigration and citizenship and to ensure the fairness and integrity of the legal process by which immigrants enter the country legally and, in many cases, become permanent residents and fellow citizens. The United States welcomes those who come here in accord with the law. Individuals who are not citizens do not have a *right* to American citizenship without the consent of the American people as expressed through the laws of the United States. With that consent, however, any individual of any ethnic heritage or racial background could become an American.

That process is possible because, in addition to the generous principles of free government, this nation has always had a deliberate and self-confident policy that assimilates immigrants and new American citizens, teaching our common language and educating them about this country’s political principles and the responsibilities of self-government. Strengthening such a policy requires clarifying rather than blurring the distinction between citizens and non-citizens and strengthening rather than weakening the naturalization process and the conditions of patriotic assimilation.¹⁷

- **Encourage immigrant education.** In order to foster political integration and strengthen common principles, immigration reform should support programs to promote civics and history education among immigrants and encourage English language acquisition. An amendment to this effect was included in the Comprehensive Immigration Reform Act 2006, and it should be included as a baseline in any new reform package.¹⁸ That proposal amounted to a voucher for adult legal immigrants seeking citizenship to

take English courses from qualified institutions and provided grants for organizations to teach civics and history to immigrants. Immigration reform should also ensure that the citizenship test focuses on core civic knowledge and concepts and should both codify and teach the meaning of the Oath of Allegiance.

- **Provide for the common language.** Clear communication, mutual deliberation, public education, and common civic principles demand that citizens share one common language. Immigration reform legislation should therefore recognize English as the national language of the United States; clarify that, unless stated explicitly in law, there is no right to receive communications, documents, or services in a language other than English; and override Executive Order 13166, which was issued by President Clinton and has not yet been rescinded by the Bush Administration.¹⁹
- **Clarify birthright citizenship.** According to the Citizenship Clause of the Fourteenth Amendment, those who are born here must also be subject to the jurisdiction of the United States. The popular concept of “birthright citizenship”—that anyone born while in the United States is automatically a U.S. citizen—is historically and legally inaccurate. Only a complete jurisdiction of the kind that brings with it an exclusive allegiance is sufficient to qualify for the grant of citizenship. Immigration reform legislation, especially if it includes a temporary worker program, must correct this misunderstanding. In order to do so, Congress should reassert its constitutional authority to clarify this question.²⁰
- **Revive expatriation.** A renewed emphasis on the terms of citizenship also demands rethinking

17. Matthew Spalding, Ph.D., “Making Citizens: The Case for Patriotic Assimilation,” Heritage Foundation *First Principles* No. 3, March 16, 2006.

18. The Strengthening American Citizenship Act, proposed by Senator Lamar Alexander (R-TN) and Senator John Cornyn (R-TX).

19. English as the National Language Amendment (S.A. 4064), proposed by Senator James Inhofe (R-OK), was approved by a vote of 62 to 35 as part of CIRA.

20. John C. Eastman, Ph.D., “From Feudalism to Consent: Rethinking Birthright Citizenship,” Heritage Foundation *Legal Memorandum* No. 18, March 30, 2006. See also Edward Erler, “Citizenship,” in Edwin Meese III, Matthew Spalding, and David Forte, eds., *The Heritage Guide to the Constitution* (Washington: Regnery Publishing, 2005), pp. 384–386.

and clarifying, both in our political rhetoric and within the law, the limits of citizenship. That includes the extreme circumstances under which naturalized citizens and native-born citizens who violate those terms can lose their citizenship. These circumstances are described by existing law; immigration reform should expand the circumstances for relinquishing citizenship to include acts of terrorism or participating in a terrorist group or organization and should adjust the presumption of evidence concerning the intention of relinquishing citizenship under these circumstances.

- **Improve immigration services.** Immigration reform should insure that the U.S. Citizenship and Immigration Service (USCIS) has the capacity to handle current and future immigration to the United States effectively and efficiently, with a better model to pay for services and funding to transform USCIS to work as part of an inter-agency effort to control legal immigration.²¹
- **Protect the integrity of the legal immigration process.** Immigration reform must ensure that the vital process of naturalization and assimilation is not overwhelmed either by the sheer number of new immigrants or by the size and complexity of any new worker program. A temporary visa program must not be allowed to become a way to circumvent the rules and procedures of the naturalization process, thereby creating *de facto* permanent residents without equivalent legal status. To the extent that the need is for a larger permanent working population in the United States, the policy preference ought not to be workers who are temporary, but rather assimilated immigrants who understand and are willing to take on the long-term obligations of citizenship. In general, immigration policy should not be used to alter the political balance in the United States.

Benefit the American Economy

Principle: Immigration policy should be a fiscal and economic benefit not only for immigrants, but also for the nation as a whole.

Most individuals and families that immigrate to the United States come seeking economic opportunity. Unlike previous generations, however, a generous welfare, education, and health system with generous eligibility draws poor and low-skill immigrants into the ranks of the underclass rather than encouraging self-reliance and financial independence. Policymakers must ensure that the interaction of social services and immigration policy does not expand the welfare state and impose significant costs on American society. Overall, immigration policy should support a growing economy and bring economic benefit to all Americans.

- **Don't import poverty.** Government provides a generous system of benefits and services to both the working and the non-working poor. While government continues its massive efforts to reduce overall poverty, immigration policy in the United States tends to produce results in the opposite direction, increasing rather than decreasing the poverty problem. Immigrants with low skill levels have a high probability of poverty and of receiving benefits and services that drive up governmental welfare, health, social service, and education costs.²²
- **Consider fiscal costs and benefits.** The fiscal impact of immigration varies strongly according to immigrants' education levels. While highly educated immigrants, on average, make positive fiscal contributions, the overall fiscal impact of low-skill immigrants is negative. On average, low-skill immigrant households receive \$19,588 more in immediate benefits than they pay in taxes each year—nearly \$1.2 million in lifetime costs for each such household.²³ Immigration

21. James Jay Carafano, Ph.D., "Better, Faster, Cheaper Border Security Requires Better Immigration Services," Heritage Foundation *Background* No. 2011, February 28, 2007.

22. Robert Rector, "Importing Poverty: Immigration and Poverty in the United States: A Book of Charts," Heritage Foundation *Special Report* No. SR-9, October 25, 2006.

23. Robert Rector, "The Fiscal Cost of Low-Skill Immigrants to the U.S. Taxpayer," testimony before the Subcommittee on Immigration, Committee on the Judiciary, U.S. House of Representatives, May 1, 2007.

reform must take into account the large and foreseeable costs associated with importing millions of low-skill immigrants and the likelihood that such an immigration policy will vastly expand the welfare state. For the same reasons, a policy that grants amnesty to current illegal aliens would have a very significant fiscal cost.²⁴

- **Emphasize high-skill immigration.** The legal immigration system should be altered so that it substantially increases the proportion of new entrants with high levels of education and skills in demand by U.S. firms. Under current law, foreign-born parents and siblings of naturalized citizens are given preference for entry visas. The current visa allotments for family members (other than spouses and minor children) should be eliminated in lieu of increasing quotas for employment-based and skill-based entry, proportionately. In general, immigration policy should encourage high-skill immigration and avoid immigration that will increase poverty and impose significant new costs on taxpayers.
- **Reduce state fiscal burden.** Although immigration policy is primarily a federal responsibility, it is the state and local governments that mostly deal with the practical implications of that policy. The fiscal tab picked up by the states for illegal immigrants who receive various local services and impose local costs amounts to an unfunded mandate placed on states by a federal government that is not enforcing its own laws. Immigration reform should decrease existing burdens and not impose any new such burdens on state and local governments.
- **Encourage economic freedom.** Beyond immediate reforms, our long-term national strategy should implement policies and measures to strengthen the governance and infrastructure of developing countries to slow migration into the

United States. We should encourage labor-exporting nations to reform their laws and economies to provide avenues of social mobility that are now absent in their societies. The U.S. government should encourage its hemispheric neighbors to liberalize their economies, reduce burdensome business regulations, ensure equal treatment of all citizens under the law, and thereby spread prosperity more broadly.²⁵

A Real Temporary Worker Program

Principle: A temporary worker program must be temporary, market-oriented, and feasible.

A balanced and well-constructed temporary worker program should diminish the incentives for illegal immigration by providing an additional option for legal temporary labor and, in combination with other reforms, reduce over time the current population of illegal aliens. This would foster better national security and serve a growing economy. Such a temporary worker program would be a valuable component of a comprehensive immigration reform proposal.

Nevertheless, enthusiasm for such a program in theory must be moderated by serious concerns not only about the failures of such programs in our past and in other countries, but also regarding how a new program would likely be implemented and operate in practice. An ill-defined and poorly constructed temporary worker program would make the current problems of immigration policy even worse.²⁶

- **Keep it temporary.** A temporary worker program should be temporary and of defined and limited duration. If participation is renewable, there should be a substantive period of time in the home country between renewals and a limit on the numbers of renewals.

24. Robert Rector, "Amnesty and Continued Low-Skill Immigration Will Substantially Raise Welfare Costs and Poverty," Heritage Foundation *Backgrounder* No. 1936, May 16, 2006; see also Meese and Spalding, "The Principles of Immigration."

25. Stephen Johnson, "Mexico's Economic Progress Can Ease Migration Woes," Heritage Foundation *WebMemo* No. 1022, March 31, 2006.

26. In general, see Meese and Spalding, "Permanent Principles and Temporary Workers." See also Tim Kane, Ph.D., and Kirk A. Johnson, Ph.D., "The Real Problem with Immigration... and the Real Solution," Heritage Foundation *Backgrounder* No. 1913, March 1, 2006.

- **Create a dynamic workforce.** The objective should be to allow for a reliable and market-driven source of labor and for that labor to be provided by a dynamic and rotating temporary workforce. Facilitation of the program should not be micromanaged by government agencies. A private-sector approach to managing and facilitating workers would more efficiently integrate the workforce and allow the market to serve economic needs and provide economic benefits.²⁷
- **Require sponsorship.** An employment sponsorship system is a flexible alternative to government management of the supply of and demand for migrant labor. Existing undocumented workers should find it relatively easy to get sponsorship with current employers, so leaving the country, applying, and reentering would neither discourage their compliance nor come at the expense of other legal migrants.²⁸
- **Resolve family status.** Temporary workers in the United States should be encouraged to establish long-term residences, create stable households, and build families in the country of their permanent citizenship, but they should not be allowed to bring spouses or families to the United States during the program. Consistent with the temporary nature of the program, the children born in the United States of non-U.S. citizen parents during their program participation should not automatically become U.S. citizens. If these questions are not resolved, and if the return period between renewals and departure after program completion is not enforced, a temporary worker program will create powerful conditions of permanency and lead to significant fiscal costs.
- **Require bilateral agreements.** Any temporary worker program requires bilateral agreements between the United States and the home nations of program participants. Such agreements would strengthen cooperation concerning verification of identity and background security; establish clear agreement to abide by (and encourage participants to abide by) the rules of the program and United States immigration laws; facilitate the return of those nations' citizens at the end of program participation; and reward nations that develop robust programs that assist in significantly reducing the unlawful population in the United States. Such agreements are also an opportunity to develop additional incentives for temporary workers, such as allowing program participants to receive credit in their home countries' retirement systems.²⁹
- **Include program triggers.** Immigration reform must include measurable benchmarks and goals that must be met in order to proceed with the implementation of a temporary worker program. These program triggers must cover border security (such as a biometric identification registry, verification of identity and criminal security check with the participants' home country, mandatory workplace verification, and a system of secure documents); internal enforcement (the vast majority of employers should be compliant with worker identification processes, and Social Security information must have been shared with DHS); and program infrastructure (a single integrated border services agency must be in place, working, and appropriately tested for reliability and accuracy). These various determinations should be made by the Administration and subject to legislative concurrence.³⁰
- **Provide economic incentives.** A temporary worker program should provide economic incentives for participants to abide by the rules of the program and return home at the end of their permitted tenure. These incentives should affect both the participant (in the form of withheld income or investment accounts) and the employer (in the form of a bond to control the flow of workers and promote compliance). In

27. Tim Kane, Ph.D., "Immigration Reform or Central Planning?" Heritage Foundation *WebMemo* No. 1088, May 19, 2006.

28. Tim Kane, Ph.D., "Sponsorship: The Key to a Temporary Worker Program," Heritage Foundation *Executive Memorandum* No. 1022, February 27, 2007.

29. Meese and Spalding, "Permanent Principles and Temporary Workers."

30. *Ibid.*

both cases, the dollar value of the bond would be repaid after the migrant exited the U.S. but would be forfeited if the migrant went into the black market economy.³¹ Likewise, temporary workers should not be eligible for means-tested welfare, Social Security, or Medicare, and employers (in the form of a surety bond) should be required to cover medical costs of workers while they in the United States.

- **Insist on numerical caps.** Even allowing for relatively larger numbers of individuals to participate in the early years of any worker program on the assumption that some number currently here will leave and reenter with temporary legal status, there must be a hard numeric cap on overall program participation in each year. This numerical cap should include spouses and children; that is, the total number of individuals given temporary legal status under this program. In future years, the cap must also include temporary workers that violated the terms of the program and remained in the country illegally.
- **Limit status adjustment.** If the program is to be a truly temporary worker program, individuals should not be allowed to adjust legal status while on the program; that is, it should be a non-adjustable visa. Otherwise, this is not a temporary program, but a transitional program to permanent status. If participants wish to enter a separate track for permanent residency, the individual must apply separately for a pre-existing category of adjustable visas. Participation in the temporary worker program should not advantage such an application (except as evidence of law-abidingness, for instance) and should not fulfill residency requirements for citizenship. Indeed, violation of the terms of the worker visa should prevent the participant from being eligible for other visas, legal permanent residency, or citizenship.

- **Resist large programs.** Immigration legislation should not create a large, open-ended, or ill-defined program in order to meet a demand for temporary workers. A pilot program, perhaps based on the expansion and streamlining of existing non-immigrant work visa programs, is a reasonable and prudent policy prior to launching a new program of any significant magnitude. Likewise, the United States already has several programs (including an unrestricted visa classification for temporary or seasonal agricultural workers) that could be streamlined and adapted for granting other non-immigrant work visas. Immigration legislation should also restructure and increase existing programs for highly skilled foreign workers, such as the H-1B program.³²

Conclusion

In the mid-1980s, Congress advocated amnesty for long-settled illegal immigrants. President Reagan considered it reasonable to adjust the status of what was then a relatively small population. In exchange for allowing aliens to stay, border security and enforcement of immigration laws would be greatly strengthened—in particular, through sanctions against employers who hired illegal immigrants.

However, the Immigration Reform and Control Act of 1986 did not solve our illegal immigration problem. Indeed, the lessons of that policy experiment are clear. From the start, there was widespread document fraud by applicants. Unsurprisingly, the number of people applying for amnesty far exceeded projections, and there proved to be a failure of political will in enforcing new laws against employers.³³

After a six-month slowdown that followed passage of the legislation, illegal immigration returned to normal levels and continued unabated. Ultimately, some 2.7 million people were granted amnesty. Many who were not granted amnesty stayed anyway, forming the nucleus of today's illegal

31. Kane and Johnson, "The Real Problem with Immigration...and the Real Solution."

32. Kirk A. Johnson, Ph.D., "How Immigration Reform Could Help to Alleviate the Teacher Shortage," Heritage Foundation *Background* No. 1884, October 5, 2005, and Kirk A. Johnson, Ph.D., and Tim Kane, Ph.D., "'Recapturing' Visas: A Sensible Temporary Fix for America's Foreign Worker Problem," Heritage Foundation *WebMemo* No. 886, October 19, 2005.

33. Meese, "An Amnesty by Any Other Name..."

population. Twenty years later, the Comprehensive Immigration Reform Act, passed by the Senate in 2006, proposed another amnesty while giving short shrift to border security and failing to strengthen enforcement of immigration laws.

CIRA also had additional problems arising out of the sheer numbers involved. By themselves, the amnesty provisions would have covered some 10 million illegal immigrants, which would have created the largest expansion of the welfare state in 35 years.³⁴ This concern was outweighed by a quintupling of the rate of legal immigration into the United States that added up to more than 60 million immigrants over the next 20 years.³⁵ Numbers of this magnitude would be a dramatic policy change, with vast but largely unaddressed implications for social and economic stability and assimilation.

Congress and the President now have another opportunity to craft immigration reform legislation. Given the stakes involved, they should proceed carefully, fully cognizant of the immediate and long-

term implications of their actions. They must rise above the politics and policy debate of the moment and develop a clear, comprehensive, meaningful, and long-term policy concerning immigration, naturalization, and citizenship.

Lawmakers should support comprehensive reform if and when they are confident that the proposed immigration reforms fully and honestly comprehend these core principles. At the same time, they should oppose and, if necessary, the President should veto any reforms or reform packages that do not comport with these principles, are not in the best interests of the United States, and are inconsistent with the great traditions and compassionate practices of America's ongoing experiment in ordered liberty.

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34. Rector, "Amnesty and Continued Low-Skill Immigration Will Substantially Raise Welfare Costs and Poverty."

35. Robert Rector, "Senate Immigration Bill Would Allow 100 Million New Legal Immigrants over the Next Twenty Years," Heritage Foundation *WebMemo* No. 1076, May 15, 2006, and "Immigration Numbers: Setting the Record Straight," Heritage Foundation *WebMemo* No. 1097, May 26, 2006, which considers amendments to the original legislation that would reduce the 20-year estimate to 60 million individuals.

ISSUE BRIEF

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Immigration Reform Needs Problem-Solving Approach, Not Comprehensive Legislation

Matthew Spalding, PhD, Jessica Zuckerman, and James Jay Carafano, PhD

In his upcoming State of the Union Address, President Obama will very likely address our nation's broken immigration system. Unfortunately, the President is expected to call for "comprehensive" immigration reform legislation. This very same approach has failed to garner support in Congress time and time again, and is likely only to foster greater division. We invite the President to instead take a problem-solving approach and welcome a discussion about finding real solutions to fixing our dysfunctional immigration system and advancing real immigration reforms.

Immigration reform can move forward on many fronts at the same time, focusing on some common-sense initiatives that begin to address the practical challenges of our immigration system. The key is that just as the many aspects and elements of immigration are not all the same and immigrants in this country are not a monolithic block, there is not one comprehensive policy that will deal with all matters all at once. In fact, comprehensive legislation, likely to be written behind closed doors and loaded with measures for special interests, will make the problems it seeks to solve worse. A varied

problem, instead, requires varied solutions which address each of our immigration system's challenges on its own track. America needs a comprehensive approach—not comprehensive legislation.

Lack of Strong Presidential Action. Four years ago, then-candidate Obama promised his administration would put forward an immigration bill within his first year in office. Yet even when Democrats controlled both houses of Congress and the White House, the Administration failed to offer up legislation to address the problems of our immigration system. Even the President's favored Development, Relief, and Education for Alien Minors (DREAM) Act did not receive a serious push from the Administration.

Instead, as the time ticked down on the end of his first term, the President chose to abuse his "prosecutorial discretion" to allow as many as 1.7 million illegal immigrants brought to this country as children to have their deportation action temporarily deferred. The move not only abused presidential authority but also circumvented the legislative process and undercut a developing proposal by Senator Marco Rubio (R-FL). The President's deferred-action policy served to poison the well for collaborative reform efforts, and complicates attempts for finding long-term solutions through the legislative process.

The President is expected to push for a "comprehensive" immigration bill in his State of the Union Address on February 12. This approach has been tried and failed. Indeed, since the U.S. last passed such comprehensive legislation in 1986, the estimated illegal immigration population in the U.S. has quadrupled. And the very same approach has failed

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to garner support on either side of the aisle since President George W. Bush last proposed comprehensive immigration legislation in 2007.

That is because messy, compromised political deals will not solve problems. In fact, bills designed to solve everything, often loaded with payoffs for special interests and often introducing measures that contradict each other, frequently wind up creating as many and perhaps more problems than they intended to solve. But perhaps in the view of some, failure is the preferred option, one in which they can demagogue the issue and blame their opponents for failure.

Need for a Problem-Solving Approach. In order to solve our nation's immigration challenges we must not—and need not—compromise on principle or security. By its founding principles, this nation embraces those who come to this country honestly, armed with their work ethic, in search of the promises and opportunities of the American Dream.

Today, however, because of our misguided immigration policies, we lack a fair, orderly, and efficient immigration system. Far too many individuals are in the shadows. Still others, particularly poor and low-skilled immigrants, are caught in a generous welfare, education, and health system that breeds dependence rather than self-reliance. Immigrants come to America seeking a better life, and so we must restore *for everyone* an America of opportunity, upward mobility, prosperity, and the blessings of liberty.

Instead of a comprehensive bill, a problem-solving approach that treats each of the many issues in our immigration system in its own lane can offer a better solution. In this manner, reforms can move forward in multiple areas at the same time and advance toward meaningful and effective solutions. In so doing, lawmakers should:

Reform the legal immigration system. Such reforms would ensure that those who wish to come here legally can do so in a fair and efficient manner. These should include reforms at United States Citizenship and Immigration Services, the streamlining of current visa programs, and enhanced avenues for the entry of skilled workers, particularly those educated in the U.S. For those who stay, we must have a deliberate and self-confident policy of immigrant assimilation.

- **Make immigration more responsive to the needs of the economy.** Such efforts should

include a targeted temporary worker program tied to market and workforce demands that would supply a rotating, temporary workforce. Not only would a temporary worker program help to ensure employers' labor needs are met, but it would also help to disincentivize illegal immigration by supplying another avenue for legal entry and employment.

- **Reinvigorate interior enforcement measures.** Measures and programs such as Social Security No Match, random workplace inspections, checks of I-9 forms, and E-Verify help to discourage the use of illegal labor and send the message that the country takes enforcement of immigration laws seriously.
- **Enhance border security efforts.** Through the use of technologies like unmanned aerial vehicles and cameras/sensors, the Border Patrol can enhance monitoring and detection along the border in order to better protect U.S. sovereignty and halt illegal border crossings. Cooperation between Mexican and U.S. law enforcement through Border Enforcement Security Task Forces and the Merida Initiative, as well as ensuring that the U.S. Coast Guard has the resources they need, also remain essential.
- **Recognize state and local authorities as responsible partners.** Through programs like 287(g), which allow Immigration and Customs Enforcement to train state and local police to enforce federal immigration laws, state and local authorities can enhance enforcement efforts and work with the federal government to play a significant role in immigration policy.

By beginning with the issues we agree on rather than those that divide us, we can make progress in immigration reform and rebuild an immigration process in harmony with our highest principles and best traditions.

Comprehensive Legislation Is Not the Answer. With comprehensive legislation everyone loses—our nation's immigrants, our employers, our citizens. Rather than continuing to play politics with immigration reform, our nation's leaders should take the responsible path and develop real solutions to address our immigration systems' core problems.

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