

# BACKGROUND

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## 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.<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup> 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 *Background* 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.<sup>4</sup>

**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.<sup>5</sup>

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.<sup>6</sup> 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

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4. James Jay Carafano, “Safeguarding America's Sovereignty: A ‘System of Systems’ Approach to Border Security,” Heritage Foundation *Backgrounder* 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](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.<sup>7</sup> 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.<sup>8</sup> 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.<sup>9</sup>

**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 (SBI-net), 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.<sup>10</sup> In the end, SBI-net 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

7. Jena Baker McNeill, “15 Steps to Better Border Security: Reducing America’s Southern Exposure,” Heritage Foundation *Backgrounder* No. 2245, March 9, 2009, [http://www.heritage.org/research/reports/2009/03/15-steps-to-better-border-security-reducing-americas-southern-exposure#\\_ftn24](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 *Backgrounder* 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 *Backgrounder* No. 2732, September 20, 2012, <http://www.heritage.org/research/reports/2012/09/drones-in-us-airspace-principles-for-governance>.

proven effective for interdiction in remote areas.<sup>11</sup> 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.<sup>12</sup>

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.<sup>13</sup> 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.<sup>14</sup> Mexico is not an unwilling partner: The Mexican government has additional projects on the drawing board that include a new gendarmerie 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.<sup>15</sup>

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.<sup>16</sup> 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.<sup>17</sup>

**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.<sup>18</sup> 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.<sup>19</sup>

**Checking In and Out of the Country.** Laws requiring better management and recording of non-immigrant visa holders when they exit the United

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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.<sup>20</sup> 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.<sup>21</sup> 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

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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.<sup>22</sup>

**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.<sup>23</sup> 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.<sup>24</sup>

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.<sup>25</sup> 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.<sup>26</sup>

**Dealing with the Shadow Population**

The existence of a large shadow population in America is injurious to the rule of law, an excessive

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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.<sup>27</sup> 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.<sup>28</sup>

### 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.<sup>29</sup>

**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.<sup>30</sup>

### 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

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27. *America's Opportunity for All*, The Heritage Foundation, 2013, [http://thf\\_media.s3.amazonaws.com/2013/Opportunity/AmOppfAll\\_Highlights.pdf](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.