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Ten-Step Checklist for Revitalizing America's Immigration System: How the Administration Can Fulfill Its Responsibilities

David Inserra

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Abstract
The U.S. immigration and border security system is often called broken and failed, prompting calls for comprehensive, complex legislation that provides amnesty to millions of unlawful immigrants and would supposedly fix the problem. Exhibit one is the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). The act ignores most of the major effective immigration laws on the books, substitutes amnesty as a cure-all, and provides so-called solutions to non-existent problems, making the real problems even worse. This failure of legislative leadership is only compounded by the executive branch's growing disregard for enforcing clear requirements in the law. Under President Obama, immigration laws are unilaterally ignored, waived, or changed. The rule of law suffers and more illegal immigration is encouraged, imposing large financial and security costs on the U.S. Indeed, the U.S. immigration system is broken because of the executive branch's decision not to execute existing immigration law. The U.S. is a nation of laws and a nation of immigrants. There is no need to sacrifice either of these principles in pursuit of the other.

The U.S. immigration and border security system is often called broken and failed, prompting calls for comprehensive, complex legislation that provides amnesty to millions of unlawful immigrants and would supposedly fix the problem. Exhibit one is the Border Security, Economic Opportunity, and Immigration Modernization Act (S. 744). The act ignores most of the major effective immigration laws on the books, substitutes amnesty as a cure-all, and provides so-called solutions to non-existent problems, making the real problems even worse. This is tantamount to taking painkillers to stop internal bleeding; the U.S. may think it is better off, but it is actually far worse off because the pain medication masks a serious infirmity.

This failure of legislative leadership is only compounded by the executive branch's growing disregard for enforcing clear requirements in the law. Under President Barack Obama, immigration laws are unilaterally ignored, waived, or changed through "prosecutorial discretion," "immigration priorities," or enforcing existing laws "more humanely." The result of such lawlessness is that the rule of law suffers and more illegal immigration is encouraged, imposing large financial and security costs on the U.S. Indeed, the U.S. immigration system is broken because of the executive branch's decision not to faithfully execute existing immigration law.

Therefore, any President who truly wants to fix the U.S. immigration and border security problems

must first fulfill his duty to "take Care that the Laws be faithfully executed."[1] Fulfilling this responsibility requires 10 areas of action, and without a commitment to every area, U.S. immigration law is not being faithfully executed. These 10 policies are:

1. Overriding and removing existing executive orders, agency memorandums, or other executive policy directives that ignore or contradict existing law;

2. Allowing immigration agencies to enforce and apply the law without workplace interference, political pressure, or procedural obstacles;

3. Providing the Customs and Border Protection (CBP) agency with a fully operational system of sensor and camera technologies and infrastructure on the southwest border to multiply the efficacy of their efforts;

4. Using the appropriate judicial and administrative tools efficiently to remove and return unlawful immigrants to their home countries;

5. Increasing enforcement against businesses that knowingly employ unlawful labor;

6. Engaging with international partners and remaining committed to citizen security and democratic governance in the Western Hemisphere;

7. Making U.S. Citizenship and Immigration Services (USCIS), more efficient and effective;

8. Reporting accurate immigration data to Congress and the American people in a truthful, consistent, and complete manner;

9. Soliciting the assistance and support of the states in enforcing immigration laws and limiting the effectiveness of those governments that attempt to frustrate enforcement with sanctuary policies; and

10. Verifying the success of these actions through honest and accurate Census survey data of the unlawful immigrant population.

These policies are a checklist for the current and future Administrations, and a step-by-step process for reforming the U.S. immigration system. Other reforms, including improving the legal immigration system and creating an effective temporary worker program, are desirable and should be studied by Congress—but Congress should first ensure that the executive branch is fulfilling its duties on this checklist. Acting on other reforms before the executive branch faithfully executes existing immigration law would only obscure a major cause of the U.S.'s immigrations woes. The government must first commit itself to fulfilling its current responsibilities; then it can and should consider changes to the immigration system.

Costs of Illegal Immigration

Before a discussion of how to improve the U.S. immigration system, the costs of amnesty and non-enforcement of U.S. immigration laws should be considered. These include dramatic fiscal and security costs, as well as damage to the rule of law.

Fiscal Costs. Illegal immigration imposes large fiscal costs on U.S. society, and amnesty only exacerbates those costs. As a result, effective immigration enforcement and border security, together with a working legal immigration system, are paramount to reducing the burden on U.S. communities, taxpayers, and programs.

Government provides four types of benefits and services that are relevant to immigration:

- **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, and medical and other services to roughly 100 million low-income Americans. Major programs include Medicaid, food stamps, the 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 and fire protection, highways, parks, and similar services, as the National Academy of Sciences determined in its study of the fiscal costs of immigration, must generally expand as new immigrants enter a community: Someone has to bear the cost of that expansion.[2]

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.[3]

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. In 2010, in the whole U.S. population, households with college-educated heads received an average of $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.[4]

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. In 2010, in the U.S. population as a whole, households headed by persons without a high school degree received an average of $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.[5]

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.[6]

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 immi-

grants live in a community, they use roads, parks, sewers, and police and fire protection; these services must expand to cover the added population to prevent 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 immigrant households with access to over 80 means-tested welfare programs, Obamacare, Social Security, and Medicare. The fiscal deficit for each household would soar.[7]

Many believe that legal immigrants use little welfare. In reality, legal immigrant households receive significantly more welfare than U.S.-born households. Illegal immigrants also receive government benefits and services—from public education to medical care.

The typical unlawful immigrant is 34 years old. After amnesty, this individual will receive government benefits for 50 years. Thus, even restricting access to benefits for the first 13 years after amnesty, as roughly proposed by various immigration bills, would have only a marginal impact on long-term costs.

Over a lifetime, the up to 11.5 million former unlawful immigrants 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 receive amnesty and underestimates significantly the future growth in welfare and medical benefits.[8]

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 (and that illegal immigration is not creating) a large fiscal burden are simply in a state of denial concerning the underlying redistributional nature of government policy in the 21st century.

Security Costs. Beyond the pure fiscal costs of immigration, non-enforcement of immigration laws also hurts U.S. security and commitment to the rule of law. From a security perspective, lax enforcement of U.S. immigration laws potentially allows terrorists to gain access to the U.S. to plan and carry out attacks. At least five of the 9/11 hijackers were in the U.S. on expired visas or had otherwise violated the terms of their visas.[9] More recently, Amine Khalifi, who was illegally in the U.S. for 12 years, was arrested in a sting in 2012 for conspiring to use a suicide vest against the U.S. Capitol.[10]

Beyond illegal immigrants engaging in terrorism—which has so far been rare—lax enforcement of immigration laws also benefits drug cartels. While the U.S. will never completely stop the flow of illicit drugs, weapons, and people into the U.S., not enforcing U.S. immigration laws and failing to secure the border makes it easier for cartel members and associates to gain entry and remain in the U.S. in order to further their criminal operations.[11] Similarly, perceived weakness in U.S. immigration enforcement encourages more illegal immigrants to come to the U.S. in the hands of drug cartels that control the smuggling and transportation routes through Mexico. Often forced to do the cartels' bidding, such as transporting drugs into the U.S., illegal immigrants have little choice but to comply or be killed.[12]

Failure to enforce U.S. immigration law also allows common criminals to go undeported. As described below, more than 100,000 criminal aliens were released from the custody of the Department of Homeland Security (DHS) in fiscal year (FY) 2013 despite being deportable for their criminal convictions, including homicide, arson, and rape.[13] Additional research by the Congressional Research Service found that many of these criminal aliens go on to commit thousands of additional crimes.

Damage to the Rule of Law. Not enforcing immigration laws, or other laws for that matter, is

also unfair and harmful to U.S. society and the democratic process. The "rule of law" is an underappreciated concept, given that it is an essential piece of American, and Western, governance and a bedrock principle of Anglo-American jurisprudence. At its core, the rule of law is the equal application of democratically enacted laws to all people.

For most of human history, and still in many places in the world today, whatever a despot or small cadre of elites declares as the law is the law. Those in power, whether via political, economic, or military means, determine what the law is and to whom it applies. As a result, the laws are enforced or promulgated arbitrarily with certain people or groups treated harshly, while others are above the law.

The rule of law on the other hand, as defined by the American Bar Association, is composed of:

1. A system of self-government in which all persons, including the government, are accountable under the law;

2. A system based on fair, publicized, broadly understood, and stable laws;

3. A fair, robust, and accessible legal process in which rights and responsibilities based in law are evenly enforced; and

4. Diverse, competent, and independent lawyers and judges.[14]

Such principles are essential for a society that believes in equality, fairness, and good governance. They are not theoretical, philosophical words; the rule of law allows liberal, democratic, and free societies to exist. Without the rule of law, the current leader or government can use the laws as they please, and citizens cannot expect justice or fairness, or to have their rights respected.

As The Heritage Foundation has outlined, the "President cannot effectively amend a law by exempting entire categories of lawbreakers from the application of that law, particularly if done for political or policy reasons."[15] The Administration's current non-enforcement of U.S. immigration laws damages the U.S.'s commitment to these principles of the rule of law: Illegal immigrants are not accountable for the laws they have broken; the law is manipulated and contorted to no longer be fair or understood; and the Administration's legal process applies the law unevenly depending on current "enforcement priorities." While non-enforcement may be a desired (but unwise) political or policy objective by certain groups or individuals, to ignore the law, which was passed by Congress and signed into law by a President, based on the Administration's current preference is no different in principle than the absolute monarchs of old or the tyrants of today.

Some would argue that such lawlessness is to be allowed because of what they view as a noble motive or a noble end. But such an argument quickly collapses under the precedent it creates. If President Obama feels he can violate the Constitution and that the rule of law should be cast off in immigration policy, what other areas of policy can be changed by executive fiat? John Yoo, a legal official under President George W. Bush, put it well:

> Imagine the precedent this claim would create. President Romney [or any future President] could lower tax rates simply by saying he will not use enforcement resources to prosecute anyone who refuses to pay capital-gains tax. He could repeal Obamacare simply by refusing to fine or prosecute anyone who violates it.[16]

Furthermore, not enforcing the law encourages more law-breaking. As with amnesty, lax enforcement of U.S. immigration laws sends a signal to would-be illegal immigrants that illegally entering or remaining in the U.S. is an offense not likely to be punished by the U.S. government. As a result, more unlawful immigration is encouraged, and more calls for lax enforcement and amnesty arise in this vicious cycle of nullification and lawlessness.

Ten Executive Branch Policies for Improving the U.S. Immigration System

While there are important reforms that only Congress can make, it is critical that the executive branch first implement the following checklist of reforms to demonstrate that it is able to enforce existing U.S. immigration law, secure the U.S. border, engage with other nations on immigration issues, better employ administrative and judicial tools, and report its policies and statistics in a straightforward and honest manner. In order to faithfully administer existing immigration laws, the executive branch should take the following 10 steps:

1. Remove all forms of executive policy directives that ignore or contradict existing laws. One of the hallmarks of the Obama Administration's immigration policy has been the use of various forms of executive policymaking devices to enforce laws in ways that directly contradict the clear intent and letter of the law. President Obama has consistently sought to eliminate immigration laws he does not agree with and has resorted to simply ignoring them. President Obama's systematic abuse of executive discretion has been well chronicled by Senator Jeff Sessions (R–AL) and others and undermines the U.S. immigration system.[17] Following are the highlights of an ever-growing list of immigration nonenforcement policies.

- Starting in 2010, the Administration began to whittle away at immigration law through Immigration and Customs Enforcement (ICE) policy memos, leading to three critical memos between March 2011 and June 2011. In the first of these three memos, ICE director John Morton outlined new "enforcement priorities" that focused on arresting and removing criminal or dangerous unlawful immigrants, those who recently crossed the border unlawfully, and aliens who are fugitives or repeat immigration offenders.[18] To further the implementation of these new priorities, Morton issued two more memos in June 2011 that called for the vast expansion of "prosecutorial discretion," or the use of judgment in deciding "to what degree to enforce the law against a particular individual."[19] Of course, the memo recommended using prosecutorial discretion for a wide range of individuals, making prosecutorial discretion de facto policy for large groups, not just special cases.
- In November 2011, U.S. Citizenship and Immigration Services (USCIS) backed up ICE's priorities stating that it would no longer issue "notices to appear" before an immigration judge to unlawful immigrants who do not meet enforcement priorities.[20]
- On June 15, 2012, the Obama Administration undertook its boldest action yet. Department of Homeland Security (DHS) Secretary Janet Napolitano formalized the use of prosecutorial discretion for individuals who were brought to the U.S. unlawfully as children (DREAMers—named for the proposed Development, Relief, and Education for Alien Minors Act).[21] This policy memo, which came to be known as the Deferred Action for Childhood Arrivals (DACA) memo, allowed President Obama to accomplish a temporary amnesty administratively—despite Congress's rejection of different versions of DREAM acts over 30 times in the past 13 years.
- On the Friday before Christmas 2012, ICE Director Morton issued yet another memo ordering ICE agents to no longer detain unlawful immigrants if their only offense was being in the country illegally.[22]
- In January 2013, USCIS issued a rule that would allow any unlawful immigrant to be eligible for a provisional unlawful presence waiver if he could show that being separated from his U.S. citizen parent or spouse would result in "extreme hardship."[23] In August 2013, ICE followed up with a policy memo that called for the use of prosecutorial discretion when related to any illegal aliens who are parents. The memo reads: "ICE personnel should ensure that the agency's immigration enforcement activities do not unnecessarily disrupt the parental rights of both alien parents or legal guardians of minor children."[24]
- USCIS then issued a memo in November 2013 that provided parole-in-place to the immediate family of current or past members of the U.S. Armed Forces or Selected Reserve.[25] Under this memo, further discretion allows these now-paroled individuals to adjust to legal status.

- In March 2014, President Obama ordered an analysis of whether already eviscerated enforcement efforts can be implemented "more humanely within the confines of the law." While every person deserves to be treated fairly and humanely, enforcing the law is not inhumane and unfair; it merely holds unlawful immigrants to the same standard to which U.S. citizens are held every day.[26] Media reports indicate that as many as 5 million unlawful immigrants could be offered a DACA-like temporary amnesty, and other executive actions could be taken as well.[27]

- In September 2014, President Obama authorized illegal immigrants to serve in the U.S. military. Through the Military Accessions Vital to National Interest (MAVNI) program, President Obama allowed DACA recipients with certain medical or linguistic expertise to enlist. This decision comes as the U.S. military is downsizing, shedding more than a hundred thousand soldiers in the Army alone.[28] Congress had just rejected such policies this summer, when it did not include the Encourage New Legalized Immigrants to Start Training (ENLIST) Act in the National Defense Authorization Act.[29]

The consequence of these policies is that in 2013 only 0.08 percent of unlawful immigrants who were not convicted of a crime or previous immigration violation were placed into removal proceedings. In other words, the overwhelming majority of unlawful immigrants, likely accounting for at least 10.5 million of the estimated 11.5 million here illegally, are not considered a priority and thus not subject to immigration enforcement under the Obama Administration.[30] Secretary of Homeland Security Jeh Johnson has stated that he does not "understand those who say we are not enforcing the law—we are enforcing the law every day."[31] What the Secretary ignores is that choosing to enforce the law against less than 10 percent of the people who have broken the law, *is* a failure to faithfully enforce the law he swore to uphold.

A related issue is the Department of Justice's failure to sue states that provide in-state tuition to unlawful immigrants—in direct violation of federal law. While states have an important role to play (discussed in more detail below), Congress and the executive branch have specifically and statutorily forbidden states from passing certain laws. It is incumbent upon the Department of Justice to sue those states that break federal law.[32] In 1996, Congress passed—and President Bill Clinton signed into law—the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA). Section 505 of the IIRIRA unambiguously prohibits state colleges and universities from providing in-state tuition rates to illegal aliens:

> Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident.[33]

In other words, if a state offers in-state tuition to unlawful immigrants, then it must provide in-state tuition to all U.S. citizens, regardless of residency. Multiple states, most recently Virginia and Florida, have proceeded to allow unlawful immigrants to receive in-state tuition, either directly based on residency or through an indirect residency requirement such as attendance in the state secondary education system. These policies directly contradict the clear letter and intent of the IIRIRA, and the Department of Justice has an obligation to sue states in order to uphold the law. Instead, it simply ignores section 505 of the IIRIRA. Substituting political preferences for the rule of law is dangerous, undermines the foundation of U.S. society, and must stop.

If an immigrant can get past the border security and into the U.S., these policies almost guarantee that he or she will not be deported. These policies have contributed to a vast increase in the number of unaccompanied alien children (UACs) illegally crossing the border, from around 15,500 in FY 2011 to as many as an estimated 90,000 in FY 2014.[34]

Despite seeing and predicting large increases in UACs, the government was unprepared for the recent influx of unaccompanied children. Press interviews with these illegal immigrant minors, and with parents crossing the border with their minor children, reveal a disturbing trend: They believe that they will be allowed to stay in the U.S. because of U.S. policies not to enforce immigration law.[35] Indeed, most do not even try to avoid being caught, but instead try to

get picked up by the Border Patrol, which, after processing the children, turns them over to the Department of Health and Human Services' Office of Refugee Resettlement (ORR). ORR then reunites these children with their families scattered across the U.S. about 85 percent of the time, even though many family members are also in the U.S. illegally.[36] While the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 may have seemingly complicated this situation, ultimately the Administration's decision to not use its enforcement powers appropriately is what allowed this problem to grow to unprecedented levels.[37] Not enforcing the law is creating such a powerful incentive that children are increasingly encouraged to brave the dangerous trip through Mexico, often being brought to the U.S. border in the hands of dangerous drug cartels and smugglers.

The number one policy that the Administration can undertake to prove that it is faithfully enforcing immigration law is to rescind every policy that directs immigration officials to ignore the clear intent, and often the letter, of U.S. immigration law.

As a result of these and other policies of the Obama Administration, all forms of illegal immigration for all sorts of unlawful immigrants are being encouraged, to the detriment of U.S. society and the rule of law. The number one policy that the Administration could undertake to prove that it is faithfully enforcing immigration law is to rescind every policy waiver listed above, and any others that direct officials to ignore the clear intent, and often the letter, of U.S. immigration law. It should then proactively take action to defend those immigration laws under assault, such as the IIRIRA. These must be the first steps, as they restore integrity and the rule of law to major immigration policies.

2. Allow immigration agencies to enforce and apply the law without workplace interference, political pressure, or procedural gimmicks.

Currently, ICE and other agencies that enforce U.S. immigration laws are ordered to ignore the laws and allow known unlawful immigrants to remain in the U.S. As a result of agency-level and department-level policy directives aimed at reducing enforcement of immigration laws, law enforcement officials face a series of rules and requirements that place them in difficult legal and ethical situations. On the one hand they have sworn an oath:

> I will support and defend the Constitution of the United States against all enemies, foreign and domestic; that I will bear true faith and allegiance to the same; that I take this obligation freely, without any mental reservation or purpose of evasion; and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.[38]

On the other hand, their President, secretary, director, and supervisors are ordering them to refrain from enforcing certain sections of the law under threat of punishment.

Some of the individuals against whom they do not enforce the law will go on to commit crimes. The Congressional Research Service studied those individuals who were identified by the Secure Communities program, a federal program by which arrest data from local governments is submitted to DHS to identify unlawful immigrants who were not jailed or deported, and then went on to be re-arrested. Between 2008 and 2011, "there were 7,283 individuals that ICE likely had the authority to take action [against] when they were identified through Secure Communities, but did not and who were then rearrested. These individuals accounted for 10,815 arrest events, and 16,226 alleged violations."[39] These included at least 1,100 major and violent crimes, such as murder, assault, rape, and child molestation. Additionally, there were at least 682 cases of burglary or theft, and at least 1,929 arrests for intoxicated driving.

In 2013, ICE released approximately 104,000 criminal aliens, many of whom were illegal immigrants.[40] Of these 104,000 criminal aliens, 36,007 convicted aliens were freed from ICE custody during deportation proceedings, or even after they were over. These 36,000 criminal aliens accounted for 87,818 convictions, including at least 193 homicides, 426 sexual assaults, 2,510 burglaries, just over 5,000 cases of assault or battery, and just over 16,000 DUIs.[41] While it is not certain how many of these

A Vicious Cycle: Not Enforcing the Law Encourages More and Worse Law-Breaking

Hans A. von Spakovsky

A federal judge in Brownsville, Texas, issued a searing indictment of the Obama Administration's immigration policy. He accused the U.S. government of "completing the criminal mission" of human traffickers "who are violating the border security of the United States" and assisting a "criminal conspiracy in achieving its illegal goals." The judge called the Administration's behavior "dangerous and unconscionable" and said that "DHS should cease telling the citizens of the United States that it is enforcing our border security laws because it is clearly not. Even worse, it is helping those who violate these laws."

On December 13, 2013, federal district court Judge Andrew S. Hanen issued his order in *U.S. v. Nava-Martinez*.[1] Mirtha Veronica Nava-Martinez, an admitted human trafficker and resident alien, pleaded guilty to attempting to smuggle a 10-year-old El Salvadoran girl into the U.S. This was Nava-Martinez's second felony offense; she was convicted of food-stamp fraud in 2011. She was caught at the Brownsville & Matamoros Bridge checkpoint in Texas, after being hired by "persons unknown" to smuggle the girl into the U.S.

The girl's mother, Patricia Elizabeth Salmeron Santos, is an illegal alien living in Virginia. She had solicited the unknown smugglers to bring her daughter from El Salvador to the U.S. for $8,500. Yet DHS delivered the child to the mother and took no enforcement action. As the judge said, "[I]nstead of enforcing the laws of the United States, the Government took direct steps to help the individuals who violated it," conduct for which any "private citizen would, and should, be prosecuted."

What especially angered the judge was that this was the fourth case of smuggling minor children in a month. In each case, the parents were in the U.S. illegally and had initiated and funded the illegal activity. In each instance, DHS completed the crime by delivering the child to the parents and refusing to take any action against them.

As the judge pointed out in his ruling, this means that DHS is encouraging "parents to put their minor children in perilous situations subject to the whims of evil individuals." While the Santos child had been transported in a car, "others are made to swim the Rio Grande River or other bodies of water in remote areas." As Judge Hanen was waiting for the judgment in this case to be prepared, "two illegal aliens drowned, two more are missing, and a three-year-old El Salvadoran toddler was found abandoned by smugglers" just outside of Brownsville.

Human trafficking and smuggling are controlled by, and help fund, drug cartels. Judge Hanen cited a long report on drug cartels that describes their "exploitation and trafficking of children" and the "violence, extortion, forced labor, sexual assault, or prostitution" to which they subject children and adults. The judge related:

> Time and again, this Court has been told by representatives of the Government ... that cartels control the entire smuggling process. These entities are not known for their concern for human life. They do not hire bonded childcare providers to smuggle children. By fostering an atmosphere whereby illegal aliens are encouraged to pay human smugglers for further services, the Government is not only allowing them to fund the illegal and evil activities of these cartels, but is also inspiring them to do so.

1. *U.S. v. Nava-Martinez* (U.S. Southern District Court 2013), http://www.judicialwatch.org/wp-content/uploads/2013/12/Judge-Hanen-Order-on-Child-Smuggling.pdf (accessed September 25, 2014).

By virtue of this DHS policy, American citizens are "helping fund these evil ventures with their tax dollars."

The DHS policy also "undermines the deterrent effect the laws may have and inspires others to commit further violations," Judge Hanen determined. Since it is DHS policy to deliver the smuggled children to their parents and not initiate deportation proceedings against them or prosecute them for human trafficking, they "perceive that they have nothing to lose but some time and effort. If the human traffickers are successful, so much the better—mission accomplished. Even if their co-conspirators are unsuccessful, the Government will finish the job of the human traffickers—mission still accomplished." Even worse, this DHS policy is "encouraging individuals to turn their children over to complete strangers—strangers about whom only one thing is truly known: they are criminals involved in criminal conspiracy."

Judge Hanen cites statistics showing that the number of unaccompanied-alien-children apprehensions along the U.S.–Mexican border "increased 81 percent from FY2010 to FY2012."

Finally, Judge Hanen says that this DHS policy "lowers the morale of those law enforcement agents on the front line." They "do their best to enforce our laws" with "no small risk to their own safety." It is "shameful that some policymaker in their agency institutes a course of inaction that negates their efforts."

There is no reason why DHS cannot "reunite the parent and child by apprehending the parent who has committed not one, but at least two different crimes." American taxpayers are not only paying the cost of transporting smuggled children across the country for delivery to the illegal alien parents; they are also paying room and board for the children and the salary and travel expense of a guardian to accompany them.

As Judge Hanen concludes, the decision by Salmeron Santos to smuggle her child across the border, "even if motivated by the best of motives, is not an excuse for the United States Government to further a criminal conspiracy, and by doing so, encourage others to break the law and endanger additional children." The DHS policy is "as logical as taking illegal drugs or weapons that it has seized from smugglers and delivering them to the criminals who initially solicited their illegal importation/exportation. Legally, this situation is not different."

Finally, Judge Hanen tossed out the excuse that the Obama Administration often gives for its behavior: prosecutorial discretion. The judge said that while prosecutors have the ability to defer prosecution or arrest in particular cases, the court "is not aware of any accepted legal principle, including prosecutorial discretion, which not only allows the government to decline prosecutions, but further allows it to actually complete the intended criminal mission."

In Judge Hanen's words: "The DHS should enforce the laws of the United States—not break them."

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individuals were here illegally, most of these individuals were in deportation proceedings and should have been detained or at least more closely supervised and monitored until their deportation order was finalized and executed.

ICE and local law enforcement officers therefore face a difficult moral dilemma. Of the people they pick up and release, as well as those who are not arrested in the first place because officers have been ordered to avoid enforcing immigration law, a certain number will go on to commit crimes that harm other immigrants, U.S. citizens, or businesses. These crimes are part of the real social cost of not enforcing U.S. immigration law, either by high-level policy directive or low-level pressure and procedural implementation.

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One example of low-level pressure can be seen in the case of ICE's sister organization in DHS, U.S. Citizenship and Immigration Services, and its handling of DACA. Even before DACA, a January 2013 report by the Inspector General revealed that USCIS officials were pressuring employees to approve various immigration applications that should have been denied. Furthermore, employees complained that they did not believe they had enough time to complete interviews of applicants, "leav[ing] ample opportunity for critical information to be overlooked."[42]

Pressure and procedural gimmicks were expanded as USCIS began to process DACA applications. As with more permanent forms of amnesty, DACA recipients were required to undergo supposedly stringent background checks. E-mails obtained through Freedom of Information Act requests, however, show that several months after the start of DACA, USCIS moved to a "lean and lite" system of background checks that were not as detailed as required. Additionally, the e-mails revealed "managerial pressure not to turn any alien applicant away for lack of ID, including [an] explicit directive in an Oct 3 memo" to this effect.[43]

Manipulation of security and screening procedures and pressure on employees to approve applications is wrong. If such behavior occurred in the private sector, it would likely be grounds for legal or regulatory action by the government. Indeed, U.S. Investigations Services, a federal contractor that handles background checks for those seeking employment with the federal government, currently faces legal action from the Department of Justice and other customers for taking shortcuts with its background checks.[44]

DHS is also encouraging illegal immigration in the way it handles recent illegal border crossers. Increasingly, DHS is releasing arrested border crossers and allowing them to travel deep into the U.S.[45] In one case in May 2014, DHS transferred 400 illegal immigrants from Texas to Arizona, where it released at least 200 at a Tucson Greyhound bus terminal, mostly adults with children. The unlawful immigrants were told to buy a ticket into the interior of the U.S. to connect with family members. They were then told to report to a local ICE office within 15 days. According to other news reports and local accounts, ICE had been dropping off illegal border crossers at the Tucson Greyhound bus station for around seven months. Other reports indicate similar releases of illegal immigrants at bus terminals across the southwest border, with illegal immigrants going as far as Connecticut.[46] Such actions have been the norm as families and UACs who crossed the border in the spring and summer of 2014 were regularly allowed to enter the U.S. and usually reunite with family members.

Such procedures destroy any real sense of border security and interior enforcement. The U.S. Border Patrol spends a sizeable amount of money to prevent illegal border crossings and arrest those who cross illegally. DHS then squanders these precious funds by releasing increasingly large numbers of illegal crossers rather than immediately deporting them. Not only are they released but they are told to enter the interior of the U.S., where many will never report to the local ICE office or appear for their immigration court date. Even if they do, the U.S. government will then either spend large sums of money to adjudi-

cate cases that should have been summarily handled at the border, or it will simply decline to enforce the law. Regardless, many of these illegal border crossers are essentially given de facto amnesty by the procedures put in place for handling large loads of new unlawful immigrants.

Upper-level policymaking and leadership trickles down and influences the way immigration officials and officers are able to do their front-line jobs. Any Administration that wants to prove that it is actually enforcing the law should ensure that pressure on employees and procedural gimmicks are not being used to stifle enforcement and execution of immigration laws.

3. Provide Customs and Border Protection with improved technology and infrastructure to more effectively and efficiently secure the border.

In the past decade, Customs and Border Protection (CBP) agency, which includes the Border Patrol, has seen a substantial increase in its funding and staffing. In the President's FY 2015 budget request for DHS, CBP saw an increase of 2.6 percent over FY 2014's enacted total, with the largest increases going toward technology systems that would supplement and assist field agents in fulfilling their duties. While border security efforts have improved, more work remains to be done. Specifically, DHS has a long-standing responsibility to secure the border and already has the authority to implement improvements to technology and infrastructure.

One infrastructure improvement could be better fences along the southern border. In 2006, President Bush signed into law the Secure Fence Act, which called for approximately 700 miles of new fencing along the southern border.[47] While DHS has put up the fencing, the majority does not adequately stop foot traffic, with much of the fencing being anti-vehicle "fencing" that is little more than metal poles or bars sunk into the ground every few feet. While some discretion for what kind of fencing is used is appropriate, the U.S. would have a more secure border if additional double-layered fencing was used to prevent pedestrian border crossers, as envisioned by the Secure Fence Act. These fences would be especially helpful in areas with a U.S. city or suburb on the other side of the border, making it easy for an unlawful immigrant to quickly fade into background.

While fences are important, they are far from a silver bullet, since those who want to cross the border can always cross in unfenced areas, use holes in existing fencing, or find alternative ways to cross the border. As a result, the use of technology to create a "virtual fence" is a solution that is more cost-effective and realistic. Through the use of cameras, sensors, drones, and other surveillance technologies, the Border Patrol agents can be made more aware of the illegal border crossings and respond in real time.

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The idea of a virtual fence is not a new one. The U.S. military used similar technologies to great effect in Iraq and Afghanistan. Under existing law, President Bush began the first virtual fence effort, known as the Secure Border Initiative Network (SBInet). This program was cancelled in 2011, however, for running over budget and experiencing technical difficulties.[48] Despite SBInet's failings, the concept remains a sound one, and the government should be looking to implement an integrated system of surveillance technologies with better oversight and acquisitions management.[49]

Rather than reinventing the wheel, DHS should borrow from the experiences and technologies of the U.S. military and its need for persistent, wide-area surveillance technologies in Iraq and Afghanistan. These systems are already in production, and using and adapting these systems would allow DHS to skip the expensive development of new systems. With troops and their surveillance systems returning home, DHS may even be able to make use of surplus systems that the military does not need. The military would likely be able to provide training and support to DHS in setting up and operating these systems. DHS already has the authority to do so and can better secure the border if surveillance systems are properly prioritized in the President's budget and competently executed and overseen.

4. Use the appropriate judicial and administrative tools to efficiently deport unlawful immigrants.

The U.S. system for processing and adjudicating the status of unlawful immigrants and determining the consequences of unlawful presence in the U.S. is dysfunctional, overburdened, and mired in bureaucratic inadequacies and political influence. This can be seen in several areas, including the large number of absconders from immigration hearings, a failure to find and remove individuals with outstanding removal orders, an unwillingness to use the most efficient removal processes, and an overall decline in the number of cases being prosecuted.

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Indeed, absconders—aliens who, after being detained and then released pending a court hearing, never show up for the hearing—are a serious problem for the U.S.'s immigration court system. Absconders represent a large portion of those illegal immigrants who are not detained, with the Justice Department reporting a 26 percent absentia or absconder rate for 2013.[50] As Juan Osuna, Director of the Executive Office for Immigration Review in the Department of Justice, testified before Congress in July 2014, for illegal immigrant minors, including UACs, the in absentia rate was 46 percent.[51] Leaked ICE information obtained by the Associated Press indicated that 70 percent of families released into the U.S. did not report to a local ICE office as required.[52] The Executive Office for Immigration Review announced in October 2014 that of the first 14,000 immigrants with their initial court hearings this summer, 15 percent of UACs and 34 of family units had absconded. These percentages will likely grow as some will not appear for subsequent hearing and some will flee after their case has been decided.[53]After all, why show up for a hearing or to an ICE office when one has no legal right to be in the U.S.? As one retired government employee with experience in immigration administration says, "On a cost basis from the alien's perspective, this makes sense. If you are in proceedings and have little chance of relief, why not treat the bond money (if it's even required) as the cost of having been caught, and then flee, hoping to stay under the radar for as long as possible, perhaps until the next amnesty?"[54]

Under current law, an alien who is notified of his court date and fails to appear is subject to an order of removal in absentia. Such an order can only be overturned in cases where the alien did not receive the "notice to appear" because of a mistake on the government's part or exceptional circumstances, such as the death of a child or spouse.[55] While such an order in absentia is proper, it has ultimately failed because the alien has likely fled and will not be deported unless found by ICE. To counter the problem of absconders, the ability of DHS to detain aliens rather than using the current "catch and release" system should be greatly expanded at the same time that removal proceedings are streamlined to minimize the delay in processing. Currently, DHS is required by law to maintain and fill 34,000 immigration beds every day, though President Obama's budget has frequently requested a decrease in the number of beds, despite the obvious success of detention in combatting absentia.[56]

Instead of decreasing tools that stop absconders, DHS should maximize the use of detention and other mechanisms to compel attendance and prevent flight. The posting of bonds as well as the use of tracking devices (as alternatives to detention) should be required in all cases for which detention is not available. Much of this is in the direct power of the executive branch because DHS regulations govern the managing of immigrants before trial. Additionally, the immigration courts and judges are not Article III judicial apparatuses but are operated by the Department of Justice and could be required to do more to compel attendance at immigration hearings. Similarly, the granting of stays and deferred action for prosecution by the Administration to those aliens who would otherwise be removed should be limited to truly difficult cases.

Another serious problem with the execution of immigration laws is the large number of unenforced deportation orders. When the Justice Department's immigration judges issue a deportation order, it is up to DHS to deport the illegal immigrant. Abscond-

ers, as well as those who flee after hearing their verdict, have accumulated so that by some estimates as many as 1.2 million deportation orders already issued by immigration judges remain unexecuted at DHS.[57] Indeed, ICE is aware of over 850,000 immigrants who have received their final order of deportation but are not in custody.[58] Enforcement of those orders and removal of those aliens from the U.S. should be a top priority of DHS.

U.S. immigration proceedings also grant too many aliens full removal proceedings that are used to delay or abscond. U.S. immigration laws allow expedited removal proceedings to be used against unlawful immigrants who have been in the U.S. for less than two years, though in practice DHS limits expedited removal to individuals who entered the U.S. fewer than 14 days prior.[59] For illegal immigrants not subject to expedited removal, normal removal proceedings should also be streamlined to process cases faster, and penalties for frivolous claims and delays should be more strictly used against illegal immigrants or their attorneys to discourage the obstruction of immigration rulings.

All aliens convicted of criminal felony or misdemeanor offenses in the U.S. should also be subject to immediate removal from the country upon the conclusion of their jail sentence. As it stands, they are uninvited guests in the U.S. who are already removable from the U.S., and by committing a crime, they have shown further disregard for this country's laws. Under U.S. law, a "United States District Court shall have jurisdiction to enter a judicial order of removal at the time of sentencing against an alien who is deportable, if such an order has been requested by the United States Attorney."[60] Furthermore, Operation Streamline, which allows the criminal prosecution and removal of recent border crossers, should be continued and expanded as a way to both rapidly remove illegal immigrants and deter additional acts of illegal immigration with the threat of jail time.[61] The law also allows the use of expedited removal proceedings against aggravated felons and "stipulated judicial orders of removal" without a removal hearing.[62] All federal prosecutors should be required to seek one of these removal orders in any criminal prosecution in which the defendant is an alien, and which can be enforced the moment the alien has completed his sentence, or even before. This will reduce the overwhelming workload on immigration courts and remove criminal aliens from the U.S.

Aliens under the age of 18 who are caught being smuggled into the country should be immediately returned to their home countries. If their parents are illegally in the U.S., those parents should be detained and subject to immediate removal with their children. Removing the entire family unit keeps the family together and also removes unlawfully present immigrants from the U.S. Furthermore, in the case of illegal aliens who encourage, support, or arrange the smuggling of other family members into the U.S., DHS should not help to complete a criminal conspiracy by delivering smuggled children to their parents and then not initiating deportation proceedings against them.

5. Increase enforcement against businesses that use illegal labor.

The major draw of illegal immigration is working in the U.S. Despite laws against employing unlawful immigrants, many companies regularly do so, especially in industries where lower-wage workers are needed, such as the agriculture industry.

As Heritage Foundation Senior Research Fellow Robert Rector pointed out in his major report on employment verification, enforcement, and protection, the majority of persons who enter the U.S. illegally or overstay temporary visas do so for purposes of employment.[63] Employment of such individuals has been illegal since 1986, yet that law has never been effectively enforced. Employer compliance with the law has been and remains largely voluntary.

But today, there are a variety of laws on the books and tools that the Administration could use to ensure better workplace verification of potential employees.

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The best-known solution to this problem is a tool called E-Verify. A real-time, Web-based verification system run by DHS and the Social Security Administration (SSA), E-Verify can determine with great accuracy the authenticity of the personal information and credentials offered by new hires. In most

cases, verification occurs almost instantly. In general, the employer will use a computer to submit certain basic information concerning the employee (name, date of birth, Social Security number) to the government. The information is securely transmitted to DHS and the SSA, and DHS checks the information to determine whether it corresponds to a U.S. citizen or to a work-eligible immigrant. In most cases, DHS can check and confirm the employee information and transmit a definitive reply to the employer within seconds.

Under federal law, the use of E-Verify is optional for businesses, except for federal government contractors. However, some states, such as Arizona, have made the use of E-Verify mandatory and imposed a series of penalties on employers who knowingly or intentionally employ "unauthorized aliens." This includes suspension of the employers' business licenses, which is an incentive for complying with the law. The Arizona requirement was upheld by the U.S. Supreme Court in 2011.[64] States, despite arguments to the contrary, play a key role in the enforcement of federal immigration law.[65]

In FY 2013, E-Verify automatically confirmed 98.81 percent of workers, with another 0.22 percent confirmed after disputing an initial mismatch, which usually takes little more than a week to resolve.[66] That leaves just under 1 percent of cases with a non-confirmation.[67] E-Verify's accuracy has increasingly improved, with one of the most recent studies, from 2012, finding that only 6 percent of final non-confirmations were erroneous. Since about 1 percent of cases result in final non-confirmations, this means that approximately 0.06 percent of all E-Verify cases end in erroneous non-confirmations. The system also provides a simple and rapid mechanism for individuals to self-check their own status and discover any errors in their work authorization in order to prevent erroneous non-confirmations.[68] On the other hand, estimates from 2009 found that around 3.4 percent of *confirmations* were erroneous, mostly due to identity fraud.[69] Continuing to improve E-Verify by cutting down on errors and tentative non-confirmation-resolution times is important for encouraging business adoption of E-Verify.

Additionally, identity fraud in E-Verify, one of the main shortfalls of the system, could be easily combatted if the President were to order the SSA to act on suspicious cases. For example, the SSA could scan its database for cases where Social Security numbers are being used by multiple individuals at different areas across the country, where retirees' Social Security numbers are being used, or where children's numbers are being used for physically difficult or intellectually advanced types of work. These cases could then easily be investigated with the help of the actual owners of the Social Security numbers.

Firms that do not use E-Verify are required to collect employee-provided documentation of their legal status. Firms that fail to examine documents submitted by potential employees and file fraudulent I-9 forms face civil fines per violation, and are also subject to criminal penalties if they engage in a "pattern or practice" of knowingly hiring illegal aliens. The I-9 forms, however, are not submitted to DHS, but merely remain with the business in the event of an audit. Under President Obama, the number of ICE audits of I-9 forms have increased, resulting in more warnings and fines, thus making it costlier and riskier for businesses to employ illegal labor. Even so, ICE performed around 2,500 audits in 2011, which, when spread across the U.S.'s 5.7 million firms, results in an audit rate of just 0.044 percent.[70] Even with those companies that are audited, DHS has done so unevenly, with a failure to "ensure that they [ICE field offices] were consistent in issuing warnings and fines." Furthermore, "some field offices issued significantly more warnings than fines."[71] A DHS report concluded that

> Homeland Security Investigations' inconsistent implementation of the administrative inspection process, plus the reduction of fines, may have hindered its mission to prevent or deter employers from violating immigration laws. The directorate has not analyzed the effect of these differences in implementation or sufficiently determined whether implementation has improved compliance."[72]

Similarly, many firms complain not about the immigration violations, but about unnecessary penalties springing from paperwork errors.[73]

While I-9 audits are one tool that the Obama Administration has used against employers, it has largely ignored workplace raids, yet another tool that can both punish companies and capture unlawful immigrants. In the mid-2000s, the Bush Administration favored workplace raids but used I-9 audits

sparingly.[74] Rather than viewing these tools as mutually exclusive, an Administration should recognize them as complementary tools that should be a disincentive to employers hiring illegal immigrants and to illegal immigrants accepting jobs without authorization for fear of deportation.

The Administration could order ICE, the agency responsible for workplace enforcement, to increase investigations and raids into those select industries where illegal immigrants work most often: construction, restaurants, landscaping, janitorial services, food processing, and hotels. When they find employers who violate the law, they should file civil or criminal cases against them, focusing on immigration violations, not paperwork errors. At the same time, these tools can also be used to find and remove unlawful immigrants.

By using visa databases in the workplace enforcement process, the Administration could more easily identify those persons who have overstayed their visas, track them down, and deport them.

Additionally, workplace enforcement can be enhanced by using visa database information against those illegal immigrants who overstayed their legal visa in the U.S. According to most estimates, around 40 percent of illegal aliens overstayed their visa, and between 10 percent and 15 percent have college degrees. By using visa databases in the workplace enforcement process, an Administration could more easily identify those persons who have overstayed their visas, track them down, and deport them.

6. Remain committed to citizen security and democratic governance in the Western Hemisphere.

The recent wave of unaccompanied minors coming to the U.S. from Central America further proves that the Obama Administration can no longer ignore the issues of Central America's Northern Triangle. High levels of crime, violence, and poverty exacerbated by weak and ineffective government institutions create further incentives to migrate. Since 2009, migration flows from Mexico have decreased, and as of 2014, Mexico is no longer the primary source country. Migrants are now coming from the Northern Triangle countries of El Salvador, Guatemala, and Honduras.

Mexican migration was driven largely by the country's economic conditions. As the Mexican economy prospered and poverty levels decreased, so did the incentive to migrate. In addition to internal reforms and the economic prosperity offered by the North American Free Trade Agreement (NAFTA), the "push" factors subsided.

This recent wave of migrants is pushed out by a different reason. Based on border-apprehension reports and repatriation surveys, violence in Central America is a large push factor. Located directly below Mexico, El Salvador, Guatemala, and Honduras are caught in the crosshairs of drug-trafficking organizations and the violent regional gangs that support them. The erosion of Colombia's cartels and subsequent growth of their Mexican counterparts shifted drug-trafficking routes to the isthmus. Weak and ineffective governments have been unable to rein in the violence and promote economic prosperity.

Considering the U.S.'s interests in curtailing unlawful immigration, ensuring the stability and security of Central America is vital. Supporting reforms that ensure citizen security and economic prosperity should remain priorities. The ultimate goal should be developing effective and enduring regional partners. The U.S. currently addresses the issues in Central America under the Central American Regional Security Initiative (CARSI). Designed to supplement Mexico's counter-crime Merida Initiative, CARSI lacks a clear idea of what success looks like, thus reducing the ability to measure desirable outcomes. Additionally, it allows foreign assistance to become politicized. The long-term goal of CARSI should build on the lessons learned from Plan Colombia, the largely successful program through which the U.S. provided security and counter-narcotics assistance to the Colombian government, resulting in the debilitation of Colombian drug cartels. Additionally, U.S. defense cuts have directly impacted regional security efforts. Reduced naval and personnel assets have diminished U.S. Southern Command's (SOUTHCOM) capability to interdict illicit drugs, and to conduct necessary joint operations and trainings.

Congressionally imposed withholding requirements against Honduras and Guatemala continue to undermine regional security efforts. Since FY 2012, Congress has withheld a minimum of 20 percent of

security assistance on the basis of human rights concerns. It maintained this provision in FY 2013 and, in FY 2014, increased the hold to 35 percent, despite Honduras having made great strides in both human rights and democratic governance. Congressional appropriators should ensure that the FY 2015 budget does not continue to suppress the U.S. security engagement.[75] SOUTHCOM's support for the new Guatemalan Interagency Task Force, which provides infrastructure and operational anti-trafficking support along the Mexico–Guatemala border, has been impeded, for instance.[76] Guatemala shares a 600-mile-long border with Mexico and is a major transit point for travel to and from Central America.

Much like Mexico's embrace of free trade pushed the country toward economic prosperity, so, too, should economic freedom be an essential element of U.S. policy in Central America. Capitalizing on the Dominican Republic–Central America–United States Free Trade Agreement (CAFTA–DR), the U.S. should push the region toward greater economic freedom. In addition to counter-crime programs, creating long-term economic prosperity will move the region's economy and society forward. All three countries suffer from long-standing problems with corruption. According to The Heritage Foundation's *Index of Economic Freedom*,[77] restrictions on labor, monetary, and business freedom keeps the region from advancing.

While the other nine items on this checklist are focused on improving the U.S. immigration system domestically, only the executive branch can lead on foreign policy. Congressional restrictions and the withholding of aid do not help, but an administration that is serious about combatting illegal immigration should take the lead in engaging with other nations and building more effective mechanisms and initiatives to improve the security and stability of Central America and other nations around the world.

7. Improve the U.S. Citizenship and Immigration Services' ability to handle visa applications and prevent fraud.

One of the saddest parts of U.S. immigration policy is that the system responsible for bringing immigrants to the U.S. legally, led by USCIS, is cumbersome, slow, and does not serve the interests of the U.S. While there are large backlogs for various visas due to statutory prescriptions, USCIS has struggled to modernize the visa application system and protect the American people from abuses of the system.

Kenneth Palinkas, president of the National Citizenship and Immigration Services Council that represents around 12,000 USCIS officials, cited multiple serious problems with USCIS that should be fixed "before any amnesty proposal is brought forward."[78] He described these problems as:

- "[A] lack of mission support [including] the failure of our software system";
- "Failure to protect taxpayers from abuses of the welfare system by those granted immigration benefits";
- "Administrative orders that require us to grant immigration benefits to those who, under law, are not properly eligible" and "approval quotas placed on adjudicators that emphasizes clearing applications more than vetting them"; and
- "A management culture that sees illegal aliens and foreign nationals, not US citizens and taxpayers, as the customer. We believe in treating all with respect and always will, but our agency's focus must be keeping the country safe and secure on behalf of the American people."[79]

While "pressure to rubber-stamp applications" at USCIS has already been discussed, other failures, most notably of USCIS's IT system and protecting the American people from dangerous individuals and welfare abuses, are areas ripe for commonsense, good-governance reform. Improving the effectiveness of USCIS should be a priority for any President who wants to better administer the U.S. legal immigration system in order to support the U.S. economy, protect the security of Americans, and make it easy for workers to come here legally.

Fixing the Information Technology Issues. To work, study, or permanently reside in the U.S., foreign individuals must acquire the appropriate visa. For individuals living around the world, the slowness of the U.S.'s paper-based system is a hindrance to coming to the U.S. An online system would support the diplomacy and economy of the U.S. by making it easier for foreigners to come and stay in the U.S.

The U.S. government, however, has struggled to create an online system to handle most immigration functions. Called a "transformation" of the application system, the Electronic Immigration

System (ELIS)—on which USCIS spent $792.6 million between 2008 and 2012, well above the original $500 million originally allocated for the five-year period—missed most major milestones.[80] As of June 2014, users of ELIS could file only two visa forms out of the 100 forms currently provided on the USCIS website and could pay the $165 USCIS Immigrant Fee but not dozens of other potential fees.[81] DHS is working to rebuild the system and in early 2014 issued the first of multiple contracts to new vendors.[82] As a result, the program will continue to face challenges in the existing system while trying to transition to the new system. It is considered a "Medium Risk Investment" by DHS's Chief Information Officer.[83]

A simple but important reform this and future Administrations should make is better managing the transformation of USCIS's application system. Other policies, including amnesty, expanded numbers of worker visas, and changes to the number and allocation of green cards, will all increase the number of individuals applying to USCIS, thus adding to USCIS's workload. Without the capability to handle this increased applicant base, security and procedural standards, wait times, and USCIS budgets will all suffer. As with SBInet's "virtual fence," such a reform is important as well as eminently doable if proper attention and oversight are given to the issue. More specifically, DHS should ensure that acquisition best practices, as laid out in a 2011 Government Accountability Report on ELIS, are closely followed in order to develop reliable plans for schedules and costs.[84]

Dealing with Fraud. While USCIS should make it easier for immigrants to come here through an effective Web-based application process, USCIS should also seek to prevent immigration fraud, which opens the U.S. up to dangerous individuals as well as additional costs.

A recent example of fraud was uncovered by the House Judiciary Committee, which discovered an unreleased government report that found that as many as 70 percent of asylum cases in 2005 had an indicator of fraud.[85] While changes in the immigration system have occurred since then, Louis Crocetti, a former head of the Fraud Detection and National Security office at USCIS, said he was "unaware of any immigration benefit fraud assessments, risk assessments, studies, or any other fraud-based research and analysis being performed since the last BFCA [Benefit Fraud and Compliance Assessment] was conducted in 2008," not just on asylum fraud but on fraud related to all forms of entry.[86]

Since these studies were finished in 2009, asylum applications and the percentage of those applications being approved have substantially increased. In 2009, the U.S. had 47,307 applicants for asylum while in 2012 it had 68,795. According to USCIS data obtained by the House Judiciary Committee, approvals of asylum applications have increased from 28 percent in 2007 to 46 percent in 2012. For those whose applications are not approved, immigration judges weigh in and their approval rates have also increased, reaching as high as 74 percent for affirmative claims of asylum.[87] The result has been claims of credible fear skyrocketing over 600 percent from 2008 to 2013.[88] Despite these trends, there are no significant efforts to seek out and stop fraud by DHS.

In 2005, as many as 70 percent of asylum cases had at least one indicator of fraud.

Those who are granted asylum immediately receive work authorization; the opportunity to acquire derivative asylum visas for a spouse and minor children; and job and English language training, followed by access to a green card in one year and the opportunity to apply for citizenship four years later.[89] Asylees are also exempt from "public charge requirements," that is, they do not have to be economically self-sufficient in order to obtain a green card, and have access to several forms of welfare including Temporary Assistance for Needy Families, food stamps, and Medicaid.[90] Such generous benefits for asylees comport with Americans' values of human rights and protecting those who cannot return to their home country for fear of persecution and repression. This generosity is not just a moral or principled position, it also furthers American public diplomacy by reinforcing the image of the U.S. as a beacon of freedom.

As can be the case with generosity, however, some take advantage of it. The many benefits the U.S. provides asylees are more than many individuals could ever dream of in their home countries. While the U.S. taxpayers have no problem helping those in need,

they do take issue with paying for someone who came here fraudulently and receives redistributed tax dollars. With 70 percent of asylum cases in 2005 having some mark of fraud, and larger numbers of asylees being accepted since then, the U.S. taxpayer may be paying for the benefits of tens of thousands of people who are here fraudulently, at a cost of billions of dollars. In other cases, fraud is used to harm U.S. security.[91] The House Judiciary Committee obtained an internal CBP document that cited multiple examples of cartel abuse of asylum including individuals entering the U.S. to target other individuals, transporting millions of dollars and thousands of pounds of drugs, and ex-assassins fleeing a cartel after they "fell out of grace" with the cartel.[92]

Despite the costs of fraud, USCIS officials face significant "pressure to rubber stamp applications." Combined with few in-depth fraud investigations occurring within USCIS for any types of visas or requests to enter the U.S., taxpayers are left on the hook for the costs of such fraud, and the security of the U.S. is degraded. In addition to ceasing pressure on USCIS officers to rubber-stamp cases, DHS should reboot credible and public fraud investigation and prevention measures.

8. Report the truth, the whole truth, and nothing but the truth about immigration statistics and enforcement strategies.

In the current debate on immigration, some claim that President Obama is engaging in record-high levels of enforcement and deportations and doing so in an inhumane and radical way. As clearly demonstrated in this report, that claim could not be further from the truth. Every President owes it to the American people to tell the truth about immigration statistics, actions, and policies. While there are differences in opinions about policy options, fomenting policy change with false statistics and emotional demagoguery is unacceptable.

Over the past year, immigration has been one of the most widely discussed issues. As legislative movement on the issue has slowed, amnesty advocacy groups and even pro-amnesty Members of Congress have put forward a narrative that President Obama is the "Deporter-in-Chief."[93] Calling for an end "to unnecessary deportations," Janet Murguia, the president of the National Council of La Raza, the largest Hispanic advocacy group in the U.S., has argued that President Obama is deporting record levels of individuals and should take unilateral action to stop enforcing even more immigration laws. Amnesty advocates present their distortions and falsehoods in order to create a false narrative to the media and apply pressure on the Obama Administration to further ignore the law.

While such behavior is harmful, President Obama has ample evidence to refute these groups. But rather than telling the truth, this Administration has used selective and manipulated statistics that mislead the American public into believing that U.S. immigration laws are being enforced. There are at least two interrelated ways in which the Administration has manipulated immigration statistics: (1) citing record levels of only one kind of deportation, while ignoring the total numbers of deportation; and (2) transferring cases of routine border crossers from the CBP to ICE that boost ICE's deportation numbers.

One way this Administration and amnesty advocates are able to declare that President Obama has deported or will deport more unlawful immigrants than any prior President is by counting only the number of "removals." Removals are the strongest form of deportation, as they impose a bar on re-entry with penalties of prison time if ignored. According to DHS statistics, removals hit a record high of 438,421 in 2013, growing from just over 200,000 in 2003.[94]

While the use of more removals is a good way to discourage more illegal immigration, the other form of expulsion from the U.S., known as a "return," which is less severe and carries no penalty for future illegal re-entry, has declined significantly. In 2013, the U.S. returned 178,371 unlawful immigrants, the lowest level of returns since 1967.[95] The resulting total of deportations, that is, returns and removals, is at its lowest level since 1973. While amnesty advocates and the Administration focus only on the removals, the U.S. public is not aware of the differences between the two types of deportations, making claims of record deportations highly misleading.

The second way this Administration is providing misleading statistics is by essentially playing a shell game with where deportations are coming from and which federal agency receives the credit. Under past Presidents, those caught at the border by the CBP were usually returned rather than being removed. Under President Obama, ICE was increasingly allowed to remove border crossers caught by the CBP. In 2012, this policy resulted in over two-thirds of CBP apprehensions ending in some type of removal.[96] While using orders of removal against

border crossers does help deter illegal immigration, it must be part of a complete enforcement strategy in order to be truly effective.

Other than serving as a potential deterrent to future border crossings, President Obama's new policy of using removals for border apprehensions also boosts the number of removals for which ICE can take credit. In 2012, 52 percent of all removals were the result of border apprehensions and were counted as ICE removals.[97] Under past Presidents, this percentage has been significantly lower. In 2008, 33 percent of border crossers were subject to removal.

There are at least two interrelated ways in which the Administration has manipulated immigration statistics: (1) citing record levels of only one kind of deportation, while ignoring the total numbers of deportation; and (2) transferring cases of routine border crossers from the CBP to ICE that boost ICE's deportation numbers.

Combined with only citing removals as deportations, this policy has skewed deportation numbers. The numbers of total deportations and deportations resulting from interior enforcement are falling precipitously, but through this manipulation, the Administration is able to artificially boost its removal numbers and claim record-level deportations, even though cases are really just being changed from CBP returns to ICE removals.

Misleading and manipulated statistics are not what the American people expect from their President and leading government officials. Far from inspiring Americans to trust their leaders, such manipulation only furthers public cynicism of Washington. Any Administration that wants to regain the trust of the American people should start by honestly explaining its actions and their effects. This means using immigration terms that Americans can understand, telling the whole truth on deportation numbers, and accurately explaining policies and their effects, not presenting feel-good talking points. Though a cliché, honesty is the best policy—something of which the immigration debate could use more.

9. Affirm and support the role of states in enforcing immigration law.

Article 1, Section 8 of the Constitution enumerates "establish[ing] an uniform Rule of Naturalization" as a power of Congress, and Article 2 provides the President with the executive power that "he shall take Care that the Laws be faithfully executed." The Constitution clearly establishes federal pre-eminence over immigration issues, but does not preclude states from assisting in the enforcement of federal law.

Despite the importance of federalism to the U.S., the Obama Administration has attacked states that have sought to take action that comports with the letter and intent of federal immigration law. Utah, South Carolina, Alabama, and, most notably, Arizona, have all passed various immigration laws that attempted to empower state and local officials to check the immigration status of unlawful immigrants and otherwise help federal authorities enforce U.S. immigration laws. Given the high-profile nature of *Arizona v. United States*, this case deserves specific attention.

In 2010, Arizona Governor Jan Brewer signed into law S.B. 1070. Soon thereafter, the Justice Department sued the state of Arizona, arguing that federal law pre-empted S.B. 1070, even though S.B. 1070 was written to mirror similar federal laws. The lower courts enjoined four provisions of S.B. 1070 that:

1. Instructed state law enforcement officers to make "a reasonable attempt...when practicable, to determine the immigration status" of any individual who is lawfully stopped or arrested when the officer has a reasonable suspicion that the individual is an unlawful immigrant;

2. Made the "failure to complete or carry an alien registration document" a state crime since federal law requires that long-term aliens be registered with the U.S. government and carry registration documents with them at all times;

3. Made unlawful presence and attempt to perform work a state misdemeanor; and

4. Allowed for warrantless arrests if a law enforcement officer has probable cause to believe the "person to be arrested has committed any public offense that makes the person removable from the United States."[98]

In a case ultimately argued before the Supreme Court, the U.S. government asserted that federal enforcement policies pre-empted Arizona's law, despite the fact that Arizona law was based on federal law. The U.S. government argued that its enforcement priorities and policies were the supreme law and that even if they deviated from the clear meaning and letter of the law, states had no right to enforce federal law since such enforcement deviated from the federal government's policies.[99] This line of argumentation turns jurisprudence on its head, as it establishes not the law, but any given Administration's preference as the supreme law of the land—dangerous territory for a nation dedicated to the rule of law.

Five justices at least partially agreed with such a notion. While the vast majority of S.B. 1070 was upheld, the court rejected the last three of the measures listed above, despite their clear basis in federal law. The Supreme Court did, however, affirm that states have an important role to play by affirming the ability of states to pass laws like S.B. 1070 that make it state crime to engage in human smuggling, to hire illegal day-laborers on the roadside, or to encourage an individual to illegally cross the border, as well as requiring state law enforcement officers to check the immigration status of anyone they stop or detain where there is reasonable suspicion the person is in the country illegally.[100]

States like Arizona that are experiencing significant problems with illegal immigration or that are underwhelmed by the federal government's enforcement efforts are trying to step up and assist in enforcing immigration law. Just as state and local law enforcement resources should be and are used to combat terrorism due to the amount of state and local resources scattered across the U.S., so, too, should state and local government be partners in enforcing immigration law. With approximately 1 million state and local law enforcement officers serving across the nation, the U.S. would be foolish to not take advantage of their local knowledge and presence.

Congress has created multiple programs that take advantage of local law enforcement, including the 287(g) program, Operation Stonegarden grants, Secure Communities, and the Border Enforcement Security Task Force (BEST units). Each of these programs serves an important purpose and, together with independent state efforts, more effectively enforce U.S. immigration law. The 287(g) program centers around the training and deputizing of state and local law enforcement officers to help enforce federal immigration law.[101] The Secure Communities program results in DHS receiving information on arrests made by state and local law enforcement, which it then screens through its immigration databases for known immigration violators.[102] Operation Stonegarden grants are intended to promote "cooperation and coordination among local, tribal, territorial, state, and Federal law enforcement agencies in a joint mission to secure the United States' borders," while BEST units similarly bring together federal, state, local, and foreign law enforcement organizations to combat criminal activity and illegal immigration.[103]

With approximately 1 million state and local law enforcement officers serving across the nation, the U.S. would be foolish to not take advantage of their local knowledge and presence.

The Obama Administration has consistently rejected, cut funding for, fought, or limited many of these cooperative programs and state efforts. A central tenet of the Obama Administration has been to centralize power within the federal government, and nowhere is this truer than in immigration policy, where the executive branch has argued that it alone can enforce, or refuse to enforce, federal law. State and local officials are willing to volunteer to be trained to help enforce federal immigration law, but the executive branch has rejected their help and gone to budgetary and administrative extremes to combat local assistance in enforcing immigration law.

More specifically, Secure Communities and 287(g) programs have been twisted and funded only to the extent that they advance the enforcement priorities of this Administration. For example, Secure Communities requires the FBI to provide DHS with a copy of the fingerprint and criminal records of individuals who are picked up by local and state law enforcement officials for various crimes. DHS then runs the individuals through its records to see if the individual is here unlawfully or otherwise subject to deportation.[104]

It is at this point, however, where DHS begins to twist the law. If the individual is known to be in the

U.S. illegally, ICE officers must go to the local jail and interview the individual in order to determine whether to pursue immigration charges. If an individual found by Secure Communities does not meet the Administration's enforcement priorities, he is simply allowed to remain in the U.S. Secure Communities is a preferred immigration enforcement program of the Obama Administration because it keeps state and local governments' role to a bare minimum. Essentially, all that local governments do is hold the individual for a few days and provide fingerprint information to the FBI as they normally would.[105] In April 2012, however, ICE announced that it would no longer ask local jails to detain unlawful immigrants who were stopped for "minor traffic offenses" and other lesser offenses, reducing Secure Communities' effectiveness in combating illegal immigration.[106] Bizarrely, ICE also stated that it would analyze and take steps against local jurisdictions where arrest-rate data was "abnormal," hinting at the idea that DHS would go after communities where the arrest rate of illegal aliens was too high, despite DHS's constant claims of limited resources.[107] Ultimately, the Obama Administration uses Secure Communities because it provides the most discretion to DHS to ignore the law.

The 287(g) program on the other hand, is not so well loved by the Obama Administration because it allows local and state officials to enforce U.S. immigration law. Local law enforcement officers must undertake training and enter into memorandums of agreement with ICE to receive immigration-law-enforcement authority; 287(g) officers are then authorized to arrest individuals and begin the removal process, essentially acting as an extension of ICE. This program is cost-effective at approximately $68 million a year, and acts as a force multiplier for ICE's efforts.[108] But enforcing U.S. immigration laws against most unlawful immigrants is exactly the opposite of DHS's stated immigration priorities. As a result, 287(g) has come under consistent attack from amnesty activists and the Obama Administration. President Obama's budget proposal has twice recommended steep cuts in 287(g), most notably for FY 2014 when the President's budget would have slashed $44 million, almost two-thirds of the 287(g) program's budget.[109]

At the same time, the Obama Administration has sought to tie the hands of local government by limiting how they enforce the law or by simply ignoring or rescinding 287(g) agreements. In December 2011, DHS rescinded Arizona's Maricopa County's 287(g) agreement and restricted access to the Secure Communities program.[110] Then, in June 2012, immediately following the Supreme Court's decision to uphold most of Arizona's immigration law, DHS rescinded all of its street-level 287(g) agreements in Arizona.[111] Since allowing local law enforcement officers to enforce the law is against DHS's objectives, President Obama has used every tool to assault the 287(g) program to ensure that immigration laws go unenforced.

The Obama Administration uses the Secure Communities program because it provides the most discretion to DHS to ignore the immigration law.

If the U.S. is to effectively enforce its immigration law, states must be part of the solution. Any Administration can and should expand 287(g) agreements and call up the assistance of state governments through other cooperative immigration enforcement programs. Furthermore, rather than suing states for correctly enforcing the letter and intent of federal immigration laws, this and future Administrations should seek to cooperate with and support state governments, and only take action against those states that are breaking immigration laws, such as by providing in-state tuition to illegal immigrants. At some point, Congress can follow up and expand cooperative programs by requiring DHS to accept requests from state and local governments to enter into a 287(g) agreement. Congress should also require that DHS provide no grant money to cities that resist the enforcement of immigration law, known as sanctuary cities. Federalism gives local governments some latitude in choosing to oppose or not assist the federal government in enforcing immigration law, but the federal government does not have to reward or pay for the results of such policies.

10. Verify the success of these reforms through un-tampered Census survey data.

If all of the above reforms were implemented, fewer people would cross the border or remain in the U.S. illegally, and more illegal aliens would be deported, thus lowering the illegal immigrant

States Are Violating Federal Law to Benefit Illegal Immigrants

The Obama Administration blesses state efforts that directly contradict federal immigration laws, so long as those efforts are magnets for more illegal immigration, not enforcement measures. This is especially true of states that offer in-state college tuition to illegal aliens—but not to all American students—as they are brazenly violating federal immigration law.

Currently, at least 19 states—California, Colorado, Connecticut, Florida, Illinois, Kansas, Maryland, Minnesota, Nebraska, New Jersey, New Mexico, New York, Oklahoma, Oregon, Rhode Island, Texas, Utah, Virginia, and Washington—are circumventing this unambiguous federal prohibition, while the Obama Administration turns a blind eye to their violations.[1]

Instead, the Administration sues states like Alabama and Arizona for trying to assist the federal government in enforcing federal immigration laws.

In 1996, President Bill Clinton signed into law the Illegal Immigration Reform and Immigrant Responsibility Act. Section 1623 of this statute prohibits state colleges and universities from providing in-state tuition to illegal aliens "on the basis of residence within the State" unless the state provides the same benefit to citizens regardless of their residence. In other words, unless Maryland offers in-state tuition to students who are residents of, say, Pennsylvania and Virginia, it cannot offer in-state tuition rates to illegal aliens.

Some states, such as Maryland, try to circumvent the express language and clear intent of Section 1623 by creating "alternative" criteria through which students can qualify for in-state tuition. Intended to act as a substitute for residence, these alternative criteria amount to nothing more than legal chicanery.

Doug Gansler, Maryland's attorney general, for example, claims that the state's new law does not violate Section 1623 because it does not require residence in Maryland—only that the student "attended" Maryland secondary schools for three years.

That ignores the fact that Maryland (like many other states) requires students to establish "proof of residency" for admission into public classrooms, K–12. In fact, one county (Prince George's) even requires a sworn "Affidavit of Disclosure" from parents verifying legal residency in Maryland.

It is clear that these states are targeting illegal aliens for in-state tuition. While lawsuits challenging these state laws have not yet made it to the Supreme Court, the court has repeatedly struck down other state legislation clearly enacted to evade federal statutory or constitutional requirements.

One reason why Section 1623 has not been reviewed by the Supreme Court is that at least one federal court of appeals has held that there is no private right of action to enforce this federal ban. In other words, citizen university students and their parents who are being discriminated against by paying higher tuition cannot sue—only the U.S. Justice Department can. And the Justice Department has categorically refused to enforce this federal prohibition.

These state laws not only violate federal law, they force citizens to pay increased tuition since the burden of paying for the illegal alien beneficiaries is passed along to other students.

It is fundamentally unfair to make citizen students from out of state, as well as in-state taxpayers, subsidize the education of illegal aliens. It also provides an additional financial incentive to enter this

1. "Undocumented Student Tuition: Overview," National Conference of State Legislatures, May 5, 2014, http://www.ncsl.org/research/education/undocumented-student-tuition-overview.aspx (accessed September 3, 2014).

country illegally. Citizens of states that provide in-state tuition to illegal aliens should be outraged at their legislators. The inaction of the federal government should also anger taxpayers.

President Obama and Eric Holder, his attorney general, have an obligation to enforce the federal immigration laws passed by Congress. That includes enforcing the prohibition on state colleges and universities from providing in-state tuition to illegal aliens without extending the same benefits to other students—who are U.S. citizens.

This Administration ignores the blatant violation of federal immigration law by 19 states, blesses "sanctuary" cities, and persecutes states that are stepping into the vacuum created by the President's refusal to enforce this country's immigration laws. Such contempt for the rule of law should profoundly concern the American people.[2]

2. Charles Stimson and Hans A. von Spakovsky, "States are Violating Federal Law to Benefit Illegals," *The Examiner*, November 30, 2011, http://www.heritage.org/research/commentary/2011/11/states-are-violating-federal-law-to-benefit-illegals.

population. The results of implementing the above reforms would be measurable in U.S. Census data. Thus, the last step before legislative changes to the U.S. immigration system are made should be the clear, consistent, and significant decrease in the unlawful immigrant population as reflected in the U.S. Census.

President Obama has used every tool to assault the 287(g) program to ensure that immigration laws go unenforced.

Part of the Department of Commerce, the U.S. Census Bureau is best known for its decennial survey that is used for multiple federal purposes, including the reapportionment of seats in the House of Representatives due to changing state populations. In addition to the Census every 10 years, the Census Bureau undertakes smaller, quicker turnover surveys, most notably the American Community Survey (ACS) and Current Population Survey (CPS) which track more information on a variety of topics ranging from labor and unemployment information to demographics and immigration. Through the use of the ACS and CPS, the U.S. can roughly keep track of the unlawful populations over time. Furthermore, Census data allows the U.S. to analyze not only the number of illegal immigrants, but also the flow over time.

In 2010, for example, CPS and ACS data pointed to approximately 10.35 million unlawful immigrants. To balance undercounting, DHS estimated that another 1.15 million unlawful immigrants existed outside the scope of the survey, bringing the total to 11.5 million unlawful immigrants.[112] That compares to estimates of 8.5 million in 2000 and 10.5 million in 2005 using similar methodologies.[113] It is worth noting that the number of illegal immigrants in the U.S. declined during the difficult economic times of the late 2000s, though the slowly improving economy has seen those numbers hold steady just below the high of around 12 million.[114] Until the CPS and ACS register clear, consistent, and significant decreases in the unlawful population that are not caused by economic reasons, Congress should resist acting on other reforms to the immigration system. The executive branch has much ground to cover to restore the integrity of the U.S. immigration system and rebuild the trust of Congress and the American people. Congress must receive proof, in form of the Census data, that the executive branch is committed to fixing the immigration system before it takes any major reform of immigration.

Critical to the validity of this approach is not tampering with or changing the way that unlawful immigrants are counted. The same methodology must be used; failure to do so will invite questions of policy and political tampering. The current counting system works well, and while no system is perfect, continuity is an important virtue that should be held in highest importance. This is especially impor-

tant given the recent decision to change the way that the Census measures health care insurance data.[115] While this decision may have been completely apolitical, it makes real policy analysis far more difficult and opens the Administration to charges of playing statistical games in order to make the President's health care law look better. The same must not happen with immigration statistics, as it would poison the next step—legislation changes by Congress—in immigration reform.

Immigration Reform Starts with Enforcing Current Law

The U.S. stands at a critical crossroads. One path is amnesty, the "easy" solution that kicks the can down the road, avoids meaningful solutions, and surrenders U.S. security, fiscal stability, and the rule of law. Another path is restrictionism and protectionism, policies that ignore much of the economic benefits of immigration and the free movement of labor. The wise road is the Heritage Foundation's solution: Americans can enforce their laws, secure their borders, work with other countries to combat illegal immigration, and also create a legal immigration system that is easier to use, brings in more high-skilled immigrants, and creates well-functioning temporary-worker programs to support the U.S. economy. The first steps on this path start with this checklist of recommendations. Ultimately, these lie in the hands of the President, whose constitutional duty it is to "take Care that the Laws be faithfully executed," not just when he agrees with them.

The U.S. is both a nation of laws and a nation of immigrants. There is no need to sacrifice either of these concepts in pursuit of the other. By respecting the rule of law and fulfilling its duty, the executive branch can allow the legislative branch, the branch entrusted with "establish[ing] an uniform rule of naturalization," to properly debate reforms to the U.S. immigration system, trusting that the executive branch will carry out and administer U.S. laws with fidelity and alacrity. Such a path forward can start today—it depends on the willingness of the President to discharge his duty under the Constitution and serve the American people as he swore to do.

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