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*Solutions that Work: A Policy Manual for Immigration Reform*

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March 2010

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A black and white, low-angle photograph of the Statue of Liberty's head and crown. The statue's face is the central focus, looking slightly upwards and to the right. The crown's spikes radiate outwards against a light sky. The lighting creates strong shadows, highlighting the texture of the bronze and the folds of the statue's robes.

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*A Policy Manual for Immigration Reform*

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This Policy Manual was crafted by the American Immigration Lawyers Association (AILA) to show that a solution to our nation's immigration problem does exist and can be achieved. Each section of this manual summarizes a key component of the existing immigration system, identifies its deficiencies and offers workable solutions that when applied together, will fix the totality of the broken, outdated, and inadequate system. AILA believes that for lasting and meaningful reform to take hold, these various components must be addressed in a comprehensive immigration reform package.

AILA understands that piecemeal approaches that focus on the symptoms of our undocumented immigration problem rather than the root causes, that treat immigration as a static problem rather than a dynamic opportunity, that seek to seal "them" out rather than acknowledge that they are "us," and that emphasize the narrow costs of immigrants rather than their broad and vital contributions, are doomed to fail. AILA advises putting forth an overall immigration strategy that allows for economic gain, rather than something easily derided as a "handout" to people some would see as having flouted U.S. immigration law.

AILA believes, just as a recent The New York Times editorial wrote, "The country needs to confront the issue, to lift the fear that pervades immigrant communities, to better harness the energy of immigrant workers, to protect American workers from off-the-books competition. What's been happening as the endless wait for reform drags on has been ugly."

President Obama and Congress are presented with an historic opportunity to overhaul U.S. immigration laws and pass legislation that remedies the manifold problems plaguing the current system. This Policy Manual provides extensive analysis of those problems and proposes a series of systemic changes to conform our immigration policies to 21st century realities.

The Manual is designed to be accessible to everyone with an interest in the overall comprehensive immigration reform debate. AILA has also launched a companion website, [www.aila.org/solutions](http://www.aila.org/solutions), that will serve as a centralized collection of resources and materials to help guide you as the debate moves forward.

AILA hopes that members of Congress and the media will profit from this effort. We look forward to the opportunity to provide further information or analysis and stand ready to assist in any constructive way. Please do not hesitate to contact our Advocacy or Communications Departments with questions about the Manual or comprehensive immigration reform.

We would also like to thank the Immigration Policy Center, a division of the American Immigration Council, and America's Voice for sharing their research and analysis with us.

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*The American Immigration Lawyers Association (AILA) is the national association of approximately 11,000 attorneys and law professors who practice and teach immigration law. Founded in 1946, AILA is a nonpartisan, not-for-profit organization established to promote justice, advocate for fair and reasonable immigration law and policy, advance the quality of immigration and nationality law and practice, and enhance the professional development of its members. AILA is an Affiliated Organization of the American Bar Association and is represented in the ABA House of Delegates.*

# *Solutions That Work: A Policy Manual for Immigration Reform*

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# *America's Immigration Problem Can Be Solved*

Our broken immigration system is a national problem that must be solved. Every American business, community, and family is affected by the shortcomings of outdated laws that regulate the flow of foreign workers, students, and family members to our country. Each year that policymakers fail to recast these laws is another year of missed opportunities for economic and social gains. The U.S. Government, for example, misses billions of dollars in potential tax revenue, while businesses lose tens of thousands of potential workers, experts, and opportunity for innovation, and thousands of families lose the chance to reunite with their loved ones. Solving the immigration problem will help rebuild our economy, refocus our national security efforts, and contribute to our prosperity.

A long-term solution to our nation's immigration problem requires a top-to-bottom overhaul to create a system that advances 21<sup>st</sup> century American interests and protects our core traditional values as a generous, welcoming nation deeply committed to the rule of law. Immigration policies have a profound impact throughout our social, political, economic, and security institutions. As it is now, the immigration problem weakens our national interests by slowing economic growth, forestalling family unification, and undermining strategic foreign policy objectives.

Any effective, long-term solution to the immigration problem must: 1) require the unauthorized population to come out of the shadows, register their presence with the government, and give them the opportunity to *earn* legal status; 2) provide fair and lawful ways for American businesses to hire much-needed immigrant workers who help grow our economy while protecting U.S. workers from unfair competition and all workers from exploitation; 3) reduce the unreasonable and counterproductive backlogs in family-based and employment-based immigration; 4) ensure the permanent immigration system provides adequate visas to meet the needs of American families, businesses, and communities; and 5) preserve and restore the fundamental principles of due process and equal protection while protecting our national security.

As the bar association for immigration attorneys and professors, the American Immigration Lawyers Association (AILA) believes that our collective expertise provides a unique vantage from which to assess the failures and successes of our immigration policies. This policy manual is intended to educate Congress and the Administration about the shortcomings of our immigration system and the solutions necessary to improve it. In the pages that follow, we identify opportunities for reform, present research and analysis from AILA and the Immigration Policy Center, a division of the American Immigration Council, and provide policy recommendations to alleviate the major problems afflicting our immigration system.

## ***AILA's Solutions That Work: A Policy Manual for Immigration Reform* includes the following chapters:**

- I. Achieve Economic Benefits Through Immigration Reform:** Chapter I provides a general introduction to comprehensive immigration reform and outlines the benefits it will have on the U.S. economy and American workers.
- II. Address the Situation of Unauthorized People Living and Working Here:** Chapter II provides background information on the current unauthorized population, discusses the need to create a path to legal status for these immigrants, and explains why such a program would not amount to "amnesty." Most unauthorized workers are law-abiding, hardworking individuals who pay their taxes and contribute to our society and as such they are essential to many sectors of our economy. By requiring these people to come out of the shadows, register with the government, pay an appropriate fine, go through security checks, and earn the privilege of permanent legal status, we can restore the rule of law in our workplaces and communities, and maximize the contributions this population can make to our country.

- III. Create and Control the Future Flows of Foreign Workers:** Chapter III addresses the need to create effective visa programs that meet the needs of our troubled economy and American workers. In the current regime, there is *no* non-immigrant visa category authorizing essential workers in low- or semi-skilled occupations to work in the U.S., except on a seasonal basis. In order to regulate and control the future flow of essential workers, a new program should be created to provide visas, full labor rights, job portability, and a path to permanent residence over time for those who would not displace U.S. workers. It would thereby significantly diminish illegal immigration by creating a legal avenue for people to enter the U.S. and return, as many wish, to their countries, communities, and families. The chapter also explains how to improve legal channels for temporary workers in high-skilled professions.
- IV. Improve Family-Based and Employment-Based Permanent Immigration Programs:** Chapter IV discusses the need to recommit to the principles of permanent immigration. Restoring family values to the family-based program requires eliminating the family-based visa backlogs, reforming the family preference system and providing adequate numbers of visas to support family reunification. Likewise, alleviating the employment-based backlogs and providing appropriate numbers of employment-based visas will ensure the continued growth and vitality of our economy. U.S. citizens and legal permanent residents are often required to wait 7–10 years (and sometimes up to 20 years) to reunite with their close family members. Such long separations make no sense in our pro-family nation and undermine one of the central goals of our immigration system: family unity. Backlogs for employment-based immigrant visas have also increased dramatically for workers with certain high-demand skill sets from certain countries. These backlogs make it difficult for employers to attract and retain the best and brightest talent from around the world, thus undermining our competitiveness in the global economy. Any workable comprehensive immigration reform proposal must eliminate our family-based and employment-based immigrant visa backlogs and improve our preference systems to adjust to 21<sup>st</sup> century realities.
- V. Implement Smarter Enforcement Strategies:** Chapter V lays out our current border and interior enforcement priorities and methods, and recommends smart enforcement that includes effective inspections and screening practices, fair proceedings, efficient processing, and strategies that crack down on criminal smugglers and lawbreaking employers. At the same time, our border security practices must facilitate the cross-border flow of goods and people that is essential to our economy. A vibrant economy is essential to fund our security needs.
- VI. Restore Fairness, Due Process, and Humanity to Immigration Courts and Detention Centers:** Chapter VI describes how overly aggressive enforcement practices and the absence of urgently-needed reforms to the immigration court system have severely undermined due process and fundamental fairness. Since 9/11, immigrants have faced more punitive enforcement practices including substantial increases in the apprehension and removal of non-citizens and skyrocketing growth in the number of people held in detention. Many detention facilities operate under substandard conditions and cannot provide medical care. At the same time that more non-citizens are being apprehended and detained, our immigration courts and the Board of Immigration Appeals remain ill-equipped to provide fair and consistent review of the growing number of immigration cases that enter the system. These chronic problems not only deny basic due process to non-citizens who are detained and face removal but also diminish the United States' standing as a nation governed by the Constitution and the rule of law.
- VII. Support the Public's Will for Immigration Solutions:** Chapter VII provides polling and election analysis that underscores the broad-based support for comprehensive reform among the American people.

## *I. Achieve Economic Benefits Through Immigration Reform*

With the U.S. unemployment rate hovering at 10%, some have questioned whether or not now is really the right time for comprehensive immigration reform that includes the creation of a pathway to legal status for unauthorized immigrants already living in the United States. Underlying this uncertainty is the fear that native-born Americans will lose out on scarce jobs if currently unauthorized immigrants acquire legal status—despite the obvious fact that unauthorized immigrants are already here and in the labor force. However, the best available evidence suggests that neither legal nor unauthorized immigration is the cause of high unemployment. Moreover, the higher wages and purchasing power which formerly unauthorized immigrants would enjoy were they to receive legal status would sustain new jobs and grow the U.S. economy.

Employment is not a zero-sum game in which workers compete for some set number of jobs. Policies which lift the wages of workers, regardless of where they were born, benefit the entire U.S. economy. Workers who earn higher wages also buy more goods and services from U.S. businesses, and pay more in taxes to federal and state governments, both of which create jobs and increase Gross Domestic Product (GDP). Conversely, attempting to remove unauthorized workers from the United States would not only be an expensive and socially destructive undertaking, but would also shrink the consumer base of the U.S. economy and reduce the total number of available jobs. In other words, comprehensive immigration reform would generate new spending that would sustain new jobs at a time when the economy desperately needs them.

### **Workers with Legal Status Earn (and Spend) More**

Studies have found that immigrants who received legal status under the 1986 Immigration Reform and Control Act (IRCA) acquired more education, earned higher wages, moved out of poverty, bought homes, and generally invested in themselves and their communities. For example, a November 2009 study by Rob Paral & Associates for the Immigration Policy Center, a division of the American Immigration Council, found that while 34% of IRCA immigrants age 35–44 years owned homes in 1990, 68% owned homes in 2006. Legal status lets workers parlay greater education and mastery of English into higher pay.

The wage gains experienced by workers legalized under IRCA resulted in large part from the fact that legal status allows workers with more education or proficiency in English to earn higher wages, according to research by economists at the University of Michigan and Australian National University. For instance, if the immigrant men who received legal status under IRCA had been “legal” throughout their entire working lives in the United States, their wages by 1992 would have been 24% higher because they would have been paid in relation to their actual skills, and would have been motivated to improve their skills to increase their earning power.

Legal status also allows workers to move into higher-paid occupations. Many workers legalized under IRCA were able to move into entirely new occupations that pay higher average wages than the occupations in which they previously worked, according to various studies. For instance, a survey of Mexican men legalized under IRCA found that 38.8% had moved up into higher-paying occupations by 1992.



## *Achievable Solutions*

A number of recent studies from across the political spectrum conclude that comprehensive immigration reform which includes a pathway to legal status for unauthorized immigrants already in the country would benefit the U.S. economy by raising wages and purchasing power, and sustaining jobs:

- **Grow the economy with immigration reform.** A February 2010 report from the Economic Policy Institute (EPI) points out not only that immigration raises wages for most native-born workers, but “grows” the economy more broadly. The report finds that the “effect of immigration from 1994 to 2007 was to raise the wages of U.S.-born workers, relative to foreign-born workers, by 0.4% (or \$3.68 per week).” Even the small (and shrinking) number of “U.S.-born workers with less than a high school education saw a relative 0.3% increase in wages (or \$1.58 per week)” as a result of immigration during this period. Moreover, the report emphasizes that more immigrant workers means more immigrant consumers, which means a bigger economy with more jobs. As the report succinctly explains, “An economy with more people does not mean lower wages and higher unemployment; it is simply a bigger economy. Just because New York is bigger than Los Angeles does not in and of itself mean workers in New York are worse off than workers in Los Angeles.”
- **Increase GDP with immigration reform.** A January 2010 study by Dr. Raúl Hinojosa-Ojeda, conducted for the Immigration Policy Center, a division of the American Immigration Council, and the Center for American Progress, estimates that immigration reform which includes legalization of unauthorized immigrants and the creation of more flexible channels for legal immigration in the future would add at least \$1.5 trillion in cumulative U.S. Gross Domestic Product (GDP) over 10 years. Over the first three years, higher personal income would generate increased consumer spending—enough to support 750,000–900,000 jobs in the United States—as well as increased tax revenues of \$4.5–\$5.4 billion. The benefits of additional growth in the GDP would be spread broadly throughout the U.S. economy, but immigrant-heavy sectors such as textiles, electronic equipment, and construction would see particularly large increases. Moreover, wages would rise for both less-skilled and higher-skilled U.S. workers. Additional support for these numbers comes from an August 2009 report by the libertarian CATO Institute which found that comprehensive reform would increase U.S. GDP by \$180 billion in 2019.

## *II. Address the Situation of Unauthorized People Living and Working Here*

In these troubled economic times, lawmakers who ignore our immigration crisis are missing an opportunity to help rebuild the economy. The majority of the 10–11 million unauthorized immigrants living and working in the United States already have deep roots in this country. Roughly one-third of unauthorized immigrants have lived here for 10 years or more; 1.1 million are children; and another 3.2 million are the parent of a U.S.-citizen child. These unauthorized immigrants are already contributing to this country as workers, taxpayers, and consumers—but those contributions are limited by their ability to fully work and participate in their communities.

While some argue for mass deportation, most people recognize that deporting millions of undocumented men and women along with their U.S.-born children is not only impractical but costly and a waste of limited resources. Instead, poll after poll shows that Americans want Congress to solve the immigration problem, giving people a way to become right with the law (see chapter VII for polling data and analysis). The public is particularly supportive of providing legal status in exchange for the government requiring unauthorized immigrants to come forward and register, meet requirements that show they are committed to following the law, and earning their place in this country.

Recent legalization proposals have stressed employment as the key to earning legalization (although some proposals allow applicants to substitute education, community service or other contributions instead of full-time work). Under these proposals, an individual registers their presence with the government and in exchange for temporary legal status, is given a number of years to “earn” full lawful permanent resident status. Usually, earning status requires proof of work, paying fines, undergoing rigorous security and background checks, learning English and American civics, and making good on any back taxes, among other criteria. Unauthorized immigrants who meet these criteria may apply for adjustment of status, subject to various waiting requirements to ensure that they are not jumping the line in front of others who applied for legal status under other laws. Legalization of unauthorized immigrants is therefore a key component of any comprehensive immigration reform package, as it addresses the growing political, economic, and national security consequences of having millions of unauthorized people living in this country.

Two targeted earned adjustment programs are the DREAM Act (S. 729/H.R. 1751) and the AgJOBS Act (S.1038/H.R.2414) both which have already found broad, bipartisan support in Congress. These measures follow the principles of earned legalization but are tailored to the unique issues and circumstances confronting two specific groups —students and agricultural workers.

Contrary to the claims of some opponents, this type of earned legalization is not an “amnesty.” By definition, amnesty is an automatic pardon, or free pass, granted to a group of people who do not have to do anything in return and are not penalized in any way for their past actions. Earned legalization, on the other hand, would impose stringent requirements and substantial penalties, while allowing the undocumented population to come clean with the U.S. government, maintain family and community ties, and continue fulfilling essential roles in our national economy.

## Legalization Benefits the Economy and American Workers

The unauthorized work force, which represents 1 in 20 workers, contributes to an uneven playing field for legal U.S. workers and for businesses that play by the rules. Moving unauthorized workers out of a vulnerable underground status strengthens all working families' ability to become more productive and creates higher levels of job-generating consumption, thereby laying a foundation for long-term community revitalization, middle-class growth, and a stronger, more equitable national economy. Legalization of the nation's unauthorized work force will help lay the foundation for robust, just, and widespread economic growth.

Under the current system, it has been a profitable arrangement for unscrupulous employers who hire unauthorized immigrants and pay them “under the table” while neglecting to withhold payroll taxes or benefits. Not only do they have a leg up when competing with employers who are following the law, but they cheat the system by pocketing money that should go towards paying for taxes and health care benefits. In turn, the unauthorized workforce frequently works longer hours for less pay, with little or no worksite safety protection which makes them easy to exploit.

Having access to a large undocumented workforce has allowed employers to create an underground economy, without the basic protections afforded to U.S. citizens and lawful permanent residents. Legalizing unauthorized immigrants who are already here, and in many cases already working, would help to eliminate the unfair advantage held by unscrupulous employers. Employers would no longer have the option of paying less and would consequently have to increase wages and provide adequate benefits. Historically, when employers increase wages, all workers benefit. Employers benefit, too, through increased productivity and a level playing field.

As wage and productivity levels rise, the U.S. economy's demand for new immigrant workers actually declines over time as the market shrinks for easily exploited, low-wage, low-productivity workers. When all immigrant workers have full labor rights, it results in higher wages—and higher worker productivity—for all workers in industries where large numbers of immigrants are employed. The wages of native-born workers also increase because the “wage floor” rises for all workers. Wages for native-born U.S. workers would increase by roughly \$162 per year for the less skilled and \$74 per year for the higher-skilled. As wage and productivity levels rise, the U.S. economy's demand for new immigrant workers actually declines over time as the market shrinks for easily exploited, low-wage, low-productivity workers<sup>1</sup>.

It is not counterintuitive to create legal channels for the unauthorized immigrant population during a time of high unemployment because a legalization program would not increase the number of workers currently in the labor force nor would it create undue competition for existing jobs because unauthorized immigrants and native born workers are not interchangeable. If 8 million unauthorized-immigrant workers who are now in the United States were deported for instance, 8 million jobs would not then become available for unemployed, native-born Americans. Immigrant and native-born workers cannot simply be exchanged for one another like batteries. Education, skill sets, age, and geography all play a role in who applies for what jobs. Studies show that immigrants do not “take” jobs away from many native-born workers, especially during economic hard times. Analysis of data from the U.S. Census Bureau clearly reveals that there is little apparent relationship between recent immigration and unemployment rates at the regional, state, or county level. This is evidenced by the fact that geographic regions with high levels of unemployment do not necessarily have large numbers of immigrants—especially immigrants who have come to the United States recently and, presumably, are more willing to work for lower wages and under worse conditions than either long-term immigrants or native-born workers.

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<sup>1</sup>Hinojosa-Ojeda, R., “Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform”, January, 2010

In fact, locales with high unemployment rates do not necessarily have large numbers of recent immigrants, and locales with many recent immigrants do not necessarily have high unemployment rates. In other words, unemployment rates in a particular area offer no clue as to how many recent immigrants live there, and the numbers of recent immigrants in an area provide no indication of what the unemployment rate might be<sup>2</sup>.

Over time newly legalized workers improve their lives and their employment opportunities. They invest more in themselves and their families, pursuing the American Dream of education, home ownership and upward mobility. But this additional investment and spending helps to support additional jobs throughout their communities. And it creates a chain reaction that results in greater prosperity and upward mobility for native born workers, too.

Economists and scholars across the political spectrum agree that immigration reform is good for all workers. Consider the following:

- A January 2010 UCLA study estimates that immigration reform which includes legalization of unauthorized immigrants and the creation of more flexible channels for legal immigration in the future would add at least \$1.5 trillion in cumulative U.S. Gross Domestic Product (GDP) over 10 years. An August 2009 report by the libertarian CATO Institute found that comprehensive reform would increase U.S. GDP by \$180 billion in 2019.
- The UCLA study estimates that over the first three years, higher personal income would generate increased consumer spending—enough to support 750,000–900,000 jobs in the United States—as well as increased tax revenues of \$4.5–\$5.4 billion.
- The Economic Policy Institute (EPI) concluded in a February 2010 report that immigration lifts the wages of U.S.-born workers, pointing out that new workers add to the supply of labor, but they also consume goods and services which create more jobs.

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<sup>2</sup> Paral, Rob., and Associates, “The Unemployment and Immigration Disconnect: Untying the Knot III,” May, 2009

## **Earned Legalization: A Repair to the Broken Immigration System**

Most politicians and policy makers agree that the U.S. cannot practically deport the unauthorized population and instead, must create a legal status for the 10–11 million residing in the U.S. However, there remains a temptation to create high penalties in exchange for a green card because many politicians want to ensure that people have paid the price for coming to the country illegally. An overly punitive process, however, ultimately defeats the purpose of a legalization program because it will deter people from participating and potentially drive people further underground. A successful legalization program combines measured penalties with clear and achievable goals that will get the maximum number of people into the system, identify the relatively few who do not belong here based on criminal activity, and integrate those who can contribute their talents as quickly as possible.

Legalization, when accompanied by comprehensive immigration reform, is beneficial to the nation. Taking care to get legalization right will pay off in a host of ways. If done correctly, legalization offers the following benefits:

- It is part of the solution to ending illegal immigration as we know it, which allows federal, state, and local governments to focus scarce resources on other issues.
- It benefits the economy and American workers by transforming unauthorized immigrants into legal workers, thereby leveling the playing field for all U.S. workers and employers.
- It is critical to fully integrating immigrants into our communities.
- It enables legalized workers to better invest in their education and future and become professionals, homeowners, taxpayers, consumers, and entrepreneurs.
- It promotes national security and public safety by allowing DHS and the police to focus resources on threats to U.S. communities' safety and security.

## Earned Legalization Is Not an Amnesty

Amnesty, by definition, is an automatic pardon, or free pass, granted to a group of individuals who do not have to do anything in return and are not penalized in any way for their past actions. While an earned adjustment (often referred to as earned legalization) is neither amnesty nor automatic; it requires unauthorized immigrants to earn legal status. It is a practical solution that balances the need to punish law violators with the recognition that our current immigration laws are unrealistic and inhumane because they fail to accommodate U.S. labor demands and impose unacceptable wait times on family reunification. Earned legalization is also the most realistic and humane response to the plight of the more than 1.1 million unauthorized children and the additional 3.2 million U.S. citizen children with at least one unauthorized parent. These kids should not be punished for their parents' decision to pursue a better life.

- Unlike President Reagan's 1986 Immigration Reform and Control Act (which could plausibly be described as providing "amnesty") the earned legalization component of comprehensive immigration reform requires unauthorized immigrants to satisfy significant prospective requirements.
- To earn legalization unauthorized immigrants would be required to: come forward and register their presence with the government, demonstrate past work history, pay significant fines, work prospectively for a number of years, undergo rigorous security and background checks, learn English and American civics, pay any back taxes, and satisfy additional criteria.
- It is disingenuous to paint such stringent requirements with the "amnesty" brush.
- Moreover, unauthorized immigrants who successfully meet these demands would not move to the head of the line or gain any preferential treatment over others who have been waiting for their green cards; they have simply earned the opportunity to apply for permanent residence and to get in line with everyone else.
- Earned legalization cannot be equated with other government-run programs such as tax amnesty. Tax amnesty does not need to be earned; it is simply granted to those who failed to meet their previous tax liabilities. It encourages individuals to come forward and satisfy those prior tax obligations by waiving all penalties and interest associated with the prior noncompliance. In direct contrast, earned legalization requires individuals who previously failed to comply with the immigration laws to pay hefty fines, in addition to meeting other non-monetary requirements.

## *Achievable Solutions*

- **Cover the maximum number of people possible.** Covering as many of the 10–11 million unauthorized immigrants as possible makes sense from a humanitarian perspective; it also makes sense from a good government perspective. If one of the objectives of legalization is to minimize illegal immigration, any program that leaves a sizeable unauthorized population in the U.S. will fail. Step one toward broad legalization is setting the eligibility cut off date (the date by which the qualifying immigrant had to have been in the U.S.) as close to the date of enactment as possible so the majority of the current unauthorized population will be eligible.
- **Create a simple and straightforward process.** A straightforward registration program without overly onerous, politically motivated initial requirements will maximize the likelihood of success. Once a law has been enacted, the priority is moving quickly, getting people into the system, and minimizing fraud. Creating overly burdensome documentation requirements will require more time to gather, review, and adjudicate. Similarly, attempting to make people pay huge fines or criminal penalties up front will only slow down the process. Basic proof of identity and a criminal background check should be enough to bring an applicant into the system, with more rigorous requirements tied to later stages in the program.
- **Make the program about integration into the community and a commitment to becoming a lawful permanent resident.** Upon registration, applicants should be on a path that leads to a green card, provided they meet specified criteria. The criteria that most seem to measure commitment—paying taxes, learning English, working hard or going to school, staying out of trouble—can be built into the requirements for successful completion of the program, but the trade off must be legal status that can eventually lead to citizenship. Without the promise of a green card, legalization is nothing more than an expanded temporary worker program, running the risk of creating a second-class citizen with the right to work, but with no incentives to put down roots and no opportunity to remain lawfully. Newly legalized immigrants must not be granted a distinctive status that singles them out from other legal immigrants, inviting discrimination and abuse.
- **Minimize the impulse to punish people.** There is likely to be considerable political pressure to impose high fines, require people to leave the country before applying, limit the ability to bring in immediate family, or complete other requirements in exchange for legal status. While these measures sound tough, they are counterproductive. In order to achieve the broadest possible legalization, the eligibility criteria and evidentiary standards must be achievable by a maximum number of people. History has shown that these types of harsh measures will not shield proposals from charges of “amnesty.” Nothing is gained, but much can be lost, if we succumb to the belief that a punitive legalization process will change the underlying issues.
  - Additionally, a categorical requirement that unauthorized immigrants return to their home countries is unworkable and would undermine any attempt to fix our broken immigration system. We want people to come forward, register their presence with the government, pay fines, and assimilate into our society not because we want to confer a special benefit on them, but because we want to reform our immigration system so that it serves our national and economic security goals. Requiring all unauthorized immigrants to return home would be a strong disincentive for them to come forward.

## *Achievable Solutions* Continued

- **Coordinate with the groups with close ties to immigrant communities.** In order to be successful, the government will need to partner with community-based organizations who know immigrant communities best. These groups will be critical to outreach, education, and application preparation and must receive funding in order to increase their capacity to implement legalization. It will be critical to inform the immigrant community about the program, eligibility standards, and application requirements. Outreach and education must be done in partnership with community-based organizations and must be done in multiple languages.
- **Make fees and fines count.** Although USCIS is fee-funded, implementing a large legalization program will require an up-front investment in the agency prior to the first applications being filed. Congress must also balance the need for funding the program with the desire to keep costs reasonable to ensure maximum participation. While application processing fees and monetary penalties are certain to be included, it is important to develop an affordable cost structure that encourages individuals to come forward rather than deterring participation. In many past proposals, applicants have been able to pay any fines in increments and those monies have been used, in part, to help support state and local initiatives that help people meet their eligibility requirements. Thinking carefully about how to structure any payments requires working with affected communities and the government to maximize the use of limited financial resources.
- **Don't create "Catch-22"s.** In order to achieve the broad goals of legalization and ensure that the maximum number of people will be legalized, it is important that immigrants not be ineligible because they are unauthorized. For example, many unauthorized immigrants have used false documents to secure employment. Violation of the law for the purpose of remaining in the U.S. illegally cannot make an individual ineligible for legalization. Applicants for legalization must not fear that coming forward will result in their deportation or any other penalty. Applicants must feel confident that evidence provided as part of the legalization program will not be used for immigration enforcement purposes, except in the case of egregious violations of the law. Any potential negative consequences of applying for legalization must be made clear through community outreach and education.
- **Build upon existing laws and proposals that make sense.** A legalization program does not have to be built from scratch. Many of the basic components can be found in legislation introduced over the last decade. Other more specialized programs, such as the DREAM Act and AgJOBS, are popular legislative proposals that can address the needs of special communities.



## **The DREAM Act**

Each year about 65,000 students who graduate from U.S. high schools hit an immigration road block. They are honor roll students, star athletes, talented artists, homecoming queens, and aspiring teachers, doctors, and U.S. soldiers. They are young people who have lived in the U.S. for most of their lives and desire only to call this country their home. They face unique barriers to higher education, are unable to work legally in the U.S., and often live in constant fear of detection by immigration authorities because, like their parents who brought them here as children, they are unauthorized.

These hardworking students, who did nothing wrong, should not be punished for their parents' actions. Most of them were brought here at an age when they had no say in the matter, and have since overcome language barriers and, in many cases, poverty to succeed. Yet, unlike their US-born classmates, these students (which include valedictorians, class presidents and other honor students) do not have the same opportunities to pursue higher education, join the military, or apply for professional jobs. Their unfortunate situation could be resolved with a targeted legalization program called The DREAM Act.

The DREAM Act would ensure that no child in America is denied their dream of having a better life if they're willing to work for it. The Development, Relief and Education of Alien Minors (DREAM) Act (S. 729/H.R. 1751) is a bipartisan bill that would provide a conditional six-year pathway to legal permanent residence for certain unauthorized youth who, as children, were brought to the U.S. if they: complete high school; demonstrate good moral character; and complete at least two years of higher education or serve for at least two years in the U.S. military.

The DREAM Act would also repeal section 505 of the Illegal Immigrant Reform and Immigrant Reconciliation Act of 1996 (IIRIRA) that prohibits states from providing any higher education benefit based on residency to unauthorized immigrants unless they provide the same benefit to U.S. citizens in the same circumstances, regardless of their residence. An example of the latter category would be a student who attended schools in the state and graduated from an in-state high school, but who resides in another state at the time of application to the institution. Even with passage of the DREAM Act and the repeal of section 505, U.S. colleges could still choose to deny in-state tuition rates to unauthorized immigrant applicants, but they would no longer be penalized for providing it.

## **The U.S. Economy Will Be Strengthened With the Passage of the DREAM Act**

The students who would benefit under the DREAM Act have been raised and educated in the U.S. and by allowing them to pursue a higher education, we are investing in the future of our country and our economy.

Several reports show that by providing access to higher education to these students, our communities, states, and nation would reap significant benefits, including reduced high school dropout rates and increased revenue from taxes paid by a more educated immigrant population.

A RAND study showed that a 30-year-old Mexican immigrant woman who graduates from college will pay \$5,300 more in taxes and cost \$3,900 less in government expenses each year than if she had dropped out of high school. This amounts to an annual fiscal benefit of over \$9,000 every year, money that can be used to pay for the education of others.

- These students are the nation's future innovators and entrepreneurs and will make up part of the educated workforce needed to help the U.S. compete in the global economy. In our globalized world, their multilingual and bicultural skills, and contributions are more important than ever to the success and global competitiveness of the United States.

## **Current Law Provides No Way for These Children to Achieve Legal Status**

- Due to the unauthorized status of their parents and other family members, these children have no available avenues for family-based visa sponsorship.
- Few employers would or could sponsor them for a work visa due to their age and lack of work experience. Even if an employer was willing to sponsor them, the process takes precious years that these children cannot afford to waste.

## **States Should Have the Right to Determine Who Qualifies For In-State Tuition**

- States should have the authority to determine how they allocate their resources.
- States are required to invest in elementary and secondary education for unauthorized children. However, when states are ready to earn a return on their investment through a highly educated workforce, they are penalized for offering in-state tuition to these children. The states (and their taxpayers) have the right to earn this return.
- Such an educational investment pays dividends to the states by reducing the dropout rate, leading to substantial savings in criminal justice costs and the use of public benefits, and sharply increasing the taxes paid by those benefiting from this initiative.

## **AgJOBS Act**

Nowhere is the failure of our immigration laws more evident than in the agricultural sector where the shortage of legal, documented agricultural workers has reached crisis proportions. The Department of Labor (DOL) estimates that over 50% of the 1.6 million agricultural workers are unauthorized foreign nationals. (Private estimates run much higher.) These individuals work grueling jobs putting food on our table, yet cannot assert the most basic rights and protections. Agricultural Job Opportunities, Benefits, and Security (AgJOBS) Act of 2009 (S.1038/H.R.2414) is a bipartisan compromise bill that reflects the interests of workers and growers.

The bipartisan AgJOBS Act would replace a broken system with a “win-win” solution, including a streamlined process for employers and additional rights for employees, and provide relief through an earned adjustment program. Under this program, unauthorized workers would be eligible to apply first for temporary resident status based on their past work experience, and then become permanent residents upon satisfying prospective work requirements.

## **AgJOBS Would Provide Long-Term Relief Through a Reformed H-2A Program, and Short-Term Relief in the Form of an Earned Adjustment Program**

- Although uncapped, the current H-2A program is so expensive and difficult to use that it places only about 40,000–50,000 guest workers per year—a mere 2 to 3% of the estimated total agricultural work force.
- A General Accounting Office study found that more than 40% of the time the DOL missed statutory deadlines for processing employer applications to participate in the H-2A program.
- Without the proper documentation, workers live in the shadows, vulnerable to severe exploitation.
- American consumers would benefit from a safe, stable, American-grown food supply rather than having to rely increasingly on foreign imports.

## **The AgJOBS Bill Would Enhance Our Nation's Security**

- It is in our national security interest to know who is working in food production and to have an effective means of monitoring these essential workers.
- AgJOBS would bring out of the underground economy an estimated 500,000 workers who would be scrutinized by our government as they begin the process toward legal status. Future guest workers under the H-2A program would be screened and monitored to address security concerns.
- Encouraging people to come out of the shadows and be reviewed by our government will enhance our security by allowing us to focus on the people who mean to do us harm rather than on those who cross our borders to fill our labor market needs.
- The AgJOBS legislation must be included in much-needed Comprehensive Immigration Reform
- While AgJOBS focuses on the unique needs of the agricultural sector, it must be included in a broader immigration reform package designed to make legality the norm.
- To fully address our economic, humanitarian and security needs, any comprehensive reform must include: an opportunity for unauthorized immigrants living and working in the U.S. to earn their permanent legal status; a break-the-mold worker program that would legalize future flows of essential workers; and a reduction of the backlogs in family-based immigrant visas.

## **An Opportunity to Earn Legal Status Does Not Equal “Amnesty”**

- Critics of AgJOBS misleadingly allege its earned adjustment program is an “amnesty.” Nothing could be further from the truth. Workers would have to both demonstrate past work contributions and make a substantial future work commitment to earn the right to remain in this country.
- Because the AgJOBS’ earned adjustment program would be a one-time opportunity for workers already present in this country who have a significant U.S. work history, it would not encourage future unauthorized migration.

### ***III. Create and Control the Future Flows of Foreign Workers***

The politics of immigration reform tend to overshadow the value our legal immigrant workforce contributes to our economic security—in times of both prosperity and of recession. Legal immigration is a highly regulated and tightly controlled system that serves the national interest by allowing U.S. employers access to workers with the specific skills necessary to strengthen the U.S. economy and remain competitive in the global economy. Unfortunately, our ability to bring in temporary foreign workers from a wide range of skill levels is extremely limited.

In the current debate over immigration reform, those with more restrictive views of immigration reform say that we should not be bringing any new foreign workers into the United States. However, the demand for foreign workers reflects the market demands in the economy. This evidenced by the fact that FY09 was the first time since 2005 that the H-1B cap was not reached prior to the start of the fiscal year for which they were sought—a strong indicator that during economic downturns, U.S. business demand for highly skilled workers is lower than during times of great prosperity. Any immigration reforms we do make, and any legal channels we do create, must be flexible enough to provide the economy with the needed number of workers in the future while also being responsive to the immediate economic conditions. The number of temporary non-immigrant visas for less-skilled workers in seasonal, non-agricultural occupations, the H-2B visa, is capped at 66,000 per year. For temporary agricultural workers there is the H-2A visa, but this program is too bogged down in bureaucracy and is not responsive to the constantly changing labor demands in the agriculture industry. In addition to the H-2B and H-2A non-immigrant visa, 5,000 permanent employment-based green cards are allotted each year to workers (and their immediate families) in less-skilled jobs. For higher skilled workers, there is the H-1B visa for foreign professionals who are hired by a U.S. employer to temporarily fill “specialty occupations,” those jobs requiring at least a bachelor’s degree or the equivalent. H-1B visas are issued to professionals such as teachers, doctors, engineers, professors, lawyers, physical therapists, and computer professionals. H-1B visas are generally capped at 85,000 per year.

The non-immigrant visa categories listed above comprise what is referred to as our “future flow” of non-immigrant workers. In this debate, the focus has been placed on the workers coming to fill jobs requiring lesser skills, often called “essential workers”<sup>3</sup> (For more information about the H-2B and H-1B visa programs, see the Immigration 101 at the end of this chapter.)

One of the key questions that must be answered is how to best to address our future flow needs.

#### ***AILA’s Approach to Addressing the Future Flow Needs***

AILA has established the following principles for reforming our business immigration system including principles for any new mechanism created to control the future flow of immigrant workers.

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<sup>3</sup>“Essential workers” are the unskilled and semi-skilled workers employed in all sectors of our economy. These individuals often work in the difficult manual jobs that increasingly skilled and educated Americans no longer choose, but which are “essential” to keep our economy growing.

## **AILA Position Statement on Business Immigration Reform Principles**

July, 2009

WASHINGTON, DC—The current business immigration system is completely outmoded. It does not serve the interest of enticing and retaining the “best and the brightest.” Nor does it address long-acknowledged shortages in various industries and geographic regions. Effective business immigration that will provide a needed boost to our flailing economy requires an immediate fix, not a pronouncement by a commission two years down the road. To address the serious flaws in our current business immigration system we need the following elements:

- Highly streamlined temporary-to-permanent processes for professional immigrants sought by U.S. employers in the fields in which U.S. educational institutions are not providing sufficient U.S. workers, including science, technology, engineering and mathematics.
- Provide legitimately needed level of visas to replace unlawful migration channels.
- Targeted, well thought out programs to address long-term shortages and help our nation’s health, education and well-being, whether the occupations are viewed as “professional” or “skilled,” such as nurses, nurse assistants, home health care aides and teachers.
- Labor market protections that promote hiring qualified U.S. workers for vacancies and protect wages and working conditions of all workers, but that recognize and respect the real-world recruitment in which employers regularly engage to obtain employees with needed skills without regard to national origin.
- A program for temporary professional workers that recognizes the fact that the need for such workers is market-driven and that artificial caps are detrimental to our economy.
- New temporary and permanent immigration categories that recognize the contributions and accomplishments of foreign nationals that are beyond a bachelor’s degree, but not quite extraordinary ability and international renown.
- Elimination of employment-based immigration backlogs, which only freeze employer-employee relationships and prevent talented individuals from progressing to their highest level of professional activity.
- Carve-out of dependents from employment-based visa caps, to ensure that all visas under the cap go to employees needed by U.S. employers.
- Reasonable, efficiently-managed programs that will assist small businesses, in areas such as innovative technologies and alternative energy development, in accessing and retaining key foreign talent, whether through a broadening of the standards for national interest waivers or through other avenues.

## **AILA Opposes An Immigration Commission that Would Make Binding Recommendations to Congress**

Several groups, including the Economic Policy Institute and the Migration Policy Institute, have put forth blueprints for an immigration commission to set immigration levels controlling the future flow of foreign nationals who may enter the U.S. to work for U.S. employers. The theory behind such a commission is that it would redress what Congress failed to do in 1986—that is, design a flexible system that could, essentially, open and close the employment-based immigration valve as needed. But the commission concepts that have been proposed thus far are fatally flawed, for a number of reasons:

- The idea for a standing commission on immigration and labor markets remains too amorphous conceptually. Sufficient oversight and enforcement of current labor protections must be a critical goal, but such a commission would add a layer of national-level determinations of local labor market needs. This would make the system more complex rather than simplifying a process that is burdensome for employers in need.
- The notion of a small group of individuals who would assess labor market data and then set immigration levels based upon that data is completely untested, and potentially dangerous. The use of government commissions to determine policies is rarely insulated from political pressure and commission appointees would be not accountable to voters.
- The commission concepts that have been proposed both envision recommendations on levels of immigration that will essentially become binding if Congress fails to act. The power to control the flow of immigrants into the U.S. should not be taken away from Congress, especially in a de facto way. As a bar association, AILA is concerned that such proposed structures may well be unconstitutional, as violative of the separation of powers doctrine.
- Labor data available through U.S. government sources is updated only every two years. It is backward looking and not equipped to assess our current and future needs. Before any type of commission could work, we need to develop an effective, real-time measurement of the evolving needs of business and the U.S. economy. Otherwise, any determinations made by such a Commission will be outdated almost before they can be implemented.
- The needs of employers for unique or highly skilled labor are often the bellwether of future larger trends as new technologies transform the labor market. Moreover, employers often seek very specific skills, not generic ones. General labor statistics will not reflect these needs. However, a real-time market based system, allowing employers to demonstrate the immediate absence of needed skills, can.
- The question of what numbers of workers should be admitted to the U.S. to fill labor needs is different from the question of what types of workers, and how many, should be admitted to the U.S. for our country to remain on the forefront of science, technology and global competitiveness over the next 5, 10 and 20 years, and beyond. The commission concepts put forward to date, while claiming to address the first question, do not address the second, more crucial issue.

## Future Flow Warrants Careful Study by Experts

The domestic and international forces that impact our country's need for immigrant workers are extremely complex. The ability to gather reliable data to predict future labor needs as well as future influx of immigrants is crucial to our nation's ability to have a flexible, rational context for the setting of appropriate immigration levels. While AILA does not endorse a commission model that would usurp Congress' ability to set appropriate levels of immigration, we do believe that it would be helpful to establish a taskforce of experts in the areas of world migration patterns, demographics and labor economics, to perform long-term studies of issues and emerging trends that might lead to the need to change immigration levels. Such issues might include:

- Census data on U.S. birth rates over the next 5, 10 and 20 years, as well as the aging of the U.S. population.
- Rates of graduation from high school and percentages of high school students attending college across the U.S.
- Numbers of U.S. citizens and permanent residents who will graduate from university-level programs in science, technology, engineering and mathematics, as opposed to other disciplines, over a specific period of time.
- Future potential labor shortages by industry, occupation and U.S. geographic region.
- Future need for foreign direct investment to spur economic growth by U.S. geographic region.
- Whether our nation's economic needs would be best served by moving some employment-based immigration functions and/or programs to government agencies that are charged with increasing the nation's economic stability, such as the Department of Commerce.
- Whether Congress should consider certain immigration-related incentive programs to encourage foreign nationals studying in particular disciplines in the U.S. to remain in the U.S. to work in a particular capacity in a specific geographic region.
- Whether the current distinctions between professional workers, skilled workers and unskilled workers provide the appropriate paradigm through which future U.S. labor needs should be addressed.
- World demographic, natural or socio-economic changes that may be predicted to have an impact on the flow and source of immigration to the U.S.

An ongoing taskforce with the expertise to study and address issues such as those raised above should provide a report to Congress on a regular basis. AILA believes that the recommendations in such reports would be extremely useful to inform legislative decision-making on immigration levels, but should not be made binding on Congress.

Another important set of guidelines for addressing the issue of future flow has been put forth by the Immigration Policy Center (IPC), a division of the American Immigration Council. The IPC is the research and policy arm of the American Immigration Council, and its mission is to shape a rational conversation on immigration and immigrant integration.

### **Focusing On The Solutions**

Future Flow: Repairing our Broken Immigration System

Immigration Policy Center, a division of the American Immigration Council, February, 2010

One of the greatest challenges in immigration reform is the need to realistically assess our future employment-based immigration needs. This includes permanent and temporary visas, high-skilled and low-skilled workers. Many people agree that our current legal immigration flow is drastically out of sync with America's labor needs and the global realities of the 21st century. Meanwhile, some employers have been able to misuse the broken system to the detriment of U.S. and foreign workers. Policymakers must recognize that if we create a legal immigration system that functions well, there will be less pressure on immigrants to come to the U.S. illegally and for employers to hire unauthorized workers. Given the current weakened economy and high unemployment rates, it is difficult to estimate the U.S.'s future labor needs. However, the economy will eventually improve, and a reasonable, flexible legal immigration system must be put into place to fill our future labor needs. If the U.S. is to thrive in the globalized 21st century economy, employment-based immigration must be seen as a strategic resource that can both meet labor market needs and foster economic growth and competition while still protecting U.S. workers and improving wages and working conditions.

#### ***Achievable Solutions***

Create a more flexible visa system that more accurately adjusts to the economy and labor market conditions. The current number of permanent employment-based visas available each year was set by Congress in 1990 and has not been adjusted since. The number of temporary visas has been adjusted infrequently. This current system does not have the flexibility to nimbly adjust the number of visas available to align with changing economic conditions. A reformed visa system would enable the U.S. to better manage our legal immigration system by allowing immigration flows to rise and fall during periods of prosperity or job scarcity in order to maximize the economic benefits of immigration. Some have proposed a standing commission to examine labor market conditions and make recommendations to Congress on a more regular basis. Others suggest that employers should play a larger role in determining the legitimate demand for foreign labor. Whether by a commission or some other mechanism, comprehensive immigration reform must include a more flexible decision-making process.



### *Achievable Solutions* Continued

- **Conduct research and gather and analyze data about worker shortages, labor market trends, and other critical factors in order to aid decision making.** Under the current system, Congress sets visa numbers with little regard for actual labor market conditions and needs. A system should be created so that experts have access to reliable data about future projections of labor needs. Congress should identify and require government agencies to track and produce accurate data on key factors including national and regional needs, industry-specific trends and needs, unemployment rates, and wages, working conditions, and recruitment of U.S. workers.
- **Protect worker and employer interests by streamlining the transition from temporary to permanent immigration status.** While many workers enter the United States on long-term but temporary visas, such as high skilled H-1B visas, it is often difficult to become a permanent resident because of backlogs, bureaucracy, and lack of protections (such as work authorization) in the interim. Similarly, only 5,000 permanent visas are available each year for lower skilled workers, making it virtually impossible for someone who comes on a temporary visa to transition to a more permanent status. This lack of flexibility ensures that good workers who want to stay and contribute often have no choice but to return home or go elsewhere, making American companies less competitive.
- **Be smart about the allocation of permanent visas.** Similar to the family-based system, there are backlogs for employment-based green cards, especially for temporary workers transitioning to permanent status. While the key problem is a lack of available visas, it is exacerbated by the government's failure to use the full number of available visas each year as well as the disjointed way visas are allocated under the statute. For instance, the family members of employment-based immigrants count against the visa cap, effectively reducing the number of visas that are available for workers. Students educated in U.S. universities, particularly in the science and technology fields, often return home rather than stay in the U.S. because the wait for a visa is so long. Fixing these problems can improve American competitiveness and increase productivity by ensuring that we maximize our use of available visas.
- **Re-examine current temporary worker programs.** Temporary worker programs should be used to fill real temporary needs in the labor force. Current caps on the number of visas available should be reconsidered in light of 21st century realities. Measures to protect both foreign and U.S. workers and level the playing field should be taken, such as enhancing temporary workers' ability to change employers and adjust to permanent residency, and enhancing labor protections. Fraud and abuse of these programs should be targeted for enforcement.
- **Ensure that any changes in our workforce immigration programs are matched with strong economic development programs for native-born workers.** Importing foreign workers should not be the primary solution to filling gaps in the labor market, achieving growth, and improving competitiveness. Legislation should provide provisions to educate, train, recruit, relocate, and hire U.S. workers to fill positions in the labor force whenever possible.

## *Immigration 101: H-2B and H-1B Workers*

### **H-2B Workers**

The H-2B visa program is vital to America's small businesses and thus to America's economic recovery. The H-2B program is capped at 66,000 visas per year and equally split between the winter and summer seasons. This is the same arbitrary number set by Congress 20 years ago, in 1990. Small business owners rely on the H-2B program because it is the only way they can legally hire workers for temporary and seasonal positions when they cannot find Americans to hire.

Small and seasonal businesses have every incentive to hire any qualified American who applies for a seasonal or temporary short-term position. Nevertheless, even in this economy, positions remain unfilled, leaving these businesses desperately in need of workers. This is not surprising since these jobs typically involve low-skilled and semi-skilled labor, involve work at remote locations, and are only short-term in duration.

Unlike the hiring of American workers, small business owners must go through a tough application process to hire foreign workers through the H-2B program. Employers must prove to the U.S. Department of Labor that there are no available U.S. workers to fill vacant short-term positions. The H-2B workers are in most cases required to return to their home country at the end of the season. They are not allowed to stay in the U.S. permanently through this program.

Without access to more temporary H-2B workers, many small businesses will be extremely short-staffed this year and could be forced to close. Small businesses need relief now so that they can get the seasonal temporary workers they need to stay afloat and contribute to America's economic recovery.

### ***Achievable Solutions***

Relief in the H-2B program includes reauthorizing the returning worker extension. This extension would provide needed relief by exempting from the cap H-2B workers who are returning to the same seasonal job and who already have successfully participated in the program in one of the previous three years.

## **H-1B Workers**

Through the H-1B program, U.S. employers are able to hire, on a temporary basis, highly educated foreign professionals for “specialty occupations”—jobs that require at least a bachelor’s degree or the equivalent in the field of specialty. Examples include doctors, engineers, teachers and researchers in a wide variety of fields, accountants, medical personnel, and computer scientists. Besides using these foreign professionals to obtain unique skills and knowledge in short supply in this country, U.S. businesses use the program to alleviate temporary shortages of U.S. professionals in specific occupations, and to acquire special expertise in overseas economic trends and issues, thereby allowing U.S. businesses to compete in global markets.

U.S. employers also turn to H-1B professionals when they recruit post-graduates from U.S. universities. Foreign students represent half of all U.S. graduate enrollments in engineering, math, and computer science. It is imperative that U.S. businesses have access to foreign professionals who have graduated from U.S. master’s and Ph.D. programs.

The H-1B visa is a vital tool necessary to help in the recovery of the U.S. economy and to keep jobs in America. Far from harming U.S. workers and the U.S. economy, highly educated foreign professionals benefit our country by allowing U.S. employers to develop new products, undertake groundbreaking research, implement new projects, expand operations, create additional new jobs, and compete in the global marketplace.

**H-1B workers do not undercut wages of U.S. workers.** When an employer submits a petition for an H-1B worker, there are safeguards to help prevent highly educated foreign professionals from undercutting the wages offered to U.S. workers. The employer must offer the foreign professional a wage that is the higher of either the typical wage in the region for that type of work (“prevailing wage”), or what the employer actually pays existing employees with similar experience and duties. Furthermore, there are other safeguards that the employer must meet including indicating that: the foreign professional will not adversely affect the working conditions of U.S. colleagues, there is no strike or lockout at the worksite and the position requires a professional in a specialty occupation and the intended employee has the required qualifications.

### ***Achievable Solutions***

Some of the immediate ways to provide relief for the H-1B visa category would be to recapture unused H-1B visas from previous fiscal years, exempt U.S.-educated workers with advanced degrees from the H-1B cap and permit work authorization for spouses of H-1B visa holders.

## ***IV. Improve the U.S. Permanent Immigration System***

Legal immigration is essential to ensuring the continued vitality of the American economy and to meeting our nation's historic commitment to family reunification. Immigrant businesses promote the renewal of city neighborhoods and commercial districts while immigrants and their families strengthen communities while bringing diversity to local artistic and other cultural resources.

However, severe backlogs for family-based green cards have resulted in a system in which extended family separations are routine. Spouses and minor children of U.S. lawful permanent residents, for example, are forced to wait between 7 to 10 years before being allowed to reunite with their families. Backlogs in employment-based green cards have likewise created massive disruptions for American businesses due to wait times ranging between 4 to 7 years.<sup>4</sup> The result has been that talented immigrants seek jobs in countries where permanent residence is more easily obtainable.

Congress must create a flexible immigration system that meets the varied needs of American businesses, families, and communities by combining enhanced legal channels for shorter-term immigrants with a robust and effective permanent immigration system. A system that fosters uncertainty, discourages talented immigrants from remaining in the U.S., and keeps families separated for years on end simply does not serve our national interest. (For more information about permanent immigration to the U.S., see the Immigration 101 at the end of this chapter.)

### **Permanent Family Immigration Program**

On the family side, improving the permanent immigration system would alleviate the multi-year visa backlogs that keep families separated, and update the arbitrary numerical caps and complex regulations that contribute to these delays. Keeping immediate relatives separated for so long undermines basic American family values and our national self-interest in a rational immigration system.

### **Visa Delays Separate Families of U.S. Citizens and Lawful Permanent Residents**

Unreasonable and unnecessary backlogs for family-based visas now exist as a result of arbitrary limits, outdated information, and administrative delays. These have led to the following crises:

- Many families have been kept apart for years, even decades, while waiting for green cards to become available and be processed.
- Even spouses of permanent residents must wait 7–10 years to come to the U.S. legally, while most others, including adult sons and daughters of U.S. citizens, are forced to wait between 4–23 years.
- As a result of these long waits, many family members who apply for visas in the prime of their lives are not granted admission until they reach retirement age, undermining their economic contribution to our country and encouraging some frustrated relatives to resort to illegal migration.

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<sup>4</sup> USCIS, *Employment Based Immigration Process*, available at <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnextoid=685c8d8b3b760210VgnVCM1000004718190aRCRD&vgnnextchannel=4f719c7755cb9010VgnVCM10000045f3d6a1RCRD> (retrieved 2/23/10, last updated 4/02/09).

- Because of current ‘bars’ to relief in our immigration law, many hard-working immigrants who live and work in the U.S., pay taxes, speak English, and desperately want to become full-fledged members of our community are unable to obtain the proper status to legally immigrate even if there is an employer or family member who is willing to sponsor them. For example, the “three and ten year bar” is one of the biggest obstacles preventing individuals already here from legally immigrating through the family-based immigration system.

### ***Achievable Solutions***

Under current law there are 480,000 family-sponsored immigrant visas available annually. However, this number is reduced by the amount of immediate relative visas and humanitarian paroles granted the previous year. The law provides for a floor of 226,000 family-based visas and in recent years, our system has become so overtaxed that only the minimum number of visas has been available for legal immigration through the family-based visa categories. Because this arbitrary limit has not kept pace with current demand for family-based visas, lengthy backlogs have kept U.S. citizen family members waiting to immigrate for many years. The following include several possibilities for altering this system to help decrease the backlogs:

- **Don’t count visas for immediate relatives of U.S. citizens against the total number of available visas:** Based on the framework of our current law, the number of available visas could be increased by not deducting immediate relatives and humanitarian paroles from the overall cap. The numbers that remain would then flow through the rest of the family-based immigration preference system.
- **Treat still abroad spouses and minor children of lawful permanent residents living in the U.S. as ‘immediate relatives’:** Currently, the immediate family members of lawful permanent residents are forced to wait from over 5 years to 8 years for a visa to come to the U.S.. If the spouses and minor children of legal permanent residents were included in the definition of immediate relative, fewer people would be forced to share the 226,000 visas that are left over for the rest of the family visa categories and nuclear family members would be united within a more humane time frame.
- **Allow same-sex and unmarried long-term couples to use our family immigration system:** One of the fundamental tenets of our immigration system is that legal permanent residents and U.S. citizens can sponsor their family members, defined as spouses and other immediate family members, for immigration status. This principle of family unification is an unassailable characteristic of our immigration system. However, same sex and long-term unmarried partners of U.S. citizens and legal permanent residents are not considered “spouses and other immediate family members” for immigration purposes. This outdated and biased definition forces U.S. citizens and legal permanent residents to make unimaginable, life-altering decisions either to relocate to a foreign country or to separate permanently from their loved ones.
- **Increase the number of visas allotted for countries with high backlogs:** Under current law, there are per-country limits on the number of available visas. Because of high demand for visas and the arbitrary limits on the number of visas per country, certain countries have extremely long backlogs. An increase in the ‘per country limits,’ especially for countries with unusually high backlogs could significantly reduce these delays.
- **Expand derivative eligibility to include immediate relatives so that a separate petition and visa number is not required:** Currently, immigrants who fall under the ‘immediate relative’ category cannot bring their spouses and unmarried children as ‘derivatives’ on their application even though immigrants in the other family-based immigration categories are permitted to do so. An advantage of derivative status is that a child or spouse does not require a separate petition which promotes efficiency and allows more people to immigrate.

### *Achievable Solutions* Continued

- **Give The Government The Discretion To Allow Hard-Working Immigrants Who Are Currently Barred From Relief To Utilize The Legal Immigration System:** Under current law, several bars to immigration relief including the ‘three and ten year bar’ and the ‘permanent bar’ prevent many unauthorized immigrants from immigrating through the family-based system. In considering whether an unauthorized immigrant with close family ties in the U.S. should be permitted to cure their unlawful status, the government should consider factors such as the immigrant’s length of residence in the United States; history of employment and business ties; family ties in the United States; military service; community contributions; and any adverse impact on U.S. employers, businesses, organizations, the local community, or other national or local interests in the event of the immigrant’s deportation from the U.S. Expanding the government’s discretion to weigh the circumstances of each case will allow more deserving immigrants to reunite with their families. In addition to providing a more expansive waiver for the ‘three and ten year bar’ and the ‘permanent bar,’ Congress should also give the agency and immigration judges enhanced discretion to waive other bars to admission or relief that exist under current law such as the bar to admission based on a ‘false claim to citizenship.’
- **Recapture unused family-based visas from prior years:** Every year, thousands of congressionally authorized family-based visas go unused due to government processing delays and bureaucratic mistakes. “Recapturing” these authorized but unused immigrant visas from prior fiscal years would help greatly reduce the visa backlog. To prevent these numbers from being wasted in the future, unused visa numbers should automatically “roll over” to the next fiscal year.

### **The Permanent Business Immigration System**

Talented immigrants have made crucial contributions to the development of next generation technologies and have founded some of the most innovative businesses in the United States. They have created jobs, fueled productivity, and driven economic expansion. And as global economic integration deepens, sustainable growth will depend in part on our continued ability to attract the best and brightest innovators and entrepreneurs. Despite the clear link between green cards and U.S. competitiveness, the permanent employment-based (EB) green card system has effectively gone unchanged for 18 years and has resulted in well-documented backlogs spanning anywhere from two to upwards of 10 years. These waits create a disincentive for the world’s best and brightest to pursue careers at U.S. companies and universities, therefore threatening the foundations of American innovation. Improvements must be made to the EB green card program that enable U.S. employers to support the economic recovery by hiring foreign talent. At a time when our economy needs high-skilled workers more than ever, if the problem isn’t solved soon, the U.S. stands to rapidly lose not only the competitive economic edge generations of Americans have worked so hard to achieve, but also its global preeminence in science and technology—areas vital to our prosperity and national security.

The current problems with the EB system are attributable to two things: administrative delays in processing green card applications; and the statutory limits, regulated by the U.S. Department of State (DOS), which cap the number of EB green cards issued each year at 140,000. When DOS believes that either the overall or per country cap is about to be reached, it imposes a “cut off” date, and only applications received before this date are processed. In October 2005 (and many times since), DOS moved this cut-off date backward, in an effort to ration available green cards. As a result, thousands of foreign professionals, many of whom have been in the U.S. legally for nearly a decade on student or work visas, have been forced to wait, essentially in a legal purgatory, up to seven years to get a green card and enjoy the rights and benefits of legal permanent residence. This means up to seven years spent waiting and worrying unnecessarily, with spouses unauthorized to work at all. Not surprisingly, these talented professionals often tire of waiting, and leave the U.S. entirely to put their knowledge and skills to use in other countries eager to compete with, and surpass, the U.S.

Significant backlogs in employment-based green cards have become an increasing concern for both American businesses and the talented immigrants they employ. Only 140,000 employment-based visas are allotted each year for foreign nationals and their immediate relatives. And of that number, only 5,000 green cards are available for non-professional workers and their families. Yet U.S. businesses face a chronic shortage of American workers—in both high-skilled and essential worker industries—and rely increasingly upon foreign workers to fill these critical positions. The disconnect between our immigration policies and economic realities could not be more stark.

Although a new temporary worker program could alleviate some of the worker shortages American employers currently face, not all of the U.S. economy's labor needs can be met by the transient workforce that a temporary program would supply. Indeed, any new worker program that does not allow valuable or productive workers to apply for permanent residence in the U.S. would represent a needless waste of talent. A transient workforce cannot substitute for the economic vitality and social stability that permanent immigrants confer on the United States.

### *Achievable Solutions*

Because the arbitrary limits have not kept pace with current demand for employment-based visas, lengthy backlogs have accrued that hurt the U.S. economy and businesses. The following include several possibilities for altering this system to help decrease the backlogs:

- **Recapture unused EB visas from prior years:** Every year, thousands of congressionally authorized employment-based visas go unused due to government processing delays and bureaucratic mistakes. “Recapturing” these authorized but unused immigrant visas from prior fiscal years would help greatly reduce the visa backlog. To prevent these numbers from being wasted in the future, unused visa numbers should automatically “roll over” to the next fiscal year.
- **Exempt spouses and children from EB green card quotas:** Each year, 140,000 EB green cards, spread across five preference categories based on credentials, are allotted for foreign nationals who seek permanent residence and who are sponsored by their employers to work in this country. The spouses and children of these foreign nationals also count against the 140,000 green card cap, accounting for over half the allotted number. However, because these green cards are distributed equally among all countries, with a quota set for each country, backlogs have resulted for individuals coming from high-demand countries, even when the overall cap has not been reached. Once the quota is met for nationals of a given country, only those who applied before a set cut-off date are able to get green cards.
- **Exempt graduates from U.S. institutions in the fields of science, technology, engineering and math:** While over half of all science, technology, engineering, and mathematics graduates of American universities are foreign born, our current system forces most of these graduates to leave the U.S. and apply their valuable skills in other countries.
- **Create a market-based EB green card cap, responsive to the needs of U.S. employers:** With these improvements, talented foreign professionals will be more likely to work in this country and fill important positions in U.S. businesses. A more efficient EB Green Card Program will provide employers with much needed access to the key employees who will enhance their company's ability to recover in these difficult economic times.

# *Immigration 101: Family and Employment-Based Permanent Immigration*

## **Family Immigration**

Current law caps the number of family-sponsored immigrant visas at 480,000 visas annually. The number of visas granted to immediate relatives of U.S. citizens and humanitarian paroles granted the previous year is subtracted from this number. The law provides for a floor of 226,000 family-based visas and in recent years, our system has become so overtaxed that only the minimum number of visas has been available for legal immigration through the family-based visa categories. Because this arbitrary limit has not kept pace with current demand for family-based visas, lengthy backlogs have kept U.S. citizen family members waiting to immigrate for many years.

This unreasonable and untenable situation destroys families and unravels the unique social fabric which has helped to make our country strong and prosperous. Legal, family-based immigration furthers America's economic and security interests while advancing core American values. Family immigration within a highly regulated and tightly controlled system fosters economic growth. Families tend to pool their resources to start businesses, purchase homes, and send family members to college. When the legal system keeps families separated for years and sometimes decades, it creates an incentive for family members to enter the country, or remain in the country, unlawfully. Creating a rational, orderly system that comports with 21<sup>st</sup> century realities will obviate this incentive and strengthen respect for the rule of law. Moreover, our country values family unity as a cornerstone of our society. Improving our family-based system will reunite loved ones and promote stability within families.

## **Employment Based Immigration**

The Immigration and Nationality Act provides a yearly minimum of 140,000 employment-based immigrant visas which are divided into five preference categories. They may require a labor certification from the U.S. Department of Labor (DOL), and the filing of a petition with United States Citizenship and Immigration Services in the Department of Homeland Security (USCIS).

### *Visa Categories<sup>5</sup>*

#### **Employment First Preference (E1)**

Priority Workers receive 28.6 percent of the yearly worldwide limit. All Priority Workers must be the beneficiaries of an approved Form I-140, Immigrant Petition for Foreign Worker, filed with USCIS. Within this preference there are three sub-groups:

1. Persons of extraordinary ability in the sciences, arts, education, business, or athletics. Applicants in this category must have extensive documentation showing sustained national or international acclaim and recognition in the field of expertise. Such applicants do not have to have a specific job offer so long as they are entering the U.S. to continue work in the field in which they have extraordinary ability. Such applicants can file their own petition with the USCIS, rather than through an employer;

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<sup>5</sup>US Department of State website, [http://travel.state.gov/visa/immigrants/types/types\\_1323.html](http://travel.state.gov/visa/immigrants/types/types_1323.html)



2. Outstanding professors and researchers with at least three years experience in teaching or research, who are recognized internationally. No labor certification is required for this classification, but the prospective employer must provide a job offer and file a petition with the USCIS; and
3. Certain executives and managers who have been employed at least one of the three preceding years by the overseas affiliate, parent, subsidiary, or branch of the U.S. employer. The applicant must be coming to work in a managerial or executive capacity. No labor certification is required for this classification, but the prospective employer must provide a job offer and file a petition with the USCIS.

### **Employment Second Preference (E2)**

Professionals Holding Advanced Degrees or Persons of Exceptional Ability in the Arts, Sciences, or Business receive 28.6 percent of the yearly worldwide limit, plus any unused Employment First Preference visas. All Second Preference applicants must have a labor certification approved by the DOL, or Schedule A designation, or establish that they qualify for one of the shortage occupations in the Labor Market Information Pilot Program. A job offer is required and the U.S. employer must file a petition on behalf of the applicant. Aliens may apply for exemption from the job offer and labor certification if the exemption would be in the national interest, in which case the alien may file the petition, Form I-140, along with evidence of the national interest.

### **Employment Third Preference (E3)**

Skilled Workers, Professionals Holding Baccalaureate Degrees and Other Workers receive 28.6 percent of the yearly worldwide limit, plus any unused Employment First and Second Preference visas. All Third Preference applicants require an approved I-140 petition filed by the prospective employer. All such workers require a labor certification, or Schedule A designation, or evidence that they qualify for one of the shortage occupations in the Labor Market Information Pilot Program.

### **Employment Fourth Preference (E4)**

Special Immigrants receive 7.1 percent of the yearly worldwide limit. All such applicants must be the beneficiary of an approved I-360, Petition for Special Immigrant, except overseas employees of the U.S. Government who must use Form DS-1884. Certain spouses and children may accompany or follow-to-join the principal special immigrant.

### **Employment Fifth Preference (E5)**

Employment Creation Investors receive 7.1 percent of the yearly worldwide limit. All applicants must file a Form I-526, Immigrant Petition by Alien Entrepreneur with USCIS. To qualify, an alien must invest between U.S. \$500,000 and \$1,000,000, depending on the employment rate in the geographical area, in a commercial enterprise in the United States which creates at least 10 new full-time jobs for U.S. citizens, permanent resident aliens, or other lawful immigrants, not including the investor and his or her family.

## *V. Implement Smarter Enforcement Strategies*

Our current border and interior immigration enforcement strategies consists of annual increases of personnel and technology along the U.S.-Mexico border and increase worksite enforcement in the interior of the country. In addition, U.S. Immigration and Customs Enforcement (ICE) partner with state and local police agencies and jails to identify and apprehend immigrants and to remove them from the country. None of these efforts has resulted in a significant decline in the size of the unauthorized population, yet funding increases while these enforcement policies and priorities have had devastating impacts on U.S. families and communities.

The lack of a comprehensive federal solution to our broken immigration system has resulted in a range of lopsided, enforcement-only initiatives that have cost the country billions of dollars, while doing little to impede the flow of unauthorized immigrants. In fact, the current immigration system's structural failures, and the inadequate or misguided responses to these failures, have led to the largest unauthorized population in our nation's history. Legalization of unauthorized immigrants already in the United States will result in a significantly smaller unauthorized population, and the creation of flexible legal channels for those immigrants we want and need ensures that future flows of illegal immigration are minimal. However, there will continue to be a need to enforce our nation's immigration laws. The challenge is designing appropriate, effective enforcement mechanisms for a new, well-functioning legal immigration system.

### **Border Security**

Our nation's commitment to securing our borders is evidenced by the annual investment of billions of dollars to developing and implementing the necessary infrastructure, technology, databases, inspections process, and special programs to keep us safe. The terrifying reminders of the attacks on 9/11 and subsequent attempts to do harm to our country by the "Shoe" and "Christmas Day" bombers require our vigilance to national security. At the same time, U.S. prosperity—a key component of U.S. national security—depends on legitimate trade, travelers, and migrants from outside of our ports of entry and so mechanisms for protecting the borders must be careful not to restrict the flow of benefits from places beyond them.

Eliminating unauthorized entry into the United States is a preeminent goal of securing the borders. However, even with annually increased dollars and manpower dedicated to security over the last decade, there has been no correlating decrease in the number of people who violate civil code by circumventing official points of entry and crossing into the country without proper documentation. For these people, the pull of job opportunities during economic booms and reuniting with their families in America is stronger than the deterrence of heightened security at the border. The 645 miles of pedestrian and vehicle fencing, plus 33 miles of reinforced physical and virtual fencing along the southwestern border have only served to divert determined border crosses to less patrolled, and more dangerous, sections of the border. From an enforcement standpoint, it is clear that regulating the flow of unauthorized immigration requires more than physical barriers to the country.

## *Achievable Solutions*

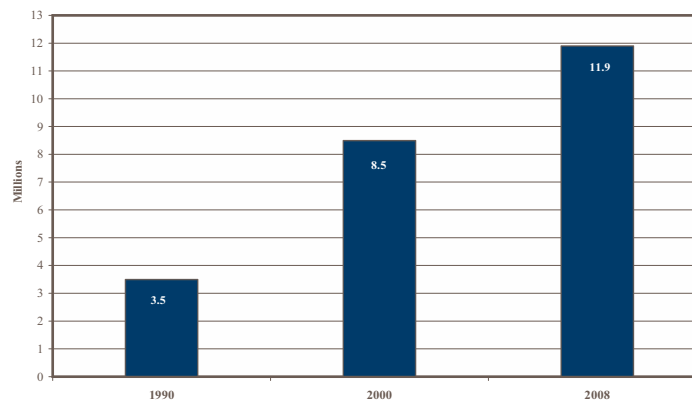
Policymakers should work to secure our borders by uniting smart enforcement measures with robust visa programs that allow workers who mean us no harm to enter the country legally. A workable enforcement solution that prioritizes safety and prosperity would include more flexible legal avenues for both temporary and permanent immigration that respond to labor demand and the desire of immigrants to reunify with their families already in the United States. Instead of clandestine border crossings by unidentified migrants, new entrants to the country would have waited in line for visas in their home countries, gone through background checks, proven links to employers or family in the US, and come to America through controlled ports of entry. This would extract unauthorized immigration from the border-security equation which currently lumps together terrorists and jobseekers from abroad as groups to be kept out, decreases the chances that a foreign terrorist actually will be caught.

## **Breaking Down The Problems: What's Wrong With Our Immigration System?**

Prepared by the Immigration Policy Center, a division of the American Immigration Council  
October, 2009

**The United States has spent billions of dollars on ineffective border enforcement.** At the same time that spending on immigration enforcement has skyrocketed, the number of unauthorized immigrants in the United States has roughly *tripled* from 3.5 million in 1990 to 11.9 million in 2008 {Figure 1}.<sup>6</sup> (Research has shown that recent decreases in the number of unauthorized border crossings have little to do with enforcement, but are due primarily to the downturn in the U.S. economy.) Furthermore, the Pew Hispanic Center estimates that between 25 percent and 40 percent of all unauthorized immigrants do *not* sneak across the border, but come to the United States on valid visas and then stay after their visas expire, meaning that border enforcement is irrelevant to a large portion of the unauthorized population.<sup>7</sup>

Figure 1: Unauthorized Immigrants in the United States,  
1990, 2000 & 2008

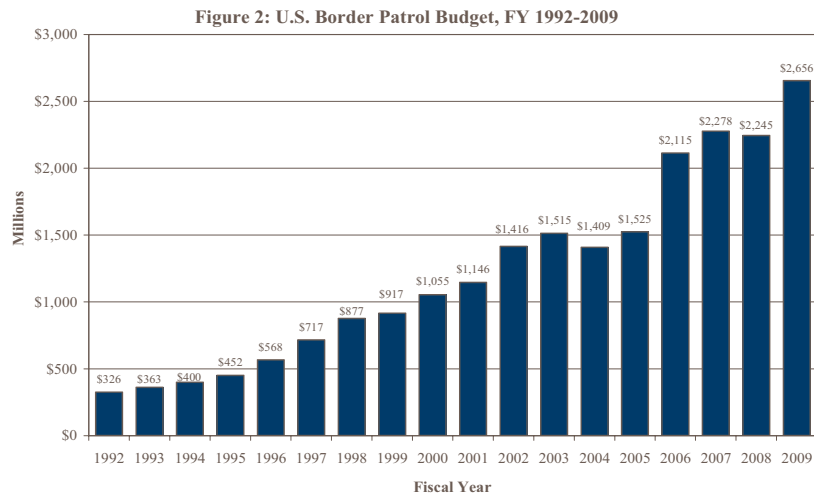


Source: Estimates by the Pew Hispanic Center; Office of Immigration Statistics (U.S. Department of Homeland Security); U.S. Immigration & Naturalization Service.

<sup>6</sup> See Walter Ewing, *Money for Nothing: Immigration Enforcement without Immigration Reform Doesn't Work* (Washington, DC: Immigration Policy Center, a division of the American Immigration Council, May 2008), p. 7.

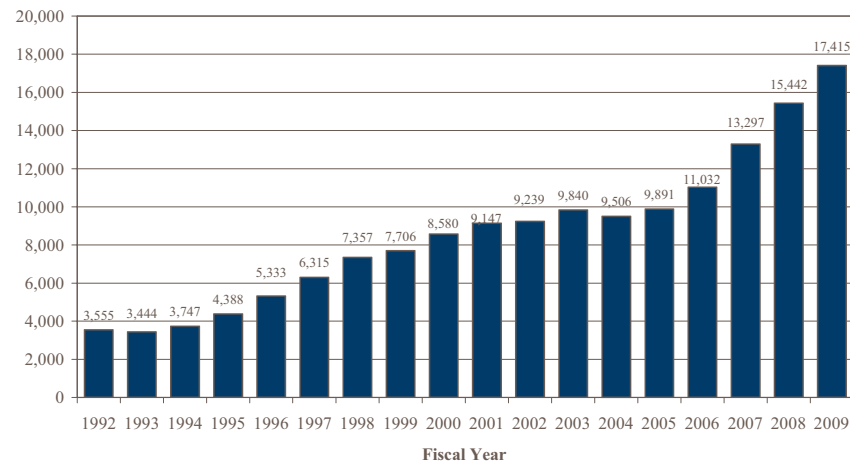
<sup>7</sup> Jeffrey S. Passel, *The Size and Characteristics of the Unauthorized Migrant Population in the U.S.* (Washington, DC: Pew Hispanic Center, March 7, 2006), p. 16.

Yet, since 1992, the annual budget of the U.S. Border Patrol has increased by 714 percent; from \$326.2 million in FY 1992 to \$2.7 billion in FY 2009 {Figure 2}.<sup>8</sup> At the same time, the number of Border Patrol agents stationed along the southwest border has grown by 390 percent; from 3,555 in FY 1992 to 17,415 in FY 2009 {Figure 3}.<sup>9</sup> The Border Patrol has also increased its technological resources, ranging from fences and cameras to sensors and aircraft.



U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.

**Figure 3: U.S. Border Patrol Agents Stationed Along Southwest Border, FY 1992-2009**



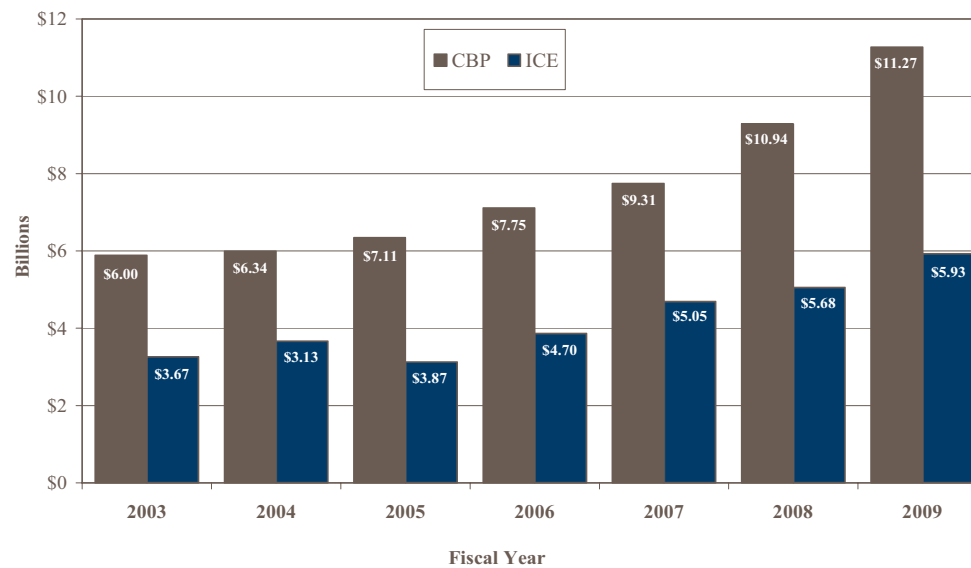
U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.

<sup>8</sup> Statistics provided by U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.

<sup>9</sup> Ibid.

Since the creation of DHS in 2003, the budget of U.S. Customs and Border Protection (CBP), the parent agency of the Border Patrol within DHS, has increased by 92 percent; from \$6.0 billion in FY 2003 to \$11.3 billion in FY 2009. The budget of U.S. Immigration and Customs Enforcement (ICE), the DHS interior-enforcement counterpart to CBP, has increased by 82 percent; from \$3.3 billion in FY 2003 to \$5.9 billion in FY 2009 {Figure 4}.<sup>10</sup> Despite all this additional spending, the number of immigrants entering the United States without authorization has not decreased as a result of additional enforcement.

Figure 4: CBP & ICE Budgets, FY 2003-2009

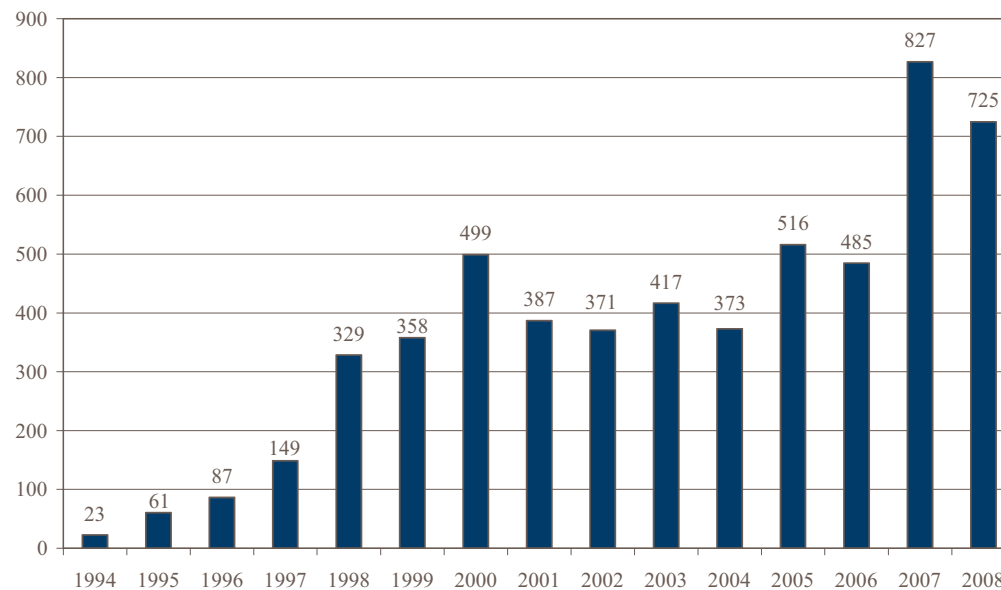


Source: U.S. Department of Homeland Security, *Budget-in-Brief* for Fiscal Years 2005 through 2010.

10 U.S. Department of Homeland Security, *Budget-in-Brief* for Fiscal Years 2005 (p. 13), 2006 (p. 15), 2007 (p. 17), 2008 (p. 19), 2009 (p. 19), and 2010 (p. 19).

**Border security without adequate legal channels for immigration has created a more dangerous border and reduced “circularity” of migration.** Because of increased border enforcement, it has become much more dangerous and expensive to cross the border. Operation Blockade and Operation Gatekeeper (initiated in 1993 and 1994, respectively), and other enhanced border enforcement measures, have successfully closed off traditional points of entry and diverted unauthorized migrants into more dangerous areas. The probability of death or injury as a result of heat exhaustion, exposure, suffocation, or drowning has increased. The Government Accountability Office (GAO) found, in fact, that border deaths had more than doubled between 1995 and 2005.<sup>11</sup> Data show that the number of border deaths has increased dramatically in recent years, now reaching an average of approximately one death per day. In Arizona alone, the number of deaths increased by 20 percent during FY 2009; between October 1, 2008 and August 31, 2009, 191 immigrants died, according to the U.S. Border Patrol’s Tucson Sector.<sup>12</sup> Border deaths typically increase during the hot summer months. At least 5,607 deaths occurred between 1994 and 2008, according to a report released in October 2009 by the American Civil Liberties Union (ACLU) of San Diego & Imperial Counties and Mexico’s National Commission of Human Rights {Figure 5}.<sup>13</sup>

**Figure 5: Border-Crossing Deaths, 1994-2008**



Source: Maria Jimenez, *Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border*, October 1, 2009, p. 17.

<sup>11</sup> U.S. Government Accountability Office, *Illegal Immigration: Border Crossing Deaths Have Doubled Since 1995; Border Patrol’s Efforts to Prevent Deaths Have Not Been Fully Evaluated*, GAO-06-770, August 2006.

<sup>12</sup> Maria Leon, “Number of Unauthorized Migrant Deaths Mount on Arizona Border,” *Latin American Herald Tribune*, September 29, 2009.

<sup>13</sup> Maria Jimenez, *Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border* (San Diego, CA: American Civil Liberties Union of San Diego & Imperial Counties and Mexico’s National Commission of Human Rights, October 1, 2009), p. 17.

Because of increased enforcement along the U.S.-Mexico border, and the heightened risks of crossing the border, many unauthorized immigrants cannot survive the trip alone and rely on professional smugglers. Since the 1990s, migrants have paid enormous sums to smugglers to assist them and their family members in crossing the border. Smugglers charge over \$2,000 to take people across the U.S.-Mexico border.<sup>14</sup> Often, migrants are indebted to the smugglers for years after they arrive in the United States, sometimes working as indentured servants until their debts are paid. Smugglers have also turned to kidnapping the loved ones of immigrants in order to extort additional money from their cargo. “Human smugglers think nothing of engaging in hostage taking and extortion to generate more profit for their illegal activities,” said John Morton, DHS Assistant Secretary for ICE.<sup>15</sup> Moreover, there have been increased reports of violence associated with rivalries between smuggling networks, affecting both immigrants and border communities.

Once in the United States, however, unauthorized immigrants are far less likely to leave than they would have been before the buildup of border enforcement in the mid-1990s. In the past, a large portion of unauthorized immigration to the United States tended to be “circular,” meaning that immigrants came here to work for short periods of time and earn money, and then returned to their home countries, often repeating the cycle. However, this has changed in recent years. Research confirms that migrants who intend to return to their home countries increasingly find themselves “stuck” in the United States. According to researchers Douglas Massey, Jorge Durand, and Nolan J. Malone, “the end result of a border buildup is typically longer trip durations, lower probabilities of return migration, and a shift toward permanent settlement.”<sup>16</sup> They found that in the early 1980s, the average stay of an unauthorized immigrant was two to three years; by 1990 it was nine years. Moreover, the probability that any one unauthorized immigrant would return home had decreased.<sup>17</sup> What had been a circular flow of migration had become permanent settlement, or “reduced circularity.”

## Interior Enforcement

For years the U.S. government has addressed unauthorized immigration primarily through the lens of deportation and removal, pursuing enforcement-only policies that have not effectively curbed unauthorized immigration. An increase of personnel and technology along the U.S.-Mexico border has been accompanied by increased worksite enforcement in the interior of the United States. In addition, U.S. Immigration and Customs Enforcement (ICE) has partnered with state and local police agencies and jails to identify and apprehend immigrants and to remove them from the country. None of these efforts has resulted in a significant decline in the size of the unauthorized population, but these enforcement policies and priorities have had devastating impacts on U.S. families and communities.

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<sup>14</sup> Douglas Massey, Testimony before the U.S. Senate Committee on the Judiciary, “Securing the Borders and America’s Points of Entry, What Remains to Be Done,” May 20, 2009.

<sup>15</sup> White, Josh and Dagny Salas, “Better to be Deported Alive Than to be Dead,” *Washington Post*, August 23, 2009.

<sup>16</sup> Douglas Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors, Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002), p. 129.

<sup>17</sup> *Ibid.*, p. 133.

## Worksite Enforcement

**Raids and audits.** Following years of large-scale worksite raids, in early 2009 DHS issued worksite enforcement guidance announcing that ICE will focus its resources on targeting employers who knowingly hire unauthorized workers rather than on the workers themselves.<sup>18</sup> In July 2009, ICE announced that 652 employer audits would be conducted,<sup>19</sup> and in November 2009, additional workplace audits were announced. Overall, the number of employer audits tripled in 2009.<sup>20</sup> DHS has claimed large numbers of investigations and penalties levied against employers.<sup>21</sup> Advocates report, however, that these audits (as well as anticipation of such audits) have generated mass firings of noncitizen workers who cannot readily resolve employment authorization issues.<sup>22</sup> And despite this shift from “worker raids” to “desk raids,” ICE has maintained its authority to apply immigration law to any unauthorized individuals they encounter on site visits, putting these workers at risk of detention and removal.<sup>23</sup>

**E-Verify.** Over the past several years, one of the proposed “solutions” to the problem of unauthorized immigration has been expansion of the E-Verify employment-verification system.<sup>24</sup> E-Verify is a federal web-based program through which U.S. businesses can attempt to verify the work authorization of new hires. E-Verify is a voluntary system, except where state laws require businesses to register to use E-Verify, as well as a few other exceptions in which the federal government has made E-Verify mandatory. There have been multiple attempts to expand E-Verify and make it mandatory for all employers. This is despite the fact that E-Verify is a controversial program because of the high probability for database errors,<sup>25</sup> misuse of the system by employers,<sup>26</sup> and the burden it imposes on the Social Security Administration (SSA).<sup>27</sup> Furthermore, E-Verify does not even identify unauthorized workers effectively. Some unauthorized workers are erroneously confirmed as authorized to work because E-Verify cannot identify counterfeit, stolen, or borrowed identity documents. And E-Verify cannot identify unauthorized workers when employers who knowingly hire them simply do not run their workers through the system, or when work is performed “off the books” in the underground economy.

<sup>18</sup> ICE Office of Investigations, “Worksite Enforcement Overview,” Apr. 30, 2009, *available at*: <http://www.ice.gov/pi/news/factsheets/worksite.htm>.

<sup>19</sup> U.S. Immigration and Customs Enforcement, “652 businesses nationwide being served with audit notices today,” July 1, 2009, *available at*: <http://www.ice.gov/pi/nr/0907/090701washington.htm>.

<sup>20</sup> Liz Jones, “After the Raid: Bellingham Immigration Raid Highlights,” KUOW.org, Feb. 22, 2010, *available at*: <http://www.kuow.org/program.php?id=19492>.

<sup>21</sup> U.S. Department of Homeland Security, “Fact Sheet: Department of Homeland Security 2009 Accomplishments & Reforms,” Dec. 15, 2009, *available at*: [http://www.dhs.gov/xlibrary/assets/department\\_accomplishments\\_and\\_reforms\\_2009.pdf](http://www.dhs.gov/xlibrary/assets/department_accomplishments_and_reforms_2009.pdf).

<sup>22</sup> Diego Graglia, “Obama’s Focus on Employers Causes Massive Firings, California Immigrant Activists Say,” Feet in 2 Worlds Blog, Aug. 3, 2009, *available at*: <http://feetin2worlds.wordpress.com/2009/08/03/obamas-focus-on-employers-causes-massive-firings-california-immigrant-activists-say/>.

<sup>23</sup> Pilar Marrero, “News Analysis: ICE Chief Promises Efficiency, Continued Tough Enforcement of Immigration Laws,” Feet in 2 Worlds Blog, Aug. 24, 2009, *available at*: <http://feetin2worlds.wordpress.com/2009/08/24/news-analysis-ice-chief-promises-efficiency-continued-tough-enforcement-of-immigration-laws/>.

<sup>24</sup> E-Verify (formerly Basic Pilot) is one of three voluntary electronic employment eligibility verification pilot programs that were created under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Originally a pilot project in five states, E-Verify has been expanded to a voluntary system in all 50 states. Employers transmit identity information through E-Verify, where it is electronically checked against both Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. The system then either confirms to the employer that the worker is employment-authorized or it issues a “tentative nonconfirmation” (TNC) notice indicating that the databases cannot immediately confirm that the worker is employment-authorized. If the employer receives a TNC, the worker then has eight federal working days from the issuance of the TNC to contest the finding with SSA or DHS. If the worker does not contest the finding, the TNC becomes final and the employer must terminate the worker or risk being found in violation of immigration laws. For more information, see National Immigration Law Center, *The History of Basic Pilot/E-Verify* (Washington, DC: October 2008). For detailed instructions about how the program works, see Department of Homeland Security and Social Security Administration, *E-Verify User Manual for Employers*, March 2009.

<sup>25</sup> See Office of the Inspector General, Social Security Administration, Congressional Response Report: Accuracy of the Social Security Administration’s Numident File, A-08-06-26100, December 2006).

<sup>26</sup> See Westat, Findings of the Web-Based Basic Pilot Evaluation (Rockville, MD: September 2007).

<sup>27</sup> “The Facts on Employment Verification: Current Proposals are Unworkable for SSA, Threaten Progress in Reducing Disability Claims Backlog” (letter from Representative Michael R. McNulty and Charles B. Rangel to Democratic Colleagues, March 27, 2008).



## Partnerships with State and Local Police

In the last decade, DHS has expanded its partnerships with state and local law enforcement agencies. There are currently 14 federal/local law enforcement programs under the umbrella of ICE ACCESS (Agreements in Cooperation in Communities to Enhance Safety and Security).<sup>28</sup> The three largest and most well known programs are:

**287(g):** Under section 287(g) of the Immigration and Nationality Act (INA), DHS delegates authority to enforce immigration laws to state and local law enforcement agencies. The terms of these arrangements are spelled out in a Memorandum of Agreement (MOA).

**Secure Communities:** A program designed to identify immigrants in U.S. jails who are deportable under immigration law. Participating jails submit arrestees' fingerprints not only to criminal databases, but to immigration databases as well; allowing ICE access to information on individuals held in jails.

**Criminal Alien Program:** A program that screens inmates in jails, identifies deportable non-citizens, and places them into deportation proceedings.

These partnerships have led to large numbers of immigrants being identified for potential deportation, but it remains unclear whether the goal of prioritizing dangerous criminals is being met. These partnerships have also led to concerns about racial profiling, pretextual arrests, and civil rights violations by local law enforcement agencies. Unfortunately, ICE and its local partners have not collected sufficient data regarding implementation of these programs. DHS needs to commit to a wide range of data collection about its current enforcement strategies so that DHS and its stakeholders can better understand the cost-benefit analysis of their controversial tactics.

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<sup>28</sup> See ICE ACCESS website: <http://www.ice.gov/partners/dro/iceaccess.htm>.

## The Results of Enforcement

**Interior immigration enforcement measures affect U.S. families.** It is important to recognize that unauthorized immigrants live in “mixed-status” families and communities, meaning that U.S. citizens, legal immigrants, and unauthorized immigrants live in the same households and neighborhoods. Policies meant to target unauthorized immigrants also impact their family members, employers, and neighbors. A large number of the people affected are U.S.-citizen children. Nationwide, there are approximately four million U.S.-citizen children with at least one unauthorized-immigrant parent, and policies that target their parents have grave effects on the children. Worksite raids, door-to-door raids, and other policies that lead to the detention and deportation of unauthorized immigrants separate parents from children and husbands from wives. U.S.-citizen children are left in an untenable situation when one (or both) of their parents is deported.

- **The enforcement-only model undermined community safety.** Unauthorized immigrants are often reluctant to report crimes they have witnessed or been victims of because they fear they may be deported as a result of coming forward. When unauthorized immigrants and their family members are reluctant to cooperate with the police and report crimes, everyone in the community is less safe. The failure to come forward as witnesses and victims makes the work of the police much more difficult, and means that crimes against Americans go unsolved. Law enforcement officials themselves have stated time and time again that trust with immigrant communities is crucial to preventing and investigating crimes, and hence essential to maintaining safe communities.<sup>29</sup> That trust cannot be gained under the current system. In some communities, it is well known that local police are working with ICE to enforce federal immigration laws. Not only does this frighten the immigrant community and make them less willing to cooperate, but it takes resources away from crime fighting. In Maricopa County, Arizona, for example, Sheriff Joe Arpaio has diverted county resources away from investigating crimes and has spent them on immigration enforcement. As a result, response times to 911 calls have increased, arrest rates have dropped, and thousands of felony warrants have not been served.<sup>30</sup>
- **Enforcement results in mistakes and civil rights violations.** Immigration law-enforcement has led to mistakes, racial profiling, discrimination, and costly litigation. In programs like Secure Communities and the Criminal Alien Program, police may have an incentive, or at least the ability, to make arrests based on race or ethnicity, or to make pretextual arrests of persons they suspect to be in violation of immigration laws, in order to have them run through immigration databases once they are jailed.<sup>31</sup> Immigration law is extremely complex and subject to constant change, and documents used to prove immigration status are not uniform. Even with extensive training and experience, mistakes are very likely, and legal immigrants and U.S. citizens can be the victims of costly errors.<sup>32</sup>

<sup>29</sup> For example, see International Association of Chiefs of Police, *Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement* (Alexandria, VA: November 30, 2004), and Major Cities Chiefs Association, *Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Police Agencies*, June 2006.

<sup>30</sup> East Valley Tribune, “Reasonable Doubt,” July 9-10, 2008.

<sup>31</sup> See James C. McKinley, “Debate Intensifies over Deportations,” *New York Times*, July 25, 2009.

<sup>32</sup> For example, see Suzanne Gamboa, “Citizens Held as Illegal Immigrants,” *Associated Press*, April 12, 2009; “Native Was Threatened with Deportation,” *Associated Press*, September 1, 2007.

### *Achievable Solutions*

- **The federal government should be in charge of immigration enforcement.** The established doctrine of federal pre-emption of immigration enforcement must be followed. Before entering into any partnerships with state and local police agencies, DHS and Congress must assess the impact of that partnership on the local community, the impact on the immigrant population, the potential for racial profiling and civil-rights violations, and the impact on DHS's ability to fulfill its enforcement priorities. Further, meaningful oversight and adequate supervision of local law-enforcement agencies by DHS is necessary.
- **Enforce civil-rights laws and protections for noncitizens during all enforcement actions.** Provide civil-rights training for all immigration officials and local law-enforcement officers enforcing immigration law. Create independent oversight mechanisms to monitor and enforce the protection of civil rights, including prohibitions against racial and ethnic profiling.

## *VI. Restore Fairness, Due Process, and Humanity to Immigration Courts and Detention Centers*

For well over a decade but especially since 9/11, our country has undermined the established tradition of treating everyone fairly under the law. Overly aggressive enforcement practices have failed to make our nation any safer, created extreme hardship for many individuals and families, and diminished America's moral standing in the international community. At the same time, reactionary laws and policies against immigrants deny basic due process to millions of people who live in the U.S. In its zeal to penalize unauthorized immigrants, our government has turned a blind eye to the basic tenets of due process that underpin American society. The immigration court system suffers from chronic overload. Judicial review in immigration cases has been severely curtailed. An overall lack of independence and competence has greatly eroded public confidence in the system. The longer we allow harsh, inequitable, un-American treatment to prevail in our immigration system, the more difficult it will be to restore the system's integrity and legitimacy.

**Due Process Protections are Inadequate.** Inadequate due process protections in our current law and a failure by the federal government to guarantee due process protections during its ramped up enforcement efforts have led to the following crisis:

The Department of Homeland Security (DHS) has made immigration enforcement a top priority. It has increased its detention and removal operations without ensuring that due process and humane standards of treatment are guaranteed for all individuals impacted by these efforts.

Long-time residents are subject to deportation even when they have strong ties to the community, pay taxes, and desperately want to become full-fledged members of our society.

Judges often have no ability to weigh the individual circumstances of the case. Low-level immigration officials often act as judge and jury, and the federal courts have been denied the power to review most agency decisions.

The absence of due process has resulted in thousands of non-citizens being subject to unnecessary and often inhumane detention. The \$2 billion detention system is a behemoth network of several hundred federal, state and local prisons and privately contracted facilities that is not regulated by legally enforceable standards. Immigrants have died in detention due to poor medical care, and thousands are subject daily to substandard conditions or abusive treatment. Moreover, U.S. citizens, the mentally ill, children and other vulnerable individuals who should not be in ICE custody have been mistakenly detained.

### *Achievable Solutions*

- Congress should restore fairness and flexibility to our system by authorizing immigration judges and officials to exercise discretion in considering the individual circumstances of each case.
- Congress should ensure that detention conditions are humane and safe by enacting detention standards legally enforceable against any facility used to hold immigration detainees for short or long-term periods.
- Congress should establish criteria to ensure that detention is reserved for those individuals who are a flight risk or a risk to public safety.

### *Achievable Solutions* Continued

- DHS should make detention decisions on a case-by-case basis to eliminate unnecessary hardship. To ensure that detention is not used to separate American families needlessly, ICE should utilize cost-saving community-based alternatives to detention programs that require immigrants to show up for their court proceedings.
- ICE agents should respect due process and other Constitutional protections in all immigration enforcement activities.

## The Importance of Independence and Accountability In Our Immigration Courts

In 2002, the Attorney General promulgated regulations that stripped the Board of Immigration Appeals (BIA), the court of last resort for many immigrants fighting deportation, of its ability to serve as the watchdog for the lower courts. The net effect of the streamlining measures was to shift the immigration case backlog to the federal courts while raising serious concerns about due process and the adequacy of appellate review.<sup>33</sup> As a direct result of these regulations, the United States Courts of Appeals have experienced a massive surge in BIA appeals, with the largest spikes in the Second and Ninth Circuits. Thus, rather than eliminating the huge backlog of immigration cases before the Board, the streamlining measures merely shifted the backlog to another branch of government.

Not only has the failure to reform the courts resulted in a heavy burden for our appeals system, but the quality and fairness of decision-making by the immigration courts has been called into question. Highly respected Court of Appeals judges have issued opinions that excoriated the quality of justice meted out by immigration judges. The immigration courts have been criticized in the press for inconsistency in asylum adjudications. And the independence of the courts has been called into question after a recent scandal sparked by a DOJ Office of Inspector General report that found evidence of the politicization of immigration judge hiring policies.

**An Independent Court:** In furtherance of our country's historical and institutional commitment to protect due process, AILA supports the creation of an independent Executive Branch agency that would include the trial-level immigration courts and the BIA. Such an entity would best protect and advance America's core values of fairness and equality by safeguarding the independence and impartiality of the immigration court system.

Such a court would enhance administrative efficiency, increase accountability, and facilitate Congressional oversight of our immigration functions. Because the immigration courts handle more than 260,000 matters annually and employ 221 immigration judges in more than 52 locations across the country, administrative efficiency is a practical necessity. To achieve this efficiency, our immigration system needs to have one full-time, high-level person in charge of administering our immigration courts. Such authority would improve accountability by fully integrating policy making with policy implementation; ensure direct access to high-level officials within the executive branch; and attract top-flight managerial talent.

<sup>33</sup> The 2002 "streamlining" regulations reduced the number of members of the BIA from 23 to 11. Many viewed the reduction in BIA members as an expedient way to remove those believed to harbor pro-immigrant leanings. The Ashcroft streamlining also curtailed the use of three-member review panels, and encouraged the issuance of single-BIA-member decisions, called "affirmances without opinion" or "AWOs." In response to further criticism, in 2006, Attorney General Gonzales proposed additional reforms. His proposed reforms included an increase in the number of BIA members from 11 to 15, but many of the additional modifications he called for—including increased three-member BIA review of immigration court decisions and increased staff and training—have not been fully implemented, as evidenced in a September 2008 report by the Transactional Records Access Clearinghouse.

## *Achievable Solutions*

- **The Board of Immigration Appeals Must Maintain Its Important Role In Ensuring That Decisions Are Fair And Correct By Having Adequate Review Authority.** In the majority of immigration cases, the Board is the only avenue for appeal and an opportunity for a complete review of an immigration judge's decision that offers critical protections against mistake or malfeasance. Despite the important role that the Board plays in our immigration system, under the DOJ regulations, the BIA lacks the authority to review the facts and testimony of the underlying case in making its decision unless they are "clearly erroneous." The result is a cursory BIA review of matters that often rise or fall on the particular facts of a given case. Not only have the regulations failed miserably from a fairness perspective, they also have failed to achieve their stated purpose of improving efficiency. To ensure that decisions are fair and meet minimum standards of justice, the Board should have de novo review over an immigration judge's findings of law and mixed questions of law and fact and should review factual determinations on a substantial evidence standard.
- **The Three-Judge Deliberative Panel Must Be Reinstated.** The DOJ regulation broadly expanded the types of cases that receive a cursory review by a single Board member. This presupposed that the cases the BIA reviews are simple, straightforward, and unambiguous and warrant little time for serious deliberation. Nothing could be further from the truth. These cases often raise complex questions of statutory and regulatory interpretation and arise in a constantly evolving legal landscape. The regulation dramatically reversed long-standing BIA practice and threatens the due process rights of immigrants who find themselves at the mercy of the courts. The three-judge panel is the appropriate and effective means of ensuring adequate deliberation and the diverse interplay of legal opinions in cases that could ultimately involve life and death determinations.
- **The BIA Should Refrain From Issuing One- To Two-Sentence Summary Opinions In Most Cases.** The BIA must have the time and resources to fully explain the reasoning behind the decisions that it makes. Efficiency can and must be achieved without destroying the integrity of the process. The increase in one-line summary dismissals has precipitated a flight to the federal courts of appeals for those individuals fortunate enough to have legal representation. Affirmances without opinion should be used sparingly.
- **The Board Of Immigration Appeals Must Have A Sufficient Number Of Judges To Do Its Job Fairly And Efficiently.** To prevent future backlogs and to ensure thoughtful and thorough deliberation, the BIA must have enough judges to get the job done. The Board annually adjudicates about 30,000 cases. This massive case load, in conjunction with the critical functions performed by the Board, illustrates the need to increase, not reduce, the number of BIA judges. The counterintuitive reduction in BIA members from 23 to 15, in the context of reducing current backlogs and preventing future ones, is plainly bad policy. The number of judges should be increased to meet current demand.
- **The Immigration Courts Should Be Given Appropriate Resources.** Unquestionably, some of the immigration court's challenges stem from chronic underfunding, resulting in staff shortages, antiquated equipment, and insufficient training. For years, EOIR has not received adequate funding to meet its legitimate resource needs. In his FY 2010 budget President Obama requested and received a modest increase for EOIR and for FY2011 the President has also requested an increase that, if appropriated, would enable the hiring of about 21 new immigration judges. In the current economic times, these are steps forward but to address the fundamental problems in EOIR the President and Congress must provide far greater increases to the immigration court system".

## Alternatives to Detention

Skyrocketing growth in the U.S. immigration detention system has resulted in the prolonged detention of hundreds of thousands of individuals, including vulnerable populations such as survivors of torture, families with small children and those with serious illnesses. To ensure that detention is used only when necessary, the American Immigration Lawyers Association (AILA) supports the creation of community-based alternatives to detention programs that allow individuals, including vulnerable populations, to be released from detention with additional supervision and services.

Congress has appropriated funds to the Department of Homeland Security (DHS) to pursue alternatives to detention programs and the Department has initiated a number of new programs. However, DHS has created programs that focus primarily on populations who are already eligible for release and do not need additional services or supervision. Furthermore, the existing DHS programs have relied heavily on the most restrictive methods available to ensure program compliance including electronic monitoring and home visits. The unnecessary use of restrictive alternatives programs for people who are already eligible for release substantially reduces the cost-savings to the Department.

### *Achievable Solutions*

- **Limit use of electronic monitoring devices.** DHS currently restricts participation in alternatives programs to those individuals who have already demonstrated that they are not a flight risk or danger to the community. Despite this practice, the Department frequently imposes additional restrictive measures such as electronic devices to monitor participants. Electronic bracelets are a major intrusion on individual liberty and require confinement in a specific space such as a private dwelling for approximately 12 hours per day (while the device recharges). Moreover, DHS also conducts house visits, sometimes late at night, that frighten children and other family members many of whom feel compelled to move away from the home.

It is rarely necessary to impose such restrictive practices on individuals who are paroled from detention or released on their own recognizance or with a bond. Electronic monitoring and late night home visits should be reserved for individuals who DHS could not otherwise release from physical detention and, as a result, who require additional monitoring to ensure compliance.

- **Community-based models must be utilized.** DHS's current alternatives to detention programs have not yet taken advantage of community-based alternative programs run by non-governmental, state or local agencies that utilize less restrictive means to ensure program compliance. Community-based alternatives programs that provide case management services, legal orientation for participants and facilitate access to counsel have been shown to substantially increase program compliance without the extensive use of electronic monitoring. DHS should pursue community-based alternatives to detention program that ensure program compliance and will save taxpayer dollars.

Detention deprives individuals of their most fundamental right to liberty and for many immigrants and asylum-seekers, this extreme measure is unnecessary. The creation of robust alternatives to detention programs that focus on case management through partnerships with community organizations rather than the use of restrictive electronic monitoring should help to reduce the numbers of individuals in detention and ensure that individuals with strong ties to the community are not needlessly separated from their families.

## *VII. Support the Public's Will for Immigration Solutions*

Immigration is just one unsolved national crisis among many that the country is currently facing, yet opinion polls continue to report, by consistently strong majorities, that Americans support reforming immigration this year.

Americans of all political parties – Democrats, Republicans, and Independents—want to see our nation's problems solved, and this is a problem they want solved now. By a 3 to 1 margin, voters nationwide want to turn unauthorized immigrants into taxpaying American citizens. Americans place blame for our dysfunctional immigration system on partisan bickering. And they are right.

In 2009 as in previous years, voters stated that they want the President and Congress to advance a solution that legalizes the undocumented workforce, requires them to pay taxes, levels the playing field for workers and employers, and restores the rule of law, in fact *\*Sixty-Five Percent of Respondents Supported Congressional Action on Comprehensive Immigration Reform in 2010.*

*\*According to a 2009 December poll, 65% of voters prefer for Congress to take up the immigration issue this year rather than wait until later. Sixty-six percent of respondents supported comprehensive immigration reform before even hearing details of the plan. Support for reform continued to cut across party lines, with 69% of Democrats, 67% of independents, and 62% of Republicans supporting comprehensive reform. When given details, support for comprehensive reform climbed. Requiring unauthorized immigrants to register with the government and meet certain conditions: including working, paying taxes and learning English in order to apply for citizenship, was supported by 87% in December. These findings show continued support for reform following similar polls in November 2008 and May 2009, even during the country's harshest economic crisis in decades [America's Voice, Benenson Strategy Group Poll, December 2009]*

This was also true in the run-up to the 2008 elections, when swing voters chose candidates who offered practical solutions to the broken immigration system over those who offered just empty rhetoric ... so might it be possible to imagine Congress uniting around them, too?

As it stands today, our broken immigration system undermines core national interests and must be reformed. The public demands it. Our security requires it. Global competitiveness and economic reality compel it. Our identity as a nation of immigrants and a nation of laws depends on it. To allow the status quo to continue is only to make things worse for the country.

American workers and businesses continue to be undercut by the underground economy. The economic potential of some of the country's most industrious workers is thwarted. While unauthorized immigrants work off the books they live in constant fear of apprehension, earn less, spend less, pay less in taxes and have little ability to report abuses or to improve their skills or job prospects. The ingredients of reform are clear: legalization for the 10–11 million to end the fear and hopelessness of life in the shadows; sensible enforcement at the border that focuses resources on fighting crime, drugs and violence; a strengthened employment system that punishes businesses that exploit illegal labor; and a future flow of workers that is attuned to the economy's needs and fully protects workers' rights.



America has suffered because of inaction and until Congress deals responsibly with immigration—making taxpayers out of all immigrants, making all employers follow sensible rules, and creating a functioning legal immigration system—everything else on the President’s domestic agenda is vulnerable to being dragged down. *\*A Majority of Voters Said the Issue Was Crucial Due to the Poor Economy and Preferred that Unauthorized Immigrants Become Legal Taxpayers over a Deportation Approach.*

*\*The sense of urgency has been bolstered by the poor economy. Fifty-five percent of respondents said that the poor economy makes it more crucial that Congress address immigration reform, as opposed to the 42% who believed it was not the right time. An overwhelming margin of voters, 67% to 28%, prefer that unauthorized immigrants take steps to become legal taxpayers over an option to deport them because they are “taking jobs.” [America’s Voice, Benenson Strategy Group Poll, December 2009]*

The Obama Administration continues saying that it will keep its promise to fix the broken system and it will take courage to defend the wisdom and necessity of fixing the immigration system. It will take even more courage to engage in the serious fight to do so. It is what the country needs and what American voters elected Mr. Obama to do. *\*Sixty-Six Percent Support Requiring Unauthorized Immigrants to Register and Work Towards Citizenship.*

*\*When given details about what is included in comprehensive immigration reform, including access to citizenship for unauthorized immigrants who register and meet state criteria, support remains strong and consistent. Roughly the same percentage of voters in May and December 2009, 66%, support a program that requires unauthorized immigrants to register, meet certain requirements, and become legal taxpayers on their way to becoming full U.S. citizens. Only 22% of voters believed that those immigrants should be required to leave and 11% believe that they should be allowed to stay temporarily. [America’s Voice, Benenson Strategy Group Polls, December and May 2009]*

Americans come to the immigration debate from many perspectives: as employers and workers who understand that immigration allows their businesses to thrive; as individuals who believe in core American values of family unification, civil rights and due process; as national security experts who know that comprehensive reform is crucial to securing our borders; and as members of religious institutions who believe in the humane treatment of all individuals. Despite different perspectives, the majority of Americans come together in support of a comprehensive solution that provides earned legalization, enhanced legal immigration channels, family reunification, and effective enforcement. A unified American public demands a fair and realistic solution to our broken immigration system, and they expect Congress and the President to deliver on their promise of comprehensive immigration reform.

Additional polling data and analysis is available on the AILA website at [www.aila.org/solutions](http://www.aila.org/solutions).

## *Additional Reading*

The following materials are available at:

[www.aila.org/solutions](http://www.aila.org/solutions)

### **AILA's Immigration 101**

Overview of Immigration Laws  
Body of Laws Governing Immigration  
Common Abbreviations  
Nonimmigrant and Immigrant Categories  
Visa Bulletin September 2009  
Types of Immigration Court Proceedings and  
Removal Hearing Process  
Forms of Relief from Removal

Key Definitions and Concepts  
Updated by Richard A. Boswell

### **Economic Analysis**

*Immigration and Wages—Methodological advancements confirm modest gains for native workers*  
Economic Policy Institute, February 2010

*Immigration Reform and Job Growth*  
Immigration Policy Center, a division of the  
American Immigration Council, February 2010

*Raising the Floor for American Workers: The Economic Benefits of Comprehensive Immigration Reform*  
UCLA's Dr. Raúl Hinojosa-Ojeda, January 2010

*Economic Progress via Legalization*  
Immigration Policy Center, a division of the  
American Immigration Council, November 2009

*Prosperous Immigrants, Prosperous Americans: How to Welcome the World's Best Educated, Boost Economic Growth, and Create Jobs*  
Marshall Fitz, December 2009

*America's Loss is the World's Gain: America's New Immigrant Entrepreneurs, Part IV*  
Vivek Wadhwa, March 2009

*An Essential Resource: An Analysis of the Economic Impact of Undocumented Workers on Business Activity in the US with Estimated Effects by State and by Industry*  
Prepared by the Perryman Group, April 2008

### **Enforcement**

*Facing Our Future: Children in the Aftermath of Immigration Enforcement*  
Urban Institute, February 2010

*Immigration Enforcement in the United States*  
Migration Policy Institute, November 2009

*Southwest Border Security Operations*  
National Immigration Forum, July 2009

### **Due Process**

*Reforming our Immigration Detention System and Promoting Access to Counsel*  
The Constitution Project, December 2009

*Jailed Without Justice: Immigration Detention in the USA*  
Amnesty International, March 2009

### **Polling Data**

*Immigration Reform: National Polling*  
Prepared by Benenson Strategy Group for America's Voice,  
January 2010

*Polls Show Most Americans Support Comprehensive Immigration Reform*  
Prepared by America's Voice, January, 2010

*Change and Continuity: Public Opinion on Immigration Reform*  
National Immigration Forum, May 2009