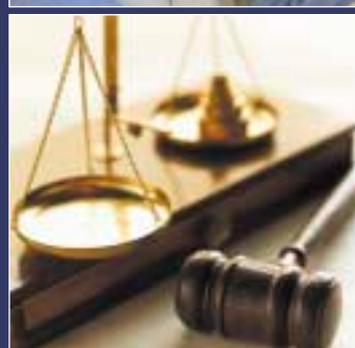
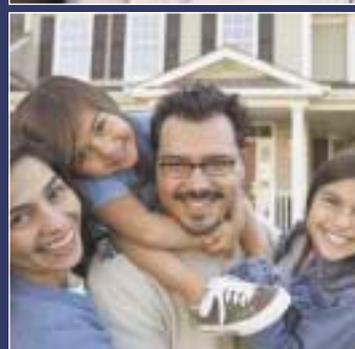
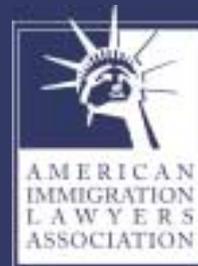


Making the Case for Comprehensive Immigration Reform

**RESOURCE
GUIDE**

American Immigration Lawyers Association



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PREFACE

This Resource Guide was developed by the American Immigration Lawyers Association (AILA) to foster a greater understanding of the interdependent architectural components necessary to support a realistic and comprehensive overhaul of our immigration system. AILA believes that for lasting and meaningful reform to take hold, these various components must be addressed in a single, indivisible legislative package. 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 believes that a unique confluence of political circumstances has presented Congress with an historic opportunity to pass legislation that remedies the manifold problems plaguing the current system. This Guide provides extensive analysis of those problems and proposes a series of systemic changes to conform our immigration policies to 21st century realities. Moreover, included at the end of each section is a listing of additional national and local resources and contacts in the event that more information is desired.

The Guide is designed to be accessible to everyone with an interest in the overall comprehensive immigration reform debate or in specific components thereof. In particular, we hope that members of Congress and the media will profit from having a centralized collection of resources and materials to guide them as the debate moves forward.

AILA’s national staff would appreciate the opportunity to provide further information or analysis and stands ready to assist in any constructive way. Please do not hesitate to contact any of the following members of our Advocacy Department with questions about the Resource Guide or comprehensive immigration reform: Marshall Fitz, Director (mfitz@aila.org); Bob Sakaniwa, Associate Director, Business (bsakaniwa@aila.org); Donna Lipinski, Associate Director, Family/Due Process (dlipinski@aila.org); Rizwan Hassan, Advocacy Associate, Business (rhassan@aila.org); Jenny Levy, Grassroots Manager (jlevy@aila.org); or Laura Trice, Advocacy Coordinator (ltrice@aila.org).



Jeanne C. Butterfield
Executive Director of AILA

The American Immigration Lawyers Association (AILA) is the national association of over 10,000 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.

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I. INTRODUCTION: COMPREHENSIVE IMMIGRATION REFORM

Introduction

The need for immigration reform is no longer in question: our immigration system is broken, and the American people have called upon Congress to fix it. The question now is not if, but how.

First and foremost, AILA believes that any long-term solution to our nation's immigration problems must begin with a comprehensive approach to reform that addresses all aspects of our immigration system. Piecemeal reforms have been tried, and they have failed. Our government has pursued a tough enforcement-focused strategy for the past ten years, and the flow of undocumented immigrants has only increased. The evidence speaks for itself. Virtually everyone—from national security experts and chambers of commerce to religious leaders and labor unions—who has studied our immigration system agrees: an enforcement-only approach simply will not work, and the only viable path to a lasting and meaningful solution is holistic, comprehensive reform.

Specifically, any effective reform program must: 1) encourage the undocumented population to come out of the shadows and earn legal status; 2) provide fair and lawful ways for American businesses to hire much-needed immigrant workers; 3) reduce the unreasonable and counterproductive backlogs in family-based and employment-based immigration by reforming the permanent immigration system; and 4) protect our national security and the rule of law while preserving and restoring fundamental principles of due process and equal protection.

This Resource Guide is intended to answer the how and the why of immigration reform. In the pages that follow, we offer a collection of position papers, background information, research and analysis produced by AILA and other experts in the fields of immigration, national security, and related issues. The Guide is structured to reflect the four key components, outlined above, that are essential to any lasting and effective reform program. Although each chapter addresses a single aspect of the overall reform, these components are inseparable and ultimately must be addressed together as part of a unified plan for comprehensive reform.

This Resource Guide includes the following chapters:

I. Introduction: Comprehensive Immigration Reform. Chapter I provides a general introduction to comprehensive immigration reform, dispels widespread myths about the consequences of such reform, and provides background information on the importance of immigration for our national economy.

II. Addressing the Situation of Undocumented Immigrants Already in the United States. Chapter II provides background information on the current undocumented 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.”

III. Enhancing Channels for Legal Workers. Chapter III addresses the need to create effective visa programs that allow foreign workers to fill jobs in industries plagued by severe shortages of American workers. The “Essential Workers” subsection of this chapter focuses on the critical work immigrants perform in lesser-skilled occupations such as agricultural and hospitality, while the “High-Skilled” subsection focuses on the need for innovative foreign professionals in high-tech occupations and other specialized fields.

IV. Reforming the Permanent Immigration System. Chapter IV discusses the need to restore our commitment to family reunification and ensure the continued growth and vitality of our economy by alleviating the family-based and employment-based visa backlogs and reforming our visa preference systems.

V. Smart Enforcement that Respects Due Process. The first section of Chapter V discusses our government's current enforcement strategy and provides analysis by national security experts explaining why enforcement alone will not solve our immigration problems. The second section focuses on the need to couple smart enforcement strategies with laws that restore and protect due process and equal protection for immigrants.

VI. Public Support for Comprehensive Immigration Reform. Chapter VI provides polling and election analysis that underscores the broad-based support for comprehensive reform among the American people. Additional information on public support, including a compilation of sign-on letters and statements in support of comprehensive immigration reform, can be found at www.aila.org/resourceguide.

We hope that this Resource Guide will be of benefit to the participants in and observers of the forthcoming debate over comprehensive immigration reform.

Comprehensive Immigration Reform

The Issue: Our current immigration system is broken and needs to be reformed. Immigration laws that are out of sync with 21st century economic realities and demographics have given rise to a vast underground economy characterized by criminal smugglers, fake documents, and millions of undocumented immigrants who are vulnerable to exploitation. Our borders are unmanageable, and we are unable to focus our enforcement resources on those who mean us harm. Moreover, our immigration system is plagued by backlogs and delays; as a result, some close family members are separated for more than 20 years.

AILA's Position: Since many of the problems with our current immigration system are interrelated, AILA believes that any workable immigration reform proposal must be comprehensive. Specifically, it must simultaneously create legal avenues for people to enter the U.S.; allow people already here to earn the opportunity to adjust their status; address the multi-year backlogs in family and employment-based immigration; and create and implement a smart border security and enforcement regime that respects core principles of due process. Thus, any workable proposal to reform our immigration system must:

1. *Enhance Channels for Legal Workers:* Current immigration laws do not meet the needs of our economy or workers. In the current regime, there is no visa category authorizing essential workers in low- or semi-skilled occupations to work in the U.S., except on a seasonal basis. That seasonal, employment-based visa—the H-2B program—is wholly inadequate to meet labor needs in a broad range of industries, from landscaping to hospitality to health care. A “break-the-mold” program would 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.

Comprehensive reform also must expand legal channels for temporary workers in high-skilled professions. Despite overwhelming evidence of the number of high-tech workers that American businesses require, and the shortage of U.S. workers available to fill these positions, Congress has maintained arbitrarily low caps on the number of visas available for high-skilled foreign workers. An expanded H-1B visa program would allow American businesses to hire the workers they need and enable the U.S. to maintain its competitive edge in the global economy.

2. *Address the Situation of People Living and Working Here:* Most undocumented workers are law-abiding, hardworking individuals who pay their taxes and contribute to our society. They are essential to many sectors of our economy. By allowing these people an opportunity to come out of the shadows, register with the government, pay a hefty 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.
3. *Reform the Family-Based and Employment-Based Permanent-Residency Preference Systems:* U.S. citizens and legal permanent residents are regularly 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. Relatedly, backlogs for employment-based immigrant visas have expanded dramatically for workers with certain 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 this global economy. Any workable comprehensive immigration reform proposal must eliminate our family-based and employment-based immigrant visa backlogs and reform our preference systems to catch up to 21st century realities.

4. *Restore the Rule of Law and Enhance Security*: By encouraging those who are already here to come out of the shadows, and by creating legal channels to provide for the future flow of workers, we can restore the rule of law in our workplaces and communities and focus our enforcement resources on those who mean us harm. We need 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.

Recent Legislation: Both the House and Senate passed significant immigration bills in the 109th Congress, but only the Senate bill embraced a realistic, comprehensive approach to solving the problems that plague our system. The House bill (H.R. 4437), sponsored by Representatives King (R-NY) and Sensenbrenner (R-WI), focused solely on ratcheting up interior and border enforcement capacities, increasing penalties for violations of immigration law, and limiting the legal rights of noncitizens in this country.

By contrast, the Comprehensive Immigration Reform Act of 2006 (S. 2611) passed by the Senate addressed each of the critical components for reform: new legal channels for future worker flows, a path to legal status for the current undocumented population, family- and employment-based immigrant visa backlog reduction, and border security. Although the bill included some flawed provisions that must be addressed in future legislation, by embracing the comprehensive architecture that advocates have sought for years, it marked a significant step forward in the immigration reform debate. On the positive side of the ledger, S. 2611 included the following essential provisions that must be a part of any comprehensive legislation:

- ★ The full AgJobs bill, providing a path to permanent status for 1.5 million seasonal agricultural workers and reforms to the H-2A program;
- ★ The DREAM Act, providing a path to permanent legal status for hundreds of thousands of eligible undocumented high school graduates;
- ★ A new “break-the-mold” temporary worker program for 200,000 new temporary workers per year with significant labor protections including portability, a path to permanent residence, and the ability to self-petition;
- ★ A path to legalization for at least 9 million currently undocumented workers and their families;
- ★ A significant increase in family-based and employment-based immigrant visa numbers;
- ★ Significant reforms to the high-skilled immigration programs; and
- ★ Reversal of the BIA streamlining rules.

Noting some of the items on the negative side of the ledger, S. 2611 also included provisions that must be remedied in future legislation to ensure a workable and humane immigration system:

- ★ Expansion of the mandatory detention regime;
- ★ Expansion of the aggravated felony definition;
- ★ Restrictions on the voluntary departure program;
- ★ Restrictions on naturalization;
- ★ Limitations on Temporary Protected Status; and
- ★ The unworkable 3-tiered legalization architecture.

During the 110th Congress, AILA will continue to work with members of the House and Senate to develop and pass a bill that includes the essential components of comprehensive reform and improves upon prior legislation to create an immigration system that is both workable and humane.

Top 10 Falsehoods Regarding Comprehensive Immigration Reform

Falsehood #1: By enforcing the laws already on the books we can fix our broken immigration system.

- ★ **The truth:** No. Virtually every senior security official to look at this problem (including DHS Secretary Chertoff and former DHS Secretary Ridge) concurs that we cannot simply “enforce our way out of this problem.” Our failed enforcement policies offer glaring evidence that more enforcement is an empty promise, not an effective solution. During the past decade, we tripled the number of agents on the border, quintupled their budget, toughened our enforcement strategies, and heavily fortified urban entry points. Yet, during the same time period there have been record levels of illegal immigration, porous borders, a cottage industry created for smugglers and document forgers, and tragic deaths in our deserts.

Effective enforcement policies are critical to restoring integrity and legitimacy to a system that currently lacks both, but our current laws are so divorced from this country’s economic and social realities that to think we will be able to restore order and legality without reform of those laws is naïve. The apt enforcement analogy is to consider what would happen if we lowered the speed limit on our highways to 25 mph. We would create a nation of lawbreakers and an impossible enforcement challenge for our highway patrols.

Enforcement will work only when our laws reflect the economic and social realities of 21st century America. By establishing legal migration channels, we can reduce the enforcement targets so that we focus our resources on those who mean to do us harm, not on those who are filling our labor market needs or reuniting with their close family members. Our current immigration policy exhibits the same fundamental flaws we saw with laws enacted during Prohibition. It’s not realistic, it doesn’t reflect our needs, and it makes good, law-abiding individuals into lawbreakers. In short, it’s bad policy.

Comprehensive immigration reform is needed to make legality the norm and restore legitimacy to the law. This will help us to differentiate between the law-abiders and the law-breakers and will allow for a more efficient allocation of enforcement resources.

Falsehood #2: Comprehensive immigration reform will lead to more illegal immigration.

- ★ **The truth:** Security experts agree that one of the principal failures of the 1986 legalization program – the Immigration Reform and Control Act (IRCA) - was the failure to address prospective migration flows. The goal of “comprehensive” immigration reform is to deal realistically and simultaneously with both the symptoms of our failing system (the current undocumented population) and the root causes (lack of legal channels). As envisioned, comprehensive reform would replace the current illegal flow with a legal flow. Programs that would match willing essential workers with willing employers, reduce the backlogs on family immigration, and offer people the opportunity to earn their permanent legal status would eliminate the strong incentives to skirt our immigration laws. Such programs would create a safe, legal, and orderly avenue for those who seek employment in the U.S as well as those who seek to reunify with family members. With these alternatives in place, immigrants would eschew dangerous border crossings in favor of a safe, controlled visa process. And because comprehensive reform proposals mandate that people must be residing in this country by the date of their introduction to be eligible, these measures would not function as a magnet for future undocumented immigration.

Comprehensive reform would also end the incentive to hire undocumented workers. Employers who still resort to using illegal workers could be targeted with tough new penalties. Under an enhanced temporary worker program, employers would be able to verify electronically that a foreign worker is authorized to work. Any employer who participates in the program would be required to use this system, with stiff fines levied on employers who knowingly violate immigration or labor laws. This verification system also would include safeguards to ensure that employers do not discriminate against job applicants, and would allow workers to verify personal information and appeal to the government to address any inaccuracies in the system.

Moreover, comprehensive immigration reform would continue to focus resources at our borders, providing for better technology and a process by which the Department of Homeland Security (DHS) can monitor and address changing border enforcement needs. Recent comprehensive reform proposals have specifically targeted efforts to combat human smuggling and increased coordination and information sharing among officials responsible for border control.

Falsehood #3: Comprehensive immigration reform is really an “amnesty” for illegal immigrants.

- ★ **The truth:** Comprehensive immigration reform is nothing of the sort. Opponents of immigration reform assign the emotionally charged label of “amnesty” to all practical proposals because they have no proposal of their own other than the tried and failed approach of more enforcement of our dysfunctional system. In fact, the recent Comprehensive Immigration Reform Act of 2006 (S. 2611) is far from an amnesty. Rather, such legislation creates a more orderly system of rules and penalties to replace the current chaotic system. Under comprehensive measures like S. 2611, immigrants must register, get to the back of the line, pay significant fines and back taxes, work prospectively, learn English, and follow the rules or they will be sent home.

Comprehensive immigration reform recognizes that most Americans believe it is unrealistic to deport the twelve million undocumented immigrants living and working in our country – and that we must act in the national interest to deal with this underground community. The undocumented would be required to *earn* the privilege of legal status before they can apply for a permanent visa. Only those who pass rigorous background and security screening and prove they are learning English would be eligible to apply.

Falsehood #4: Legalizing the undocumented is unfair to those who are patiently waiting in line.

- ★ **The truth:** No. The earned legalization proposals do not allow anyone to “cut in line.” In fact, it will help those waiting in line because a central component of comprehensive reform is reduction of the family backlogs to allow families to reunify in a timely manner. One symptom of our current failed policies is that families can be separated for many years. Immigrants without papers already living in the United States will go to the back of the line. After first registering for temporary admission they must work for a number of years before they can earn the opportunity to permanently adjust their status.

Falsehood #5: Comprehensive immigration reform will take jobs away from American workers.

- ★ **The truth:** No. All of the proposals under consideration require employers to demonstrate that they were unable to fill the position opening with a qualified U.S. worker. The proposals simply allow immigrant workers to fill jobs that are currently going unfilled because the large majority of Americans are over-qualified and are unwilling to take these jobs. While 31 percent of foreign-born workers age 25 and over held a bachelor’s degree or more in 2005, many less educated immigrants come to the U.S. because there is a high demand for such workers in important lower-skilled sectors of our economy.

According to the Bureau of Labor Statistics, among the 20 occupations expected to experience the largest job growth during the 2004-2014 period, 10 will require only short-term on-the-job training (not a high school or college education): salespersons, food preparation and serving workers, cashiers, janitors, waiters and waitresses, nursing aides, receptionists, security guards, office clerks, teacher assistants, home health aides, personal and home care aides, truck drivers, and groundskeepers. Overall, 45 percent of total job openings in the 2004-2014 period are expected to be filled by workers who have a high school diploma or less education. Given that native-born workers are more likely than immigrants to have a high school diploma, vocational training, or several years of college – and that the native-born population is rapidly growing older as the baby boomers reach retirement age and birthrates decline – less-skilled immigrants are needed to fill these positions.

It also is important to note that there is no correlation between increased immigration and the displacement of U.S. workers. In fact, immigration augments the U.S. labor force and creates new jobs. As a 2005 study from the Immigration Policy Center explains, “immigrant workers serve as a valuable complement to the growing proportion of the native-born workforce that is not well matched by age or education with many of the less-skilled jobs that the U.S. economy generates. Moreover, the immigrant workers who fill these jobs further increase the demand for labor through their consumer purchases, investments, and tax payments, all of which create additional new jobs.”¹ Rather than cost American workers their jobs, immigration and comprehensive immigration reform, will help create jobs.

Falsehood #6: Comprehensive immigration reform will lead to wage depression for U.S. workers.

- ★ **The truth:** By creating legal channels for foreign workers, comprehensive immigration reform will buoy the wages and working conditions of U.S. workers. Currently, some undocumented workers are forced to accept submarket wages and working conditions because their status makes them vulnerable and unable to protect themselves against unscrupulous employers. By according them legal status, comprehensive reform will put them on the same footing with employers as native-born workers.

In addition, by creating a legal guest worker program with tough enforcement provisions, comprehensive reform will help to reduce unfair competition, as temporary workers and newly legalized immigrants enjoy the same freedoms and protections as do native-born workers.

Studies also have shown that those lesser-skilled U.S. citizen workers who compete most closely with lesser skilled immigrant workers experience very little downward pressure on their wages, while the vast majority of native workers actually experience wage gains. In a 2006 study, economist Giovanni Peri found that, “during the 1990-2004 period, the 90 percent of native-born workers with at least a high-school diploma experienced wage gains from immigration that ranged from 0.7 percent to 3.4 percent depending on education. Native-born workers without a high-school diploma lost only 1.1 percent of their real yearly wages due to immigration.” Recent history drives this point home. As Peri points out, “the average yearly wages of native-born workers rose by 12.5 percent in 1990-2004 even though immigration increased the size of the labor force by almost 12 percent.”²

Falsehood #7: We tried something like this proposal before, in 1986. We shouldn’t go down this path again.

- ★ **The truth:** Recent comprehensive immigration reform proposals differ dramatically from what we tried in 1986. The 1986 Immigration Reform and Control Act (IRCA) focused only on symptoms, the undocumented population, not the cause: an immigration system that did not reflect the needs of U.S. businesses and families. IRCA did not create any legal channels for future workers or family members while creating an enforcement regime that was bound to fail. The effectiveness of enforcement policies is directly linked to the rationality of the underlying rules.

Comprehensive immigration reform addresses both the symptoms and the cause, combining legal future channels with tough enforcement and border provisions, along with a path to permanent legal status for those already here and working.

¹ Immigration Policy Center, *Economic Growth and Immigration: Bridging the Demographic Divide*. Washington, DC: American Immigration Law Foundation, November 2005, p. 15.

² Giovanni Peri, *Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004*. Washington, DC: Immigration Policy Center, American Immigration Law Foundation, October 2006, p. 2, 5.

Falsehood #8: Terrorists could use the expanded visa programs under comprehensive immigration reform to enter the U.S.

- ★ **The truth:** Individuals granted visas under this comprehensive reform proposal would face stringent security checks. Their identities, photos, and fingerprints will be checked against terrorist watch lists and criminal databases. From a security perspective, this is a vastly superior alternative to our current system, which has spawned a robust human smuggling trade that could actually open avenues for terrorists to exploit. Moreover, our failed policies have forced large numbers of people into a shadow culture, with some having to rely on fraudulent documents for their survival. That reality, in turn, has fueled a burgeoning black market in fraudulent documents.

Comprehensive immigration reform will help shut down the human smuggling and fraud industries that have flourished in an environment where the absence of legal migration avenues has been overwhelmed by the push and pull of economic opportunity. By funneling workers who seek to fill gaps in our labor market into legal and secure channels, the market for these nefarious industries will shrink, thereby denying terrorists access to resources they need to maneuver freely. Of course, the earned legalization component of comprehensive reform would create strong incentives for those already here to come forward to be reviewed by our government. Bringing this shadow population out of the shadows is a security imperative.

The truth of the matter is that finding terrorists is like finding a needle in a haystack. A smart comprehensive immigration reform plan that separates hardworking individuals from those who mean to do us harm will help shrink that haystack and make America safer.

Falsehood #9: Americans don't support this kind of reform.

- ★ **The truth:** Recent surveys of registered likely voters found that there is overwhelming and intense support for comprehensive reform that includes the following components:
 - ★ Provides resources to greatly enhance border security;
 - ★ Imposes much tougher penalties on employers who hire illegal workers;
 - ★ Allows additional foreign workers to come to the U.S. to work for a temporary period;
 - ★ Creates a system in which current undocumented immigrants could come forward and register, pay a fine, and receive a temporary work permit;
 - ★ Provides these temporary workers with a multi-year path to earned citizenship, if they get to the end of the line and meet certain requirements like living crime-free, learning English, and paying taxes.

Support for these provisions is solid across party lines: 73 percent of Republicans, 67 percent of Independents, and 70 percent of Democrats favor passage of such measures.

Moreover, 75 percent of registered likely voters expect Congress to deal with immigration reform, including creating a guest worker program and creating an earned legalization program for current undocumented immigrants, during 2007.

Falsehood #10: Immigrants are a drain on our economy.

- ★ **The truth:** On the contrary, our economy is “highly dependent on immigration, legal and illegal, temporary and permanent,” according to a 2004 report issued by the Chicago Council of Foreign Relations. Another 2004 report notes that “the challenge facing the American workforce in the coming 20 years” is that “we will not have enough people to fill it.”

A comprehensive 1997 report issued by the National Academy of Sciences reinforces the positive impact of immigration on our economy. This study concluded that immigrants benefit the U.S. economy overall, have little negative effect on the income and job opportunities of most native-born Americans, and annually may add as much as \$10 billion to the economy. As a result, the report concluded, most Americans enjoy a healthier economy because of the increased supply of labor and lower prices resulting from immigration.

Additionally, in a poll of eminent economists conducted by the CATO Institute in the mid-1980s and updated in 1990, 81 percent of the respondents opined that, on balance, twentieth-century immigration has had a “very favorable” effect on U.S. economic growth. The Cato Institute also concluded in a 1997 study that immigrant households paid an estimated \$133 billion in direct taxes to federal, state, and local governments. In 2006, over 500 economists and social scientists confirmed these findings in an open letter to President Bush and members of Congress that stressed the net economic benefit of immigration and stated that immigrants benefit American workers by lowering consumer prices and contributing skills, capital, and entrepreneurship to the American economy. The message from those who are charged with crunching the numbers is simple: immigration is good for our economy.

Immigration Policy Center
American Immigration Law Foundation
Immigration Policy in Focus, Volume 4, Issue 3, May 2005

The Economics of Necessity: Economic Report of the President Underscores the Importance of Immigration

by *Walter A. Ewing, Ph.D.*

Executive Summary

Although immigration is crucial to the growth of the U.S. labor force and yields a net fiscal benefit to the U.S. economy, current immigration policies fail to respond to actual labor demand.

Among the findings of this report:

- ★ Nearly a quarter of the U.S. population is either foreign-born or the child of someone who is foreign-born.
- ★ In 2004, 14.9 percent of the labor force was foreign-born, amounting to 21.8 million workers. Between 1996 and 2003, the foreign-born accounted for 58 percent of the 11 million new workers in the United States.
- ★ In 2003 foreign-born workers comprised 41 percent of the labor force in “farming, fishing, and forestry”; 33 percent in “building and grounds cleaning and maintenance”; 22 percent in “food preparation and serving”; 22 percent in “construction and extraction”; 19 percent in “computer and mathematical occupations”; and 17 percent in “life, physical, and social sciences.”
- ★ In the 1996-2002 period, the immigrant share of employment growth amounted to 86 percent of the 1 million new positions in “precision production, craft, and repair” (which includes mechanics and construction workers) and 62 percent of the 2 million new positions in service occupations (such as janitors, kitchen workers, and grounds workers).
- ★ The fertility rate in the United States is projected to fall below “replacement” level by 2015-2020, declining 1.91 children per woman.
- ★ During the 2002-2012 period, the number of workers age 55 and over will likely increase 49.3 percent, compared to only 5.1 percent among those 25-54 and 9 percent among those 16-24.
- ★ During the 2002-2012 period, the number of jobs will likely increase by 23.3 percent in “professional and related occupations” and 20.1 percent in “service occupations.”
- ★ An increase of 10 percent in the foreign-born share of the workforce lowers wages for natives less than 1 percent.
- ★ Over the next 50 years, legal immigrants will add \$407 billion to the Social Security system.
- ★ As of January 2005 there were 271,000 applications for employment-based green cards pending (including a backlog of 191,000 at the Department of Homeland Security) and the Department of Labor had a backlog of 300,000 applications for labor certification.

Although little noticed by the press, the 2005 *Economic Report of the President* – which was submitted to Congress on February 17, 2005 – prominently highlights the critical importance of immigration to the U.S. economy. The fact that the report devotes an entire chapter to the topic of immigration underscores both the extent to which immigration has become a driving force in the economy and the degree to which immigration policy affects the nation’s economic prospects. The data compiled in the report, as well as a wide array of data from other sources, illustrate that immigration has become the key to growth of the U.S. labor force and that immigrants provide a net fiscal benefit to the U.S. economy. However, current immigration policies fail to account for either of these facts and set limits on immigration that fall well below actual labor demand. The President’s report recognizes that the outdated U.S. immigration system is in need of reform and proposes a new temporary worker program. But truly comprehensive immigration reform will also entail creating a pathway to legal status for most of the undocumented immigrants already in the United States and expanding the avenues for permanent immigration, as well as crafting tougher wage and labor laws for all workers.

“The Economics of Necessity: *Economic Report of the President* Underscores the Importance of Immigration” is available in its entirety at <http://www.aifl.org/ipc/economicsofnecessity.asp>.

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Immigration Policy Center
American Immigration Law Foundation
Special Report, November 2005

Economic Growth & Immigration: Bridging the Demographic Divide

Report Summary

The U.S. economy faces a demographic challenge to its future economic growth. Among the native-born population, fertility rates are falling, workers are growing older and better educated, and labor force participation rates are flattening. However, the economy continues to create a large number of less-skilled jobs that favor younger and less-educated workers. These divergent trends present an obstacle to continued labor force growth, which is an essential component of economic growth in general. Barring unlikely increases in productivity growth rates, expansion of the workforce is crucial to sustained growth in the labor-intensive industries that generate the greatest number of less-skilled jobs.

Immigration fills this gap between native labor supply and domestic labor demand, especially in less-skilled occupations for which relatively few native-born workers are available. Immigrants are more likely than the native-born to be younger, to have only a high-school education or less, and to participate in the labor force. As a result, they comprise a disproportionate share of workers in less-skilled jobs and, according to federal employment and workforce projections, will continue to do so over the coming decade. Thus immigration has become an engine of labor force growth and, hence, economic growth in many industries and the U.S. economy as a whole.

Despite the critical role played by foreign-born workers in many less-skilled job categories, the current immigration system offers very few visas that are designed or available for these workers. Nearly all of the visa “preference” categories that do exist for workers in less-skilled jobs are subject to numerical caps that fall far short of meeting the labor demands of the U.S. economy. The result is that a large number of prospective employment-based immigrants are crowded into a small number of highly limited visa categories, or are forced to pursue immigration opportunities through an already overburdened family-based system.

Labor Force Growth is Critical to Economic Growth

The Bureau of Labor Statistics (BLS) assumes that the U.S. Gross Domestic Product (GDP) will increase by 3 percent a year between 2002 and 2012. The rising economic output necessary to sustain this level of GDP growth can come from increases in 1) productivity growth, 2) labor force participation or 3) labor force growth. In light of the current flattening or decline of labor force participation rates and productivity growth rates, labor force growth will play a particularly critical role in maintaining GDP growth.

- ★ *Productivity Growth Rates:* The United States has been experiencing a productivity boom, with output per hour worked growing at 3.7 percent a year between 2001 and 2004. High immigration, especially of unskilled workers, usually is not associated with periods of high productivity growth. However, the late 1990s demonstrate that it is possible for periods of relatively high immigration to be accompanied by high productivity growth. Nevertheless, the consensus of economists is that sustainable productivity growth will be around 2.6 percent per year over the coming decade.
- ★ *Labor Force Participation Rates:* Labor force participation rates measure the proportion of the population age 16 and older that either is employed or seeking employment. If the labor force participation rate of the population rises, then the labor force will expand even if the population itself is not growing. However, this is not the trend in the United States. In 2004, the labor force participation rate of the native-born population was 65.5 percent, higher than most developed countries, and projected to remain flat.

- ★ *Labor Force Growth:* Labor force growth is the product of two factors: labor force participation and population increase. Given that labor force participation rates in the United States are unlikely to increase, population growth will be the primary source of labor force growth in the years to come. Population growth, in turn, can come from two possible sources: rising birth rates or immigration. In light of the demographic trends of the native-born workforce, immigration will continue to play a critical role in providing the workers needed to sustain overall economic growth.

Immigration is Key to Labor Force Growth

Natural population increase is unlikely to provide sufficient workers to sustain the labor force growth needed to maintain overall economic growth. The fertility rate in the United States currently averages between 2.0 and 2.1 births per woman, with 2.1 considered the minimum required to replace the existing population.¹ As a result, growth of the population and thus the labor force increasingly will depend on immigration.

- ★ *Immigration Projections:* BLS devotes special attention to immigration in projecting future labor force growth, noting that growth in particular age groups of the labor force must come from immigration, since the U.S. workers in some age groups, such as those 25 to 34 in 2012, are already born. In calculating the labor force growth resulting from immigration, BLS uses the Census Bureau's "middle series" projections, which assume that immigration will average 1.1 million per year between 2002 and 2012.² After subtracting out-migration, the Census Bureau estimates that net immigration will average 850,000 a year during this period. If historical trends continue, one-half, or a total of 4.25 million, of these immigrants will join the U.S. labor force. Thus, immigration is expected to account for a fourth of total projected labor force growth.
- ★ *Undocumented Immigration:* According to estimates from the Pew Hispanic Center, the number of immigrants arriving in the United States from 2000 to 2004 averaged approximately 1.3 million per year, which is very close to the estimates used by BLS. However, more than half of these arrivals—53 percent—were undocumented.³ If this disconnect between the labor force needs of the U.S. economy and legal limits on immigration continues, then roughly 1 in 8 new workers joining the U.S. labor force over the coming decade would be undocumented immigrants.

Immigration is Vital to the Less-Skilled Workforce

BLS expects that between 2002 and 2012 the number of U.S. jobs will increase by 21 million, and that there will be a total of 56 million job openings after accounting for worker turnover. Many of these jobs will favor workers with age and educational profiles for which the native-born labor force is not well matched.

- ★ *The Native-Born Workforce is Increasingly Unlikely to Fill Less-Skilled Jobs:* The native-born population as a whole is growing older and successive generations of native-born workers are better educated. Between 1994 and 2004, the proportion of the native-born labor force age 25-44 fell from 63.3 percent to 52.9 percent, while the proportion of native-born workers age 25 and older with a high-school diploma or less fell from 44.3 percent to 37.8 percent. While relative youth is not a requirement for many jobs, it is an asset in those less-skilled jobs that are physically demanding or dangerous. And although the trend towards a more highly educated native-born workforce obviously is a positive development, it presents a serious challenge to those sectors of the economy that employ workers with less education.
- ★ *The U.S. Economy Continues to Demand Workers in Less-Skilled Jobs:* The shifting demographics of the native-born workforce would present less of an economic challenge, at least in the short term, if the number of less-skilled jobs was not expanding. However, BLS projects that 98 percent of projected employment growth between 2002 and 2012 will be in industries with numerous sub-sectors character-

¹ Barbara Downs, Fertility of American Women: June 2002, Current Population Reports, P20-548. Washington, DC: U.S. Census Bureau, October 2003, p. 1.

² www.census.gov/popest/states/NST-comp-chg.html

³ Jeffrey S. Passel, Unauthorized Migrants: Numbers and Characteristics. Washington, DC: Pew Hispanic Center, June 14, 2005.

ized by jobs that do not require high levels of education. One such sector of high growth is construction, in which the number of jobs is predicted to rise by over one million to 7.7 million. In 2004, 65.5 percent of construction workers had a high-school diploma or less education.

- ★ *Immigrant Workers Complement the Native-Born Labor Force:* On average, foreign-born workers tend to be younger than their native-born counterparts and a larger proportion have relatively little formal education. In 2004, immigrants made up more than a quarter of all 25–34 year-old workers with a high-school diploma or less, and more than half of 25–34 year-old workers without a high-school diploma. As a result, immigrants provide a needed source of labor for the large and growing number of jobs that do not require high levels of education.
- ★ *Immigrants Are a Vital Part of the Less-Skilled Labor Force:* Immigrants comprise a disproportionately large share of workers in many of the less-skilled occupations which BLS predicts will experience high job growth or many job openings in the coming decade. In 2004, 15 percent of all U.S. workers age 16 and older were born abroad (16 percent of male workers and 12 percent of female workers). However, the foreign-born share of workers was highest in less-skilled occupations such as farming, janitorial services, construction, and food preparation, where between 20 and 38 percent of workers were immigrants.

Conclusion

If the U.S. economy is to maintain at least 3 percent annual growth over the coming decade and beyond, the U.S. labor force must continue to expand. Without an adequate supply of workers, future economic prosperity and the rising standard of living that Americans have come to enjoy will be at risk. However, the rising demand for labor is unlikely to be met solely by a native-born population that is growing steadily older and has already achieved high levels of participation in the labor force. Since few additional workers can be culled from the native-born population, immigration has become a critical source of labor force growth. Yet current U.S. immigration policies remain largely unresponsive to labor demand. While policymakers continue to debate the relative merits of various immigration reform proposals, immigration beyond current legal limits already has become an integral component of U.S. economic growth and will remain so for the foreseeable future. A sensible immigration policy would acknowledge this reality by maintaining and regulating the flow of immigrant workers, rather than attempting to impose outdated immigration limits that actually would undermine U.S. economic growth, if they were enforced successfully.

“*Economic Growth & Immigration: Bridging the Demographic Divide*” is available in its entirety at http://www.aif.org/ipc/special_report/2005_bridging.pdf.

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Immigration Policy Center
American Immigration Law Foundation
Immigration Policy in Focus, Volume 5, Issue 8 - October 2006

Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004

by Giovanni Peri, Ph.D.

Executive Summary

A crucial question in the current debate over immigration is what impact immigrants have on the wages of native-born workers. At first glance, it might seem that the simple economics of supply and demand provides the answer: immigrants increase the supply of labor; hence they should decrease the wages of native workers. However, the issue is more complicated than this for two reasons that have been largely overlooked. First, immigrants and natives tend to differ in their educational attainment, skill sets, and occupations, and they perform jobs that often are interdependent. As a result, immigrants do not compete with the majority of natives for the same jobs. Rather, they “complement” the native-born workforce—which increases the productivity, and therefore the wages, of natives. Second, the addition of new workers to the labor force stimulates investment as entrepreneurs seize the opportunity to organize these new workers in productive ways that generate profits. When these two factors are included in the analysis of immigration and wages, it becomes clear that immigration has a positive effect on the wages of most native-born workers.

Among the findings of this report:

- ★ Immigrants are increasingly concentrated among workers with the lowest and highest levels of education, but comprise a relatively small share of workers in intermediate groups.
- ★ During the 1990-2004 period, immigration accounted for 20 percent of employment growth among workers without a high-school diploma and 14.1 percent among workers with at least a college degree. In contrast, immigration accounted for 9.9 percent of employment growth among workers with only a high-school diploma and 6.5 percent among those with some college.
- ★ The share of foreign-born workers within each educational group varies according to years of experience, sometimes by wide margins. In 2004, for instance, 34.1 percent of workers without a high-school diploma were foreign-born, but the foreign-born share ranged from 11.6 percent to 49.3 percent depending on years of experience.
- ★ Since workers with different levels of experience tend to fill different types of jobs, even if they have comparable levels of education, this pattern suggests that natives are in direct competition only with a subset of immigrants within a given educational group, while benefiting from complementarities with workers in other experience groups.
- ★ Immigrants tend to choose different occupations than natives. Since the services provided by different occupations are not perfectly substitutable for each other, this implies that natives and immigrants are not perfect substitutes for each other even if they have similar levels of education and experience.
- ★ During the 1990-2004 period, the 90 percent of native-born workers with at least a high-school diploma experienced wage gains from immigration that ranged from 0.7 percent to 3.4 percent depending on education. Native-born workers without a high-school diploma lost only 1.1 percent of their real yearly wages due to immigration.

“Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004” is available in its entirety at http://www.aifl.org/ipc/infocus/infocus_10306.pdf.

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Additional Resources and Contacts

American Immigration Law Foundation

The Foundation is dedicated to increasing public understanding of immigration law and policy and the value of immigration to American society, and to advancing fundamental fairness and due process under the law for immigrants.

918 F Street, NW, 6th Floor
Washington, DC 20004
(202) 742-5600
<http://www.aifl.org>

American Immigration Lawyers Association

The American Immigration Lawyers Association is the national association of immigration lawyers 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.

918 F Street, NW
Washington, DC 20004
(202) 742-5600
<http://www.aila.org>

Other Helpful Resources and Contacts:

Visit www.aila.org/resourceguide for an index of national, state, and community groups that, as advocates, activists, and direct service providers, are dedicated to promoting fair and equitable immigration laws and to protecting the rights and interests of immigrants.

AILA State Chapters can also provide contact information for local immigration attorneys who have expertise on legal issues related to comprehensive immigration reform. To contact the AILA Chapter Chair for your state, please see p. 108 of this publication, or download a list of Chapter Chairs at www.aila.org/resourceguide.

II. ADDRESSING THE SITUATION OF UNDOCUMENTED IMMIGRANTS ALREADY IN THE UNITED STATES

Introduction

Lawmakers debating “what to do” about undocumented immigration must begin by recognizing that most of the 12 million undocumented immigrants now living and working in the United States already have deep roots in this country. Roughly one-third of undocumented immigrants have lived here for 10 years or more; 1.8 million are children; and another 3.1 million U.S.-citizen children have at least one undocumented parent. In addition to their family ties, undocumented immigrants are integrated into the U.S. economy as workers, taxpayers, and consumers. As a result, attempting to fit all of the currently undocumented population into a temporary worker program that lacks a pathway to permanent residence is highly unrealistic. Even more unrealistic is the notion that we can or should deport millions of undocumented men and women along with their U.S.-born children. Both of these options raise the specter of serious social and economic upheaval in the communities where undocumented immigrants live and the businesses where they work.

Policymakers must recognize that a “one size fits all” approach to immigration reform is unworkable. Rigid, inflexible temporary worker programs that envision a homogeneous stream of replaceable, temporary immigrants are doomed to fail, for they accommodate neither the economic need for a long-term, stable workforce, nor the reality that even immigrants who planned to return home may unexpectedly put down roots or find permanent business opportunities in the U.S. While many current and prospective immigrants undoubtedly would welcome the chance to participate in a legal temporary worker program, many have developed significant ties to U.S. families, communities, and businesses that bind them permanently to this country. Not all industries that depend heavily on immigrant workers can rely on a transient workforce that changes every few years, and many among the current undocumented population already are an integral part of U.S. society and the U.S. economy.

The most realistic solution is a flexible program of “earned adjustment,” often referred to as “earned legalization.” A flexible earned adjustment program requires undocumented immigrants to earn legal status by demonstrating past work history, paying significant fines, undergoing rigorous security and background checks, learning English and American civics, and making good on any back taxes, among other criteria. Undocumented immigrants who successfully jump through all of these hoops do not gain preferential treatment over others who have been waiting for their green cards. Rather, they simply earn the opportunity to apply for permanent residence and to get in line behind those who applied before them.

Targeted earned adjustment programs have already found broad, bipartisan support in Congress, as part of the DREAM Act (S. 2075/H.R. 5131) and the AgJobs Act (S. 359/H.R. 884) introduced during the 109th Congress. Those measures would allow two specific groups of immigrants—students and agricultural workers—to take steps towards earning permanent legal status. Included in the Senate’s comprehensive immigration reform legislation last year, these measures follow the principles of earned legalization but are tailored to the unique issues and circumstances confronting these groups.

Contrary to the claims of some opponents, 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.

Earned Legalization Is Not an Amnesty

- ★ Amnesty, by definition, is an automatic pardon, or free pass, granted to a group of individuals without any consideration in return for the amnesty.
- ★ Earned adjustment, often referred to as earned legalization, is neither an amnesty nor an automatic fix; it requires undocumented immigrants to *earn* legal status.
- ★ 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 only provides undocumented immigrants an opportunity to earn permanent legal status by satisfying significant *prospective* requirements.
- ★ Earned legalization requires undocumented immigrants to 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, make good on any back taxes, and satisfy additional criteria. It is disingenuous to paint such stringent requirements with the "amnesty" brush.
- ★ Moreover, undocumented immigrants who successfully jump through all of the hoops are not moved to the head of the line and do not gain 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 significant non-monetary requirements.
- ★ A categorical requirement that undocumented 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 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.
- ★ Earned legalization is a practical solution that balances the need to acknowledge law violations with the recognition that our current immigration laws are unrealistic and inhumane because they fail to accommodate U.S. labor demand 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 1.6 million undocumented children and the additional 3.1 million U.S. citizen children with at least one undocumented parent. These kids should not be punished for their parents' decision to pursue a better life.

AgJOBS & Comprehensive Immigration Reform: The Key to Achieving a Stable and Legal Agricultural Work Force

The Issue: Our immigration laws fail to account for the economic and social realities confronting the United States. Nowhere is this fact more evident than in agriculture, where the shortage of legal, documented workers in the U.S. has reached crisis proportions. According to a conservative estimate by the Department of Labor (DOL), over 50 percent of the United States' 1.6 million agricultural workers are undocumented foreign nationals. Private estimates run to 75 percent or higher. These individuals work grueling jobs to put food on our tables, yet they remain unable to assert the most basic rights and protections.

Any comprehensive immigration reform proposal must include agriculture worker provisions similar to those reintroduced during the 110th Congress as the bipartisan Agricultural Job Opportunities, Benefits, and Security (AgJOBS) Act of 2007 (S. 340/H.R. 371). Passed by the 109th Senate as part of the Comprehensive Immigration Reform Act of 2006 (S. 2611), AgJOBS takes a two-pronged approach to achieving a stable and legal agricultural work force. The legislation's long-term focus is on streamlining the H-2A temporary worker program to make it more practical, secure, and fair, while short-term relief is provided through an earned adjustment program. The AgJOBS provisions thus accommodate the need to create both a legal means by which employers can hire foreign workers in the absence of available U.S. workers and a means to legitimize the status of those immigrants already present in the U.S. who have been supporting our economy with their labor.

AILA's Position: AILA strongly supports the passage during the 110th Congress of comprehensive immigration reform legislation that contains the provisions of the bipartisan AgJOBS bill. Such provisions would constitute a positive gain for both workers and employers by creating a stable labor force and a useable program through which future workers can legally enter.

Why the agricultural components of comprehensive immigration reform are good for America: It is in the national security interest of the U.S. to know who is working in food production and to have an effective means of monitoring these essential workers. Agricultural worker provisions similar to AgJOBS would provide that capability. With the enactment of these provisions, agricultural workers would be brought out of the underground economy and scrutinized by our government as they begin the process toward legal status. Moreover, 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 our government 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.

Earned adjustment does not equal "amnesty": Critics of AgJOBS and comprehensive immigration reform have misleadingly dubbed its earned adjustment program an "amnesty program." This is not the case. Under comprehensive immigration reform, all workers, including agricultural workers, would not only have to demonstrate past work contributions to the U.S. economy, but also make a substantial future work commitment to earn the right to remain in this country.

Recent Legislation:

110th Congress: The AgJOBS Act of 2007 (S. 340/H.R. 371) was introduced in the 110th Congress on January 10, 2007, by Senators Larry Craig (R-ID), Dianne Feinstein (D-CA), and Edward Kennedy (D-MA), and by Representatives Chris Cannon (R-UT) and Howard Berman (D-CA). The legislation proposes reforms of the H-2A process so that agricultural employers unable to find American workers would be able to hire needed foreign workers. Furthermore, the legislation provides a reasonable mechanism for undocumented agricultural workers to earn legal status, as more fully discussed below.

Long-term relief via a streamlined H-2A program: The legislation would streamline the outdated and unworkable H-2A foreign agricultural worker program while preserving and enhancing key labor protections. Currently, agricultural employers who cannot hire a sufficient number of domestic workers are required to undergo a complicated, lengthy, uncertain, and expensive process to demonstrate such shortage to the government. Only then are they permitted to arrange for the hiring of temporary nonimmigrant guest workers. Indeed, the current H-2A program is so difficult to navigate and expensive that it places only about 40,000-50,000 guest workers per year—a mere 2 to 3 percent of the estimated total agricultural workforce. In fact, a General Accounting Office study found that the DOL missed statutory deadlines for processing employer applications to participate in the H-2A program more than 40 percent of the time. Moreover, workers without the proper documentation must live in the shadows and are vulnerable to severe exploitation.

The bipartisan AgJOBS Act would replace the current bureaucratic nightmare for both employers and prospective workers with a “win-win” solution. A streamlined “attestation” process similar to the one used in connection with the H-1B program would speed up the certification of H-2A employers and the hiring of needed workers. H-2A workers would have new rights to seek redress through mediation and federal court enforcement of specific rights. American consumers also would benefit from a safe, stable, American-grown food supply rather than having to rely increasingly on foreign imports. The AgJOBS Act would bring about the comprehensive reforms needed to stabilize the current agricultural labor crisis and would ensure a future workforce for the labor-intensive U.S. agricultural sector.

Short-term relief via an earned adjustment program: The bipartisan AgJOBS Act, in the short-term, would provide relief through its earned adjustment program, under which undocumented agricultural workers would be eligible to apply first for temporary resident status based on their past work experience, and then to become permanent residents upon satisfying prospective work requirements. To be eligible for the program, individuals would have to demonstrate that they performed agricultural work in the U.S. for at least 863 hours or 150 work days during the 24-month period ending on December 31, 2006. Eligible applicants would be granted temporary resident status while they work toward the permanent residence requirements.

Workers would be eligible to apply for permanent residence status if they meet one of the following requirements: performed at least five years of agricultural employment in the U.S. for at least 100 work days per year during the five-year period beginning after the date of enactment; performed three years of agricultural employment in the U.S. for at least 150 work days per year during the three-year period beginning after the date of enactment; or performed four years of agricultural employment in the U.S. for at least 150 work days for three of those years and at least 100 work days in the remaining year during the four-year period beginning after the date of enactment. Eligible individuals would have to apply for adjustment to permanent resident status no later than seven years after the date of enactment.

109th Congress:

AgJOBS 2005: AgJOBS legislation very similar to that introduced in the 110th Congress was also considered by members of the previous Congress. The AgJOBS Act of 2005 (S. 359/H.R. 884) was introduced in the 109th Congress on February 10, 2005, by Senators Larry Craig (R-ID) and Edward Kennedy (D-MA), and on February 17 by Representatives Chris Cannon (R-UT) and Howard Berman (D-CA).

Comprehensive Immigration Reform: An amended version of AgJOBS was also incorporated into the comprehensive immigration reform bill (S. 2611) that passed the Senate on May 25, 2006.

AILA strongly supports the inclusion of AgJOBS provisions in any comprehensive immigration legislation introduced during the 110th Congress.

DREAM Act & Comprehensive Immigration Reform: Student Adjustment for Deserving Children

The Issue: Each year, children in the U.S. are prevented from pursuing their dreams of going to college because they have no legal immigration status. Despite the fact that many have grown up in the U.S., attended local schools, and demonstrated a sustained commitment to learn English and succeed in our educational system, our immigration laws provide no avenue for these students to legalize their status. Many of these children were brought to the U.S. by their parents at an age when they were too young to understand the legality of their arrival, let alone take action to rectify it. Enacting comprehensive immigration reform that contains provisions from the bipartisan DREAM Act would offer students who meet the legislation's rigorous requirements an opportunity to apply for legal status.

AILA's Position: AILA strongly supports passage of legislation that provides deserving students with an opportunity to apply for legal status and continue their education, and believes that any comprehensive immigration reform legislation must include a measure worthy of these deserving children. Children who were not old enough to make their own decisions when entering the United States should not be held responsible for their parents' actions. They should be able to live in and contribute to the country in which they have spent significant portions of their lives. By providing the opportunity for these children to go to college and gain legal status, America will both strengthen its economic foundation by creating a more educated workforce and introduce justice and fairness to our immigration system.

Recent Legislation:

109th Congress

DREAM Act – Senate bill. The Development, Relief, and Education for Alien Minors (DREAM) Act (S. 2075), introduced on November 18, 2005, by Senators Richard Durbin (D-IL), Chuck Hagel (R-NE), and Richard Lugar (R-IN), would have allowed certain immigrant students who met the legislation's eligibility requirements to adjust their status to that of conditional permanent resident for a period of six years. To be eligible for the benefit, the bill required students to have: entered the U.S. before the age of 16; been physically present in the U.S. for a continuous period of not less than five years immediately preceding the date of enactment; at the time of application, been admitted to a U.S. institution of higher education or earned a high school diploma or general education development (GED) certificate; and been a person of good moral character since the time of application.

To have the conditional basis of their permanent resident status lifted, students would have had to satisfy one of the following requirements within six years of the grant of conditional status:

- ★ Earn a degree from a U.S. institution of higher education or complete at least two years, in good standing, of a bachelor's or higher degree program; or
- ★ Serve in the U.S. Armed Forces for at least two years and, if discharged, receive an honorable discharge.

In addition, the DREAM Act would have repealed § 505 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), which requires states that provide the in-state tuition rate to undocumented students to provide the same tuition rate to out-of-state residents.

American Dream Act – House bill. In the House, Representatives Lincoln Diaz-Balart (R-FL), Howard Berman (D-CA), and Lucille Roybal-Allard (D-CA) introduced very similar legislation (the American Dream Act/H.R. 5131) on April 6, 2006.

Comprehensive Immigration Reform. The DREAM Act was also incorporated in its entirety into the comprehensive immigration reform bill (S. 2611) that passed the Senate on May 25, 2006.

AILA strongly supports incorporation of the DREAM Act in its entirety into any comprehensive immigration reform legislation introduced during the 110th Congress.

Immigration Policy Center
American Immigration Law Foundation
Immigration Policy in Focus, Volume 4, Issue 4, June 2005

Ties that Bind: Immigration Reform Should be Tailored to Families, Not Just Individuals

by Rob Paral

Executive Summary

Given the extent to which undocumented immigrants already living in the United States are part of U.S.-based families, comprehensive immigration reform must include more than just a new temporary worker program.

Among the findings of this report:

- ★ According to the Pew Hispanic Center, about 57 percent of all undocumented immigrants are from Mexico. Some experts estimate that as many as 3 million out of the 4 million Mexican immigrants who came to the United States during the 1990s were undocumented.
- ★ A large portion of immigration to the United States is undocumented because current immigration policies fail to recognize the economic and historical relationships between the United States and immigrant-sending countries such as Mexico. Current policies admit relatively few Mexican, or other Latin American workers, on the basis of U.S. workforce needs.
- ★ In 2000, 92.5 percent of Mexican immigrants who arrived in the United States during the 1990s lived with someone to whom they were related by birth, marriage, or adoption.
- ★ In 2000, 57.3 percent of Mexican immigrants who arrived in the United States during the 1990s were members of U.S.-based nuclear families, including 33.5 percent who lived with a spouse and/or a child and 23.8 percent who were themselves children.
- ★ In 2000, 65.7 percent of households containing Mexican immigrants who arrived in the United States during the 1990s lacked an obvious sponsor for legal status.
- ★ According to the Pew Hispanic Center, 35 percent of the undocumented population in 2004 had been in the United States since 1994 or earlier, and roughly 3.2 million U.S.-citizen children had at least one parent who was undocumented.
- ★ According to the Mexican Migration Project, the share of undocumented immigrants likely to return home after five years in the United States declined from 86 percent in 1990 to 40 percent in 1998.

“Ties that Bind: Immigration Reform Should be Tailored to Families, Not Just Individuals” is available in its entirety at <http://www.aifl.org/ipc/tiesthatbind.asp>.

The Immigration Policy Center (IPC) is dedicated exclusively to the analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States. The IPC is a division of the American Immigration Law Foundation, a nonprofit, tax-exempt educational foundation under Section 501(c)3 of the Internal Revenue Code.

Pew Hispanic Center
Research Report
March 7, 2006

The Size and Characteristics of the Unauthorized Migrant Population in the U.S. Estimates Based on the March 2005 Current Population Survey

Jeffrey S. Passel
Senior Research Associate, Pew Hispanic Center

Executive Summary

The Pew Hispanic Center estimates that there are currently 11.5 to 12 million unauthorized migrants living in the United States. This estimate is based on data from Census 2000, the March 2005 Current Population Survey (CPS) and the monthly Current Population Surveys through January 2006. Analysis of the March 2005 CPS shows that there were 11.1 million unauthorized migrants in the United States a year ago. Based on the monthly Current Population Surveys conducted since then and other data sources that offer indications of the pace of growth in the foreign-born population, the Center developed an estimate of 11.5 to 12 million for the unauthorized population as of March 2006. See “Note on Methods and Terminology” below for definitions, data sources, and methods. Using a well-established methodology, this report offers estimates for the size and certain characteristics, such as age and national origins, of the unauthorized population. Major findings include:

Numbers and Origins

- ★ The number of unauthorized migrants living in the United States has continued to increase steadily for several years, reaching an estimated 11.1 million based on the March 2005 compared to an estimate of 8.4 million based on Census 2000.
- ★ Since 2000, growth in the unauthorized population has averaged more than 500,000 per year. Based on evidence that this trend has persisted, the current unauthorized population can be estimated at between 11.5 and 12 million.
- ★ In the March 2005 estimate two-thirds (66%) of the unauthorized population had been in the country for ten years or less, and the largest share, 40% of the total or 4.4 million people had been in the country five years or less.
- ★ Unauthorized migrants accounted for 30% of the foreign-born population in 2005. Another 28% were legal permanent residents, and 31% were U.S. citizens by naturalization.
- ★ Most of unauthorized migrants came from Mexico. There were an estimated 6.2 million unauthorized Mexican migrants in 2005, or 56% of the unauthorized population.
- ★ About 2.5 million unauthorized migrants, or 22% of the total, have come from the rest of Latin America, primarily from Central America. Unauthorized migrants from Mexico and the rest of Latin America represented 78% of the unauthorized population in 2005.
- ★ Between 2000 and 2005 the number of unauthorized migrants from Mexico increased by about 1.5 million. Other large increases occurred among unauthorized migrants from Central America (+465,000) and South and East Asia (+365,000).

Family Characteristics

- ★ There were 5.4 million adult males in the unauthorized population in 2005, accounting for 49% of the total. There were 3.9 million adult females accounting for 35% of the population. In addition, there were 1.8 million children in the unauthorized population, or 16% of the total.

- ★ Among adults, males make up 58% of the unauthorized population while females make up 42%.
- ★ As of 2005, there were 6.6 million families in which either the head of the family or the spouse was unauthorized. These unauthorized families contained 14.6 million persons.
- ★ Nearly two-thirds (64%) of the children living in unauthorized families are U.S. citizens by birth, an estimated 3.1 million children in 2005.

Labor Force Characteristics

- ★ Unauthorized migrants accounted for about 4.9% of the civilian labor force in March 2005, or about 7.2 million workers out of a labor force of 148 million.
- ★ Unauthorized workers are employed in a variety of occupations, although the distribution of the unauthorized workforce across occupations differs from that of native-born workers. For example, nearly a third (31%) of unauthorized workers were employed in service occupations compared to one sixth (16%) of native workers in March 2005. Unauthorized migrants are underrepresented in white-collar occupations.
- ★ About 19% of unauthorized workers were employed in construction and extractive occupations, 15% in production, installation and repair and 4% in farming.
- ★ Unauthorized migrants make up a large share of all workers in a few more detailed occupational categories. They were 24% of all workers employed in farming occupations, 17% in cleaning, 14% in construction and 12% in food preparation industries. Within those categories, unauthorized workers were a very large share of all workers in certain specific occupations. For example, the unauthorized were 36% of all insulation workers and 29% of all roofers and drywall installers, 27% of all butchers and other food processing workers.
- ★ The concentration of unauthorized workers in broad industries is not as marked as the concentration in broad occupation groups. Only in “leisure & hospitality” and in “construction” does the share of unauthorized workers greatly exceed the share of natives. About 1 in 5 unauthorized workers was in the construction industry (20%) and 1 in 6 was in the leisure & hospitality industry (17%). Only about 7%–8% of native workers was in each of these industries.
- ★ There are a few detailed industries with high concentrations and significant numbers of unauthorized workers. The unauthorized were 21% of the workers in private household industries. They were between 12% and 14% of all the workers in food manufacturing, farming, furniture manufacturing, construction, textiles, and food services.

Unauthorized Migrants

This report uses the term “unauthorized migrant” to mean a person who resides in the United States but who is not a U.S. citizen, has not been admitted for permanent residence, and is not in a set of specific authorized temporary statuses permitting longer-term residence and work. (See Passel, Van Hook, and Bean 2004 for further discussion.) Two groups account for the vast majority of this population: (a) those who entered the country without valid documents, including people crossing the Southwestern border clandestinely; and (b) those who entered with valid visas but overstayed their visas’ expiration or otherwise violated the terms of their admission. Some migrants in this estimate have legal authorization to live and work in the United States on a temporary basis. These include migrants with temporary protected status (TPS) and some migrants with unresolved asylum claims. Together they may account for as much as 10% of the estimate.

The Pew Hispanic Center Research Report on The Size and Characteristics of the Unauthorized Migrant Population in the U.S. is available in its entirety at <http://pewhispanic.org/reports/report.php?ReportID=61>.

The Pew Hispanic Center is a project of the Pew Research Center, a nonpartisan “fact tank” that provides information on the issues, attitudes and trends shaping America and the world. It is supported by The Pew Charitable Trusts. <http://pewhispanic.org/>

Additional Resources and Contacts

Asian American Justice Committee

AAJC works to advance the human and civil rights of Asian Americans through advocacy, public policy, public education, and litigation. In accomplishing its mission, AAJC focuses its work to Promote Civic Engagement, to Forge Strong and Safe Communities, and to Create an Inclusive Society in communities on a local, regional, and national level.

1140 Connecticut Avenue, NW
Suite 1200
Washington, DC 20036
(202) 296-2300
<http://www.advancingequality.org/>

Coalition for Comprehensive Immigration Reform

The Coalition for Comprehensive Immigration Reform (CCIR) is a new collaborative developed by national and local community, immigrant, labor and policy leaders in 2004. Based in Washington, DC, the mission and central purpose of the CCIR is to pass progressive comprehensive immigration reform.

1775 K Street, NW, Suite 620
Washington, DC 20006
(202)661-3689
<http://www.cirnow.org>

Farmworker Justice

For twenty five years, Farmworker Justice has been helping empower migrant and seasonal workers to improve their wages and working conditions, labor and immigration policy, health and safety, and access to justice.

1010 Vermont Ave, NW, Ste 915
Washington, DC 20005
<http://www.fwjjustice.org/>

The Migration Policy Institute

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide.

1400 16th St NW, Ste 300
Washington, DC 20036
(202)-266-1940
<http://www.migrationpolicy.org/>

National Council of La Raza

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas – assets/investments, civil rights/immigration, education, employment and economic status, and health.

1126 16th Street, N.W.
Washington, DC 20036
(202) 785-1670
<http://www.nclr.org>

National Immigration Forum

The mission of the National Immigration Forum is to embrace and uphold America's tradition as a nation of immigrants. The Forum advocates and builds support for public policies that welcome immigrants and refugees and are fair and supportive to newcomers in the United States.

50 F Street NW
Suite 300
Washington, DC 20001
(202) 347-0040
<http://www.immigrationforum.org>

National Immigration Law Center

Since 1979, the National Immigration Law Center (NILC) has been dedicated to protecting and promoting the rights of low income immigrants and their family members. NILC develops in-depth analyses of proposed legislative and regulatory changes that advocates and policymakers rely on for accurate, insightful information.

3435 Wilshire Blvd., Suite 2850
Los Angeles, CA 90010
(213) 639-3900
<http://www.nilc.org>

Other Helpful Resources and Contacts:

Visit www.aila.org/resourceguide for an index of national, state, and community groups that, as advocates, activists, and direct service providers, are dedicated to promoting fair and equitable immigration laws and to protecting the rights and interests of immigrants.

AILA State Chapters can also provide contact information for local immigration attorneys who have expertise on legal issues related to comprehensive immigration reform. To contact the AILA Chapter Chair for your state, please see p. 108 of this publication, or download a list of Chapter Chairs at www.aila.org/resourceguide.

III. ENHANCING CHANNELS FOR LEGAL WORKERS

Introduction

Although the heated political debate over undocumented immigration has focused attention on the role that immigrants play in filling less-skilled jobs that require little formal education, immigrants in fact are a vital part of the labor force at both ends of the educational spectrum. In 2005, about 22 million workers in the United States were foreign-born, amounting to 15 percent of the U.S. labor force. But immigrants accounted for an even higher share of workers in particular occupations, less-skilled and high-skilled alike: 39 percent in farming, fishing, and forestry; 33 percent in building and grounds cleaning and maintenance; 26 percent in construction and extraction; 21 percent in computer and mathematical occupations; and 17 percent in architecture and engineering.

At the low end of the occupational spectrum, the high demand for essential workers is largely driven by demographics.¹ Immigrants are more likely than native-born workers to be younger, to have a high-school education or less, and to participate in the labor force. Moreover, the number of younger native-born workers with relatively little formal education is declining, while the number of less-skilled jobs continues to grow. The Bureau of Labor Statistics predicts that during the 2004-2014 period, the number of jobs in service occupations will likely increase by 5.3 million (19 percent). The demographic reality is that the growing demand for workers to fill less-skilled jobs will have to be met by immigrants, not by a native-born population that is becoming steadily older and better educated.

It should come as no surprise that undocumented immigrants now fill many of these less-skilled jobs. The U.S. immigration system allows extremely few opportunities for essential workers to enter the country legally. Currently, the number of temporary visas for less-skilled workers in seasonal, non-agricultural occupations (H-2Bs) is capped at 66,000 per year. In theory, an unlimited number of temporary agricultural workers can enter the country each year on H-2A visas, but the program by which they do so is mired in bureaucracy and responds slowly to the often rapid fluctuations in labor demand that are characteristic of agriculture, so it is little used. In addition, only 5,000 employment-based green cards are allotted each year to workers (and their immediate families) in less-skilled jobs. Due to these limitations, undocumented immigrants now comprise, according to the Pew Hispanic Center, roughly 24 percent of all workers in farming, fishing, and forestry; 17 percent in building and grounds cleaning and maintenance; 14 percent in construction and extractive occupations; and 12 percent in food preparation and serving.

The lack of sufficient visas to meet the demand for less-skilled, foreign workers in these industries is a root cause of undocumented immigration. Even if all undocumented immigrants here today were legalized, this would do nothing to stem undocumented immigration in the future as demand for less-skilled workers continues to increase. A well-crafted visa program would not only take pressure off our borders, but also benefit both American businesses and American workers.

To protect the interests of both American and immigrant workers, a new essential worker program must afford foreign workers all of the labor protections that U.S. workers enjoy, allow them to change employers, and provide them an opportunity to apply for legal status. Such safeguards are essential, for they not only protect immigrant workers from abusive labor practices, but also prevent employers from driving down wages for all workers by exploiting immigrant labor. Such a fair and workable program would allow employers to hire the workers they desperately need, while also protecting American workers and eliminating a major cause of undocumented immigration.

¹Essential 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. Please see “Essential Workers Help Our Economy” on p. 37 for more information.

Yet reform of our employment-based visa programs must not be limited to the less-skilled workforce. At the high end of the occupational spectrum, immigrant professionals and the American businesses that employ them are also constrained by an arbitrary and restrictive visa system. The demand for highly educated immigrant workers is driven by a booming high-tech industry and a chronic shortage of American workers specializing in fields such as engineering, math, and computer science. American businesses must recruit foreign professionals in order to fill job openings and remain competitive in the global economy. Yet the current H-1B visa program imposes an arbitrary numerical cap, set more than a decade ago, on the number of visas available to highly skilled foreign workers, leaving American employers unable to hire the foreign professionals their businesses demand. Only a reformed H-1B visa program will allow American businesses to remain leaders in innovation and maintain their competitive edge in the global economy.

The United States needs a new visa system that allows immigrant workers to legally enter the country in numbers sufficient to meet labor demand. Comprehensive reform that creates robust and realistic legal channels for foreign workers across the occupational spectrum will stem the flow of undocumented workers and promote a vibrant American economy that benefits all U.S. workers.

Essential Workers Help Our Economy

What are Essential Workers?

- ★ *“Essential Workers”* are workers employed in unskilled or semi-skilled occupations in all sectors of our economy. Essential workers include, for example, restaurant workers, retail clerks, carpenters, plumbers, roofers, manufacturing line workers, hotel service workers, food production workers, landscape workers, and health care aides. 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.

Aren't there enough U.S. workers for these jobs?

- ★ *New jobs will increase dramatically by 2012, boosting the demand for Essential Workers.* Bureau of Labor Statistics (BLS) projections indicate that the U.S. will create 21.3 million new jobs by 2012. During this period, employment growth will be concentrated in the service-producing sector, with health services, leisure and hospitality, transportation and warehousing among the fastest growing sectors.
- ★ *Unskilled and semi-skilled occupations have the highest projected growth rate.* The Department of Labor ranked the top 30 occupations with the largest projected job growth from 2002-2012. Of the occupations listed, 20 require only short-term or moderate-term on-the-job training.
- ★ *As the baby boomers age, demand increases for Essential Workers.* The aging population and increased life expectancies will increase the need for health services. The healthcare services industry is expected to add roughly 3.5 million jobs—1 out of every 6 new jobs created by 2012.
- ★ *The U.S. is not producing enough new workers.* The Bureau of Labor Statistics projects that as the baby boomers retire, growth in the work force will slow to 0.4% per year. Barring unforeseen increases in immigration and/or participation rates among the elderly, there will be a reduction in the total size of the nation's workforce.
- ★ *Employers are doing the “right” things.* Essential Worker employers have led the way in welfare-to-work, school-to-work and other initiatives that have been successful in reducing welfare rolls and getting graduates jobs, but these efforts still are insufficient. Employers are raising wages, offering improved benefits, signing bonuses and relocation pay.

Isn't there already a visa category for essential workers that these employers can use?

- ★ *Yes and No.* The H-2B temporary visa program is useful only for employers who can establish that their need for foreign workers is seasonal (a one-time occurrence, or a peak load or intermittent need). If the employer's need is year-round or does not fall into one of the definitions used by the Department of Labor or Immigration Service, the employer cannot use the H-2B visa to fill labor needs. A nonimmigrant visa category does not exist for employers who need workers for more than one year or for employers who have permanent or long-term jobs, for example in the health care, retail, hospitality, construction, and other industries. Even for employers with truly seasonal needs, the H-2B category is fraught with bureaucratic red tape that makes it extremely time-consuming and difficult to use. The H-2B category is further limited by the annual cap of 66,000 visas, far below current demand. Moreover, the permanent immigrant category for non-professionals in occupations that require less than two years' experience is virtually useless; only 5,000 visas are available annually for both the principal worker and their immediate family members, and the backlog of waiting cases is typically over ten years long. As a result, employers often are forced to send their work overseas, cut back, or close their doors.

With concerns about national security, is now the time to look at expanding legal immigration programs?

- ★ *Yes.* Virtually every security expert (including former DHS Secretary Tom Ridge and current Secretary Chertoff) to look closely at this problem agrees that creating legal channels to take the pressure off of our borders is a national security imperative. A temporary worker program would help control immigration by legalizing the flow of people seeking to enter and leave this country. It would help satisfy the U.S. demand for workers and provide a legal and safe mechanism for workers to enter and leave the U.S.

Is immigration a tool that can help strengthen our economy?

- ★ *Yes.* Alan Greenspan, former Chairman of the Federal Reserve Bank, and many others have called upon Congress to reexamine our immigration policies as a means of maintaining a strong economy. In Congressional testimony, Mr. Greenspan demonstrated the link between alleviating inflationary pressures caused by a tight labor market and stated that tight labor markets could be the greatest threat to our economy, as they promote inflation. He stated that Congress should look at the contributions that immigrant workers can make to help reduce the chance of inflation, reduce the stress on our social security system, and help our economy. In addition, a recent letter signed by over 500 leading economists asserted that immigration has proved a net economic gain for American citizens, who benefit from the infusion of skills, capital, and entrepreneurship that immigrants contribute to the American economy.

What needs to be done?

- ★ *Congress and the Administration need to commit to passing bipartisan comprehensive immigration reform that would match willing workers with willing employers.* Throughout the 109th Congress, President Bush spoke forcefully about the need to reform our immigration laws and articulated several principles to guide such reform. The President's comments have helped spur the debate on reform. The United States needs a regulated, workable immigration system that allows foreign nationals to work here when there is evidence of a shortage of available U.S. workers, that allows those individuals already here and working to obtain legal status and work authorization, and reduces the permanent immigration backlogs in order to allow the families of workers in the U.S. to reunite. Such initiatives must receive adequate funding in order to succeed and reduce the long visa processing backlogs that make current programs difficult to use.

The Essential Worker System Needs Reform

Many essential workers, coming to the U.S. to fill voids in our workforce, risk danger, and even death, to do so. Too often, these hardworking immigrants are then subject to abuse by unscrupulous employers who exploit unauthorized workers, overshadowing and undermining the efforts of decent employers.

- ★ *A new worker visa system is needed so that essential workers can come to work through proper legal channels.* The lack of worker visas is a root cause of our current undocumented immigration crisis. Even if we legalize everyone here today, this would do nothing to stop others from coming illegally tomorrow unless we can create legal channels for needed, wanted workers to enter lawfully. Current employment-based immigration visas do not fill the needs of U.S. employers in a variety of industries and sectors. As a result, thousands of workers arrive without documentation each year. We must replace the flow of unauthorized workers with a legal flow. We must do so in a way that protects both foreign and U.S. workers—we must not create a new underclass of exploitable foreign workers.
- ★ *Our current system has made illegality the norm.* Our current lack of legal immigrant channels has spurred the growth of a black market that profits from undocumented workers, as migrants increasingly have come to rely on professional smugglers to find their way past border guards. Once they arrive in this country, many are trapped here, unable to return. We need a program that would significantly diminish future illegal immigration by providing people with a legal avenue to enter the U.S. and return, as many wish, to their home countries, communities, and families.
- ★ *We need a fair, 21st century worker program.* Past programs were fraught with abuses and exploitation, and did not provide full labor protections, labor mobility, the right to organize, and a path to permanent residence. We need an essential worker program that provides legal visas, family unity, full labor rights, labor mobility, and a path to permanent status.
- ★ *We need to address employers' need for essential workers without displacing U.S. workers.* These “essential workers” would fill unmet needs in hotels, construction, restaurants, and other sectors that rely heavily on unskilled and semi-skilled labor. Employers seeking to hire these immigrant workers must show that they can't find U.S. workers to fill the jobs, and that hiring these workers won't displace or adversely affect U.S. workers.
- ★ *We need to provide essential workers with full labor protections.* Essential workers must be afforded all of the labor protections U.S. workers have, including the right to organize, the right to change jobs freely—not only between employers, but across economic sectors—and the fully enforced legal protection of their wages, hours, and working conditions. We must protect workers who pursue legal redresses against unscrupulous employers who violate labor protection laws.
- ★ *We must provide essential workers with the opportunity to obtain permanent legal status.* Many foreign workers prefer to work in the U.S. for a period of time and then return to their home countries. But others who choose to make the U.S. their permanent home should have the opportunity to do so. Temporary workers must be provided with the opportunity to become permanent residents, and eventually citizens, should they so desire.

Immigration Policy Center
American Immigration Law Foundation
Immigration Policy in Focus, Volume 4, Issue 5, July 2005

No Way In: U.S. Immigration Policy Leaves Few Legal Options for Mexican Workers

by Rob Paral

Executive Summary

Current immigration policies are completely out of sync with the U.S. economy's demand for workers who fill less-skilled jobs, especially in the case of Mexican workers. While U.S. immigration policies present a wide array of avenues for immigrants to enter the United States, very few of these avenues are tailored to workers in less-skilled occupations. It should come as no surprise, then, that immigrants come to or remain in the United States without proper documentation in response to the strong economic demand for less-skilled labor.

Among the findings of this report:

- ★ According to the Bureau of Labor Statistics, 48 percent of all job openings, some 27 million positions, between 2002 and 2012 “are expected to be held by workers who have a high school diploma or less education.”
- ★ Given that 12.5 percent of native-born adults age 25 and older lacked a high school diploma in 2003, compared to 32.8 percent of the foreign-born, it is clear that a large number of less-skilled jobs will be filled by immigrants.
- ★ According to the 2003 American Community Survey, Mexicans comprised 30.7 percent of all foreign-born workers in the United States, but amounted to 88.8 percent of the foreign-born labor force in “farming, fishing, and forestry”; 60.2 percent in “construction and extraction”; and 51.6 percent in “building and grounds cleaning and maintenance.”
- ★ Only one of the five categories of visas for permanent immigration status is tailored to less-skilled workers, and it is capped at 5,000 visas per year.
- ★ Only two of the 16 employment-based visa categories for temporary immigrant status are available to workers in industries that require little or no formal training. One (H2A) is restricted to agricultural workers and the other (H2B) is not only capped at 66,000, but is limited to “seasonal” or otherwise “temporary” work that is defined so restrictively as to disqualify workers in many industries.
- ★ Roughly 76 percent of Mexicans receiving temporary work visas in 2002 were recipients of only H2A and H2B visas. In other words, Mexican workers are crowded into categories in which few visas are available for most industries.

The family-based immigration system is not capable of compensating for deficiencies in the employment-based system due to arbitrary numerical caps. In the case of Mexican nationals, wait times for visas under the “family preference” system are currently 7-10 years for the spouse of an LPR and 10-12 years for the unmarried adult child of a U.S. citizen.

“No Way In: U.S. Immigration Policy Leaves Few Legal Options for Mexican Workers” is available in its entirety at <http://www.aifl.org/ipc/nowayin.asp>.

The Immigration Policy Center (IPC) is dedicated exclusively to the analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States. The IPC is a division of the American Immigration Law Foundation, a nonprofit, tax-exempt educational foundation under Section 501(c)3 of the Internal Revenue Code.

Immigration Policy Center
American Immigration Law Foundation
Immigration Policy Brief, March 2005

Essential Workers: Immigrants are a Needed Supplement to the Native-Born Labor Force

An analysis of data from the 2000 census reveals that employment in about one-third of all U.S. job categories would have contracted during the 1990s in the absence of recently arrived, noncitizen immigrant workers.

by Rob Paral

Executive Summary

- ★ Employment in about one-third of all U.S. job categories would have contracted during the 1990s in the absence of recently arrived, noncitizen immigrant workers, even if all unemployed U.S.-born workers with recent job experience in those categories had been re-employed.
- ★ Thirteen occupational categories collectively would have been short more than 500,000 workers during the 1990s without recently arrived noncitizen immigrant employees, even if all unemployed natives with recent experience in those categories had been re-employed.
- ★ Eleven job categories would have seen their workforce contract by more than 7 percent during the 1990s if recently arrived noncitizens had not been available, even with re-employment of experienced natives.
- ★ The earnings of immigrant workers rise and eventually equal or surpass those of native workers the longer the immigrants live in the United States and as they naturalize.
- ★ Given the long-term economic success of immigrants, over-reliance on temporary worker programs may unwisely terminate the upward mobility of immigrant workers just as they begin to achieve their greatest productivity.

“Essential Workers: Immigrants are a Needed Supplement to the Native-Born Labor Force” is available in its entirety at http://www.aifl.org/ipc/policy_reports_2005_essentialworkers.asp.

The Immigration Policy Center (IPC) is dedicated exclusively to the analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States. The IPC is a division of the American Immigration Law Foundation, a nonprofit, tax-exempt educational foundation under Section 501(c)3 of the Internal Revenue Code.

Open Letter on Immigration from Economists and Social Scientists

June 19, 2006

Dear President George W. Bush and All Members of Congress:

People from around the world are drawn to America for its promise of freedom and opportunity. That promise has been fulfilled for the tens of millions of immigrants who came here in the twentieth century.

Throughout our history as an immigrant nation, those who were already here have worried about the impact of newcomers. Yet, over time, immigrants have become part of a richer America, richer both economically and culturally. The current debate over immigration is a healthy part of a democratic society, but as economists and other social scientists we are concerned that some of the fundamental economics of immigration are too often obscured by misguided commentary.

Overall, immigration has been a net gain for American citizens, though a modest one in proportion to the size of our 13 trillion-dollar economy.

Immigrants do not take American jobs. The American economy can create as many jobs as there are workers willing to work so long as labor markets remain free, flexible and open to all workers on an equal basis.

In recent decades, immigration of low-skilled workers may have lowered the wages of domestic low-skilled workers, but the effect is likely to have been small, with estimates of wage reductions for high-school dropouts ranging from eight percent to as little as zero percent.

While a small percentage of native-born Americans may be harmed by immigration, vastly more Americans benefit from the contributions that immigrants make to our economy, including lower consumer prices. As with trade in goods and services, the gains from immigration outweigh the losses. The effect of all immigration on low-skilled workers is very likely positive as many immigrants bring skills, capital and entrepreneurship to the American economy.

Legitimate concerns about the impact of immigration on the poorest Americans should not be addressed by penalizing even poorer immigrants. Instead, we should promote policies, such as improving our education system, that enable Americans to be more productive with high-wage skills.

We must not forget that the gains to immigrants coming to the United States are immense. Immigration is the greatest anti-poverty program ever devised. The American dream is a reality for many immigrants who not only increase their own living standards but who also send billions of dollars of their money back to their families in their home countries—a form of truly effective foreign aid.

America is a generous and open country and these qualities make America a beacon to the world. We should not let exaggerated fears dim that beacon.

Please see a list of American and foreign signatories on the following pages.

This open letter is available on-line on the website of the Independent Institute at <http://www.independent.org/newsroom/article.asp?id=1727>.

AMERICAN SIGNATORIES

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Additional Resources and Contacts

CATO Institute, The Center for Trade Policy Studies

The mission of the Cato Institute Center for Trade Policy Studies is to increase public understanding of the benefits of free trade and the costs of protectionism.

1000 Massachusetts Avenue, N.W.
Washington D.C. 20001-5403
Phone (202) 842-0200
<http://www.freetrade.org/issues/immigration.html>

Essential Worker Immigration Coalition

The Essential Worker Immigration Coalition (EWIC) is a coalition of businesses, trade associations, and other organizations from across the industry spectrum concerned with the shortage of both skilled and lesser skilled (“essential worker”) labor. EWIC stands ready to work with the Administration and Congress to push forward on important immigration reform issues.

1615 H Street, N.W.
Washington, D.C. 20062
(202) 463-5931
<http://www.ewic.org>

The Manhattan Institute, The Center for Race and Ethnicity

The Mission of the Manhattan Institute is to develop and disseminate new ideas that foster greater economic choice and individual responsibility.

52 Vanderbilt Avenue
New York, N.Y. 10017
(212) 599-7000
<http://www.manhattan-institute.org/html/cre.htm>

National Council of La Raza

The National Council of La Raza (NCLR) – the largest national Hispanic civil rights and advocacy organization in the United States – works to improve opportunities for Hispanic Americans. To achieve its mission, NCLR conducts applied research, policy analysis, and advocacy, providing a Latino perspective in five key areas – assets/investments, civil rights/immigration, education, employment and economic status, and health.

1126 16th Street, N.W.
Washington, DC 20036
(202) 785-1670
<http://www.nclr.org>

National Employment Law Project, Immigrant Worker Project

NELP’s Immigrant and Nonstandard Worker Project seeks to protect and promote employment rights of low wage workers. In particular, it works to ensure that immigration status or status as a “nonstandard” or “contingent worker” does not mean that workers have less rights in the workplace.

55 John Street 7th Floor
New York, NY 10038
(212) 285-3025
<http://www.nelp.org>

National Immigration Forum

The mission of the National Immigration Forum is to embrace and uphold America's tradition as a nation of immigrants. The Forum advocates and builds support for public policies that welcome immigrants and refugees and are fair and supportive to newcomers in the United States.

50 F Street NW
Suite 300
Washington, DC 20001
(202) 347-0040
<http://www.immigrationforum.org>

Service Employees International Union

The Service Employees International Union is an organization of more than 1.8 million members united by the belief in the dignity and worth of workers and the services they provide and dedicated to improving the lives of workers and their families and creating a more just and humane society.

1800 Massachusetts Avenue, NW
Washington, DC 20036
202-730-7000
<http://www.seiu.org>

UNITE HERE

UNITE (formerly the Union of Needletrades, Industrial and Textile Employees) and HERE (Hotel Employees and Restaurant Employees International Union) merged on July 8, 2004 forming UNITE HERE. The union represents more than 450,000 active members and more than 400,000 retirees throughout North America.

1775 K Street, NW, Suite 620
Washington, DC 20006
(202) 393-4373
<http://www.unitehere.org/>

Other Helpful Resources and Contacts:

Visit www.aila.org/resourceguide for an index of national, state, and community groups that, as advocates, activists, and direct service providers, are dedicated to the just treatment of immigrants in laws and in practice.

AILA State Chapters can also provide contact information for local immigration attorneys who have expertise on legal issues related to comprehensive immigration reform. To contact the AILA Chapter Chair for your state, please see p. 108 of this publication, or download a list of Chapter Chairs at www.aila.org/resourceguide.

Highly Educated Foreign Professionals: Vital to America's Economic Competitiveness

The Issue: In 2006, American businesses faced an unprecedented hiring crisis when the numerical cap limiting the H-1B visa program for FY2007 was reached four months prior to the start of the fiscal year. This marked the third consecutive year that this arbitrary numerical limit, set more than a decade ago, was triggered prior to the end of the fiscal year. Congress has allowed this to occur despite overwhelming evidence of the number of high-tech jobs that need to be filled in the U.S., and the shortage of U.S. workers available to fill them. Yet, as President Bush and many others recently have stated, a solution to this problem is clear and readily available: bring more highly educated foreign professionals into this country, by way of the H-1B visa. Simply put, without more access to H-1Bs, our businesses suffer, and the U.S. stands to lose rapidly not only the competitive economic edge generations of Americans have worked so hard to achieve, but also its preeminence in a variety of scientific and technical fields—areas vital to our prosperity and national security.

What is the purpose of the H-1B program?—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, professors 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. There still are not enough U.S. students graduating with advanced degrees in these fields to fill highly specialized positions, and, according to the Bureau of Labor Statistics (BLS), the demand for such graduates will increase substantially in the next ten years. It is thus imperative that U.S. businesses have access to foreign professionals who have graduated from U.S. master’s and Ph.D. programs.

Does the H-1B Program Hurt U.S. Workers?—The H-1B program does not harm U.S. workers. The H-1B program has built-in safeguards to ensure that highly educated foreign professionals do not undercut the wages offered to U.S. workers. Employers 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. A U.S. employer using this program must also guarantee that:

- ★ The foreign professional will not adversely affect the working conditions of U.S. colleagues;
- ★ U.S. colleagues will be given notice of the professional’s presence among them;
- ★ There is no strike or lockout at the workplace;
- ★ The position requires a professional in a specialty occupation and the intended employee has the required qualifications.

AILA’s Position: The H-1B visa is a vital tool necessary to keep the U.S. economy competitive in the world market 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. As President Bush remarked recently, if these professionals are not permit-

ted to come to the U.S. to share their expertise, they will go to other countries and benefit companies abroad instead. The end result will be American jobs lost and American projects losing out to foreign competition, with devastating long-term consequences for the U.S. economy. Germany and Australia, to name but two economic competitors, already have updated their immigration laws to attract highly educated talent and are poised to take in the skilled professionals that we turn away. Other countries are sure to follow suit. It is thus imperative that Congress support an H-1B program reflecting our nation's urgent need for more H-1B workers, allowing U.S. employers access now and in the future to the talents of these highly educated foreign professionals.

Recent Legislation: There have been many attempts over the years to increase the H-1B cap permanently. Unfortunately, these attempts have failed. Most recently, in December 2005, the Senate passed a budget reconciliation bill (S.1932) that included the Senate Judiciary Committee's provisions to recapture unused H-1B visa numbers dating back to FY 1991, a total of approximately 300,000 additional H-1B visas. The House, however, forced these provisions to be stripped from the budget reconciliation package during conference negotiations.

SKIL Act: AILA currently is part of a coalition of corporations, universities, research institutions, and trade associations working to help solve the H-1B problem. This coalition supports a high-skilled immigration bill that was introduced in the 109th Congress by Senator Cornyn (R-TX) and Representative Shadegg (R-AZ), a bill that would have assisted U.S. businesses in alleviating the specialty occupation worker shortage. Among a variety of other excellent proposals, the SKIL bill would have:

- ★ Created a market-based H-1B cap beginning with a base level of 115,000;
- ★ Exempted U.S.-educated workers with advanced degrees from the H-1B cap and permitted work authorization for spouses of H-1B workers;
- ★ Redirected a portion of the H-1B education and training fee to the National Defense Education Act and the National Science Foundation's STEP program.

More information on the main provisions of the SKIL bill is posted on AILA's website: <http://www.aila.org/content/default.aspx?docid=19303>.

Comprehensive Immigration Reform: In late May, the Senate passed the Comprehensive Immigration Reform Act of 2006 (S. 2611), which included the H-1B provisions from the SKIL Bill. As a result, S. 2611 offered a framework for comprehensive immigration reform that would expand and improve the high-skilled temporary immigration system by:

- ★ Creating a market-based H-1B cap beginning with a base level of 115,000 (If the cap is exhausted in a given fiscal year then the subsequent fiscal year's visa floor increases by 20 percent of the base. If the cap is not exhausted in that fiscal year it remains constant.);
- ★ Creating a new uncapped exemption from the overall H-1B cap for those foreign nationals who have earned an advanced degree in science, technology, engineering, or math (STEM)); and,
- ★ Permitting work authorization for spouses of H-1B workers.

AILA supports reform of the H-1B program as laid out in the SKIL Bill, and believes that its provisions must be included in any comprehensive immigration reform legislation introduced in the 110th Congress.

National Foundation for American Policy
NFAP Policy Brief
March 2006

H-1B Professionals and Wages: Setting the Record Straight

Executive Summary

U.S. companies hire and recruit globally. In some cases, this means hiring foreign-born individuals on H-1B temporary visas, many times off U.S. college campuses as part of the normal recruitment process. In essence, critics assert the only reason a U.S. employer would ever hire someone on an H-1B visa is because he or she will work cheaper than Americans, implying that only people born in the United States possess desirable skills. The story that a veritable conspiracy exists in America to hire foreign-born professionals so they can work cheaply is unsupported by the evidence. Moreover, it runs contrary to common sense and any serious analysis of how the U.S. labor market functions.

- ★ A study by Madeline Zavodny, a research economist at the Federal Reserve Bank of Atlanta, found that the entry of H-1B professionals neither lowers the contemporaneous earnings of natives, nor has “an adverse impact on contemporaneous unemployment rates.”
- ★ Research by Paul E. Harrington, associate director of the Center for Labor Market Studies at Northeastern University, shows foreign-born and native professionals earn virtually identical salaries in math and science fields. National Science Foundation data show foreign-born scientists and engineers actually earn more than natives in some fields.
- ★ Even among the highly stratified sample of the small number of employers whose actions warranted investigation and government-imposed penalties between 1992 and 2004, the average amount of back wages owed by even those employers is small – less than \$6,000 per employee, no more than the typical government and legal fees paid by most employers to hire H-1B visa holders. And among those employers, few if any are well-known companies. Generally, of the small number of violations no more than 10 to 15 percent of H-1B violations in a year are found to be “willful” by the Department of Labor, indicating the extent of abuse is limited.
- ★ Contrary to the myth that H-1B visa holders are “indentured servants,” professionals on such visas understand their market value and show great mobility in the U.S. labor market. An NFAP sampling of U.S. employers and immigration lawyers confirmed that individuals on H-1B visas change companies frequently. In fact, generally speaking, the majority of H-1B hires by large companies today first worked for other employers. This is supported by data from the Department of Homeland Security.
- ★ A recent report for the Center for Immigration Studies (CIS) asserting that computer programmers on H-1B visas are underpaid contained shortcomings that make it unreliable for use by policy makers. The key flaw in the CIS study is that it utilized data that do not reveal what employers actually pay individuals on H-1B visas, relying on prevailing wage information alone, when, in fact, the actual amount companies pay is much higher. Actual starting salaries for H-1B professionals average 22 percent above the prevailing wage standards, according to a statistically valid sample of H-1B cases randomly selected for NFAP by a respected law firm. Another indicator of the CIS paper’s unreliable methodology is that the paper claims that some large technology companies pay their H-1B employees, on average, as much as \$40,000 less than the H-1B professionals of competing tech firms located less than 30 minutes away, an impossibility given the competition for labor.

- ★ If companies simply wanted to obtain services based only on wages, then U.S. companies would move all of their work outside the United States, since the median salary for a computer software engineer is \$7,273 in Bangalore and \$5,244 in Bombay, compared to \$60,000 in Boston and \$65,000 in New York, according to the Seattle-based market research firm PayScale.

“H-1B Professionals and Wages: Setting the Record Straight” is available in its entirety at <http://www.nfap.net/researchactivities/articles/NFAPPolicyBriefH1BProfessionalsAndWages0306.pdf>.

The National Foundation for American Policy (NFAP) is a non-profit, non-partisan organization dedicated to public policy research on trade, immigration, education, and other issues of national importance. <http://www.nfap.net/>

Immigration Policy Center
American Immigration Law Foundation
Immigration Policy in Focus, Volume 5, Issue 6 - August 2006

Building a Competitive Workforce: Immigration and the U.S. Manufacturing Sector

by David L. Bartlett, Ph.D.

Executive Summary

Shortages of skilled labor constitute the foremost challenge confronting U.S. manufacturers who face growing competition from manufacturers in Asia, Eastern Europe, and elsewhere. Demand for professionals with university degrees is rising as manufacturing becomes increasingly high tech. But the U.S. educational system is not producing enough highly educated native-born manufacturing workers to meet this growing demand. Moreover, the pending retirements of Baby Boom generation workers will further constrain the growth of the manufacturing labor force. Bridging this gap between the supply and demand for skilled workers requires new investments in the U.S. educational system and the formulation of immigration policies that respond to the labor needs of the U.S. economy. Yet current immigration policies, especially since 9/11, have made it more difficult for highly skilled professionals from abroad to enter the United States.

Among the findings of this report:

- ★ In 2005, 90 percent of manufacturers surveyed by the National Association of Manufacturers (NAM) reported “moderate to severe” shortages of skilled production workers, while 65 percent indicated “moderate to severe” shortages of scientists and engineers.
- ★ In order to hedge against worker shortages, and in response to mounting global competition, American manufacturers are boosting investments in industrial automation, robotics, and other labor-saving equipment that requires a high level of skill to operate. These developments are raising demand for highly educated manufacturing workers.
- ★ Even during the 2000-02 recession, during which 2.8 million manufacturing jobs disappeared, high-salaried positions for machinists, tool and die makers, and welders went unfilled owing to a paucity of qualified applicants. NAM estimates that U.S. manufacturers will face a deficit of 10 million skilled workers by 2020 if these trends go unchecked.
- ★ In 2004, immigrants represented large shares of advanced-degree holders in technology-intensive manufacturing industries: machinery (65.4 percent), measurement/control instruments (48.2 percent), electronic components (44.6 percent), computers/peripherals (44.4 percent), communications equipment (39.8 percent), and medical equipment (37.3 percent).
- ★ Between 2001 and 2004, the number of foreign-born workers with advanced degrees rose in 7 industries (machinery, electronic components, aircraft, computers/peripherals, measurement/control instruments, motor vehicles, and aerospace) and declined in 3 (pharmaceuticals, communication equipment, and medical equipment).

“Building a Competitive Workforce: Immigration and the U.S. Manufacturing Sector” is available in its entirety at http://www.aifl.org/ipc/infocus/comp_workforce.shtml.

The Immigration Policy Center (IPC) is dedicated exclusively to the analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States. The IPC is a division of the American Immigration Law Foundation, a nonprofit, tax-exempt educational foundation under Section 501(c)3 of the Internal Revenue Code.

Additional Resources and Contacts

The Brookings Institution

The Brookings Institution is a private nonprofit organization devoted to independent research and innovative policy solutions. For more than 90 years, Brookings has analyzed current and emerging issues and produced new ideas that matter—for the nation and the world.

1775 Massachusetts Avenue, N.W.

Washington, DC 20036-2188

202-797-6000

http://www.brookings.edu/index/taxonomy.htm?taxonomy=Social%20Policy*Immigration

Compete America

Compete America is a coalition of over 200 corporations, universities, research institutions and trade associations committed to ensuring that the United States has the capacity to acquire the talent necessary for continued innovation and expansion in a worldwide economy.

1331 Pennsylvania Avenue, NW

Suite 600

Washington, DC 20004

<http://www.competeamerica.org/>

National Foundation for American Policy

The National Foundation for American Policy (NFAP) is a non-profit, non-partisan organization dedicated to public policy research on trade, immigration, education, and other issues of national importance.

2111 Wilson Blvd., Suite 700

Arlington, VA 22201

(703) 351-5042

<http://www.nfap.net/>

U.S. Chamber of Commerce

The U.S. Chamber of Commerce is the world's largest business federation representing more than 3 million businesses of all sizes, sectors, and regions. It includes hundreds of associations, thousands of local chambers, and more than 100 American Chambers of Commerce in 91 countries.

1615 H St, NW

Washington, DC 20062

(202) 659-6000

<http://www.uschamber.com/issues/index/immigration/default.htm?n=tb>

Other Helpful Resources and Contacts:

Visit www.aila.org/resourceguide for an index of national, state, and community groups that, as advocates, activists, and direct service providers, are dedicated to the just treatment of immigrants in laws and in practice.

AILA State Chapters can also provide contact information for local immigration attorneys who have expertise on legal issues related to comprehensive immigration reform. To contact the AILA Chapter Chair for your state, please see p. 108 of this publication, or download a list of Chapter Chairs at www.aila.org/resourceguide.

IV. REFORMING OUR PERMANENT IMMIGRATION SYSTEM

Introduction

AILA believes that any truly comprehensive immigration reform program must address our outdated permanent immigration system and eliminate the multi-year backlogs for family-based and employment-based green cards. The ostensible goals behind our permanent immigration policies include promoting family unification, facilitating immigrant assimilation, and unleashing immigrants' economic dynamism. Yet our current, outdated policies do just the opposite.

Severe backlogs for family-based green cards keep families separated for years and even decades, and similar delays for employment-based green cards disrupt American businesses and lead talented immigrants to seek jobs in countries where permanent residence is more easily obtainable. 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.

Many lawmakers have become fixated on the notion of reforming the U.S. immigration system by creating a new essential worker program.¹ Although a new visa program for legal workers is an integral component of any comprehensive reform proposal, an approach that focuses solely on temporary immigration would fail to produce a lasting solution. Such a narrow approach would be a disservice to U.S. families who have been waiting for years to be reunited, and to U.S. businesses that need a stable workforce to continue to grow. Instead, Congress must create a flexible immigration system that meets the varied needs of American businesses, families, and communities by combining enhanced legal channels for short-term immigrants with a robust and effective permanent immigration system.

On the family side, reform of the permanent immigration system must alleviate the multi-year visa backlogs that keep families separated, and update the arbitrary numerical caps and highly complex regulations that contribute to these delays. In the case of Mexican nationals, visa wait times are currently 7-10 years for the spouse of a legal permanent resident and 10-12 years for the unmarried adult child of a U.S. citizen. Keeping immediate relatives separated for so long undermines basic American family values and our national self-interest in a rational, workable immigration system.

On the employment side, 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 essential workers and their families. Yet U.S. businesses face a chronic shortage of American workers – in both high-skilled and essential worker industries – and they rely upon foreign workers to fill these critical positions. The disconnect between our immigration policies and the economic realities facing this country in the 21st century could not be more stark.

¹ Please see Chapter III for a definition of “essential workers” and more information about the need to create realistic legal channels for such workers.

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 United States would represent a needless waste of talent. Perhaps more importantly, a transient workforce cannot substitute for the economic vitality and social stability that permanent immigrants confer on the United States.

Reform of the permanent immigration system is essential to ensuring the continued vitality of the American economy, and to meeting our nation's historic commitment to family reunification. To be truly comprehensive, therefore, any immigration reform proposal must alleviate the green card backlogs, update the arbitrary visa caps, and restore integrity to the family-based and employment-based permanent immigration system.

Eliminating the Employment-Based Visa Backlog: Vital to America's Economic Competitiveness

The Issue: Reform of the permanent employment-based visa program is urgently needed in order for U.S. employers to hire the foreign talent necessary for the American economy to remain vibrant and competitive. There simply are not enough Americans available to meet U.S. employer demands for high-skilled labor in this country. Over half of all science, technology, engineering, and mathematics graduates of American universities are foreign born. Our current system, however, forces most of these graduates to leave the U.S. and apply their valuable skills in other countries, a scenario that is beneficial to all but the U.S. Needless to say, foreign countries are not complaining, but are instead poised to take advantage in their increasingly successful attempts to surpass us. Simply put, 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.

How the Employment-based (EB) Visa System Works: Each year, 140,000 EB visas, or “green cards,” spread across five preference categories based on credentials, are allotted for foreign nationals seeking 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 visa cap, accounting for over half the allotted number. However, because these visas 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 visas.

EB Retrogression and the Unavailability of Green Cards: The current problems with the EB system are attributable to two things: administrative delays in processing green card applications; and, as mentioned above, the statutory limits, regulated by the U.S. Department of State (DOS), putting a cap on the number of EB visas issued each year. 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, 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, 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.

AILA's Position: Congress must reform the EB visa system. These reforms should include:

- ★ Recapture of unused EB visas from prior years;
- ★ Exemption of spouses and children from EB visa quotas;
- ★ A market-based EB visa cap, responsive to the needs of U.S. employers.

Without these reforms, we will continue to make it more and more difficult for talented foreign professionals to work in this country and fill the positions U.S. employers desperately need to fill. As a result, these talented professionals simply will go elsewhere, resulting in devastating long-term consequences for the U.S. economy.

Recent Legislation:

SKIL Act: AILA currently is part of a coalition of over 200 corporations, universities, research institutions, and trade associations working to help reform the EB visa program. This coalition supports a high-skilled immigration bill that was introduced in the 109th Congress by Senator Cornyn (R-TX) and Representative Shadegg (R-AZ), a bill that would have assisted U.S. businesses in alleviating the specialty occupation worker shortage. Among a variety of other excellent proposals, the SKIL bill would have:

- ★ Raised the cap from 140,000 to 290,000 visas a year and allowed unused visas to fall forward annually, while recapturing unused visas from previous fiscal years 2001-2005.
- ★ Retained current green card allocation so that the majority of visas (57%) go to highly-educated and skilled workers.
- ★ Exempted from the EB cap professionals who have earned a U.S. master's or higher degree AND those awarded a medical specialty certification based on post-doctoral U.S. training and experience.
- ★ Exempted those who will perform labor in shortage occupations (designated by the Secretary of Labor for blanket certification as lacking sufficient U.S. workers) who are able, willing, qualified and available for such occupation, if the employment does not adversely affect conditions of similarly employed U.S. workers.
- ★ Exempted spouse and minor children of employment-based professionals.

More information on the main provisions of the SKIL bill is posted on AILA's website: <http://www.aila.org/content/default.aspx?docid=19303>.

Comprehensive Immigration Reform: In late May, the Senate passed the Comprehensive Immigration Reform Act of 2006 (S. 2611), which included the EB visa program provisions in the SKIL Bill. As a result, S. 2611 offered a framework for comprehensive reform that would not only fix the problems with the low-skilled immigration system, but also address the need of U.S. businesses to hire and retain highly educated, foreign professionals.

AILA strongly supports inclusion of the SKIL Act provisions as a part of any comprehensive immigration reform legislation introduced during the 110th Congress.

Prepared by the National Immigration Forum
Updated January 2007

Immigration Backlogs are Separating American Families

In our immigration law, our country has made it a priority for families to be together. In recent years, however, growing backlogs in our immigration system, along with barriers to family unification erected by laws passed in 1996, have kept families separated for many years, and in some cases have split families apart.

Family immigration categories and per-country limits

Our family immigration system places people who want to immigrate to the U.S. into visa categories (most with numerical limits) according to the closeness of the relationship and the citizenship status of the U.S. family member.

Categories of Family Immigration, Numerical Limits, and Approximate Length of Wait for Visa

Visa Category	Citizenship Status to U.S. Family Member	Relationship of Intending Immigrant to U.S. Family Member	Annual Numerical Limit	Length of Wait for Visas in this Category <i>(As of January 2005)</i>
Immediate Relative	U.S. Citizen	Spouse, unmarried minor child, parent	No limit	No quota limit backlog. Application processing backlog may be several months.
First Family Preference	U.S. Citizen	Unmarried adult children (21 years or older)	23,400	5 years, 8 months for most countries
Second A Family Preference	U.S. Legal Permanent Resident	Spouse, minor child	87,900	4 years, 9 months for most countries
Second B Family Preference	U.S. Legal Permanent Resident	Unmarried adult children (21 years or older)	26,300	9 years, 8 months for most countries
Third Family Preference	U.S. Citizen	Married adult children	23,400	8 years for most countries
Fourth Family Preference	U.S. Citizen	Brothers and sisters	65,000	11 years for most countries

As the table above shows, there is no numerical cap for spouses, unmarried minor children, and parents of U.S. citizens. This category is called “immediate relatives of U.S. citizens.” For all other relations, however, there are strict limits on the total number in each category. All “immediate relatives” plus all of the family preference categories must fit within an overall ceiling for family-based immigration of 480,000, but this ceiling can be exceeded due to the fact that there is a “floor” of 226,000 for the family preference categories (non-immediate relatives) coupled with the fact that immediate relatives are not capped. (So, when immediate relative immigration is more than 254,000 (480,000 – 226,000), the overall ceiling is “pierced.”) For many years now, there have been no more than 226,000 visas allocated to the family preference categories because immediate relative immigration has been more than 254,000 per year. *This is the heart of the backlog problem with family preference immigration.*

In addition to these category limits, the ceiling on the number of people we allow in from any one country is approximately 25,600. This ceiling includes immigrants in the family-preference categories and immigrants who are coming here through the sponsorship of an employer. There are some exceptions to the per-country limits.

Two kinds of backlogs

There are two kinds of backlogs. At the end of the immigration process, when an immigrant visa is available to the immigrant, there may be an administrative backlog due to the fact that the immigration service may not have sufficient resources to handle its workload. Delays in the process of adjudicating the permanent resident visa, or “green card,” have recently been as long as two years. These backlogs can be dealt with by giving the immigration agency more resources to handle its workload.

However, the more serious problem—often confused with the administrative problem—is the much longer backlog that has developed because *the number of visas available by law each year is less than the number of prospective immigrants getting in line to wait for a visa*. This problem cannot be solved by making the immigration agency more efficient, but will only be resolved by reforming our immigration system so that the number of visas available better meets demand.

Priority dates and backlogs

An immigrant begins the process of joining his or her family member in the U.S. when the family member submits a petition to the government. The filing of that petition establishes a priority date, holding the immigrant's place in line. The State Department keeps tabs on whether or not there are visas available within the category and per-country limits. If there is no backlog, an immigrant visa (or “green card”) is immediately available to the immigrant, and the immigrant will receive one as soon as the government processes the application. In the application process, checks are performed to make sure the individual has no criminal history, is not a security threat, and is otherwise not inadmissible as an immigrant to the U.S.

In recent years, however, the number of visas available in our family immigration system has not met the demand. Except for the spouses, children, and parents of U.S. citizens, for which there are no per-country or category ceilings, there are backlogs in all categories of family-based immigration. Each month, the State Department publishes a table showing the availability of immigrant visas relative to their priority dates. The “Visa Bulletin,” in which this table is published, can be found on the Web site of the State Department at: http://www.travel.state.gov/visa/frvi/bulletin/bulletin_1360.html.

For example, as of January 2007, a wife, husband, or child of a U.S. Lawful Permanent Resident is only now receiving a visa if his or her priority date was earlier than March 15, 2002—that is, after a wait of *almost five years* (longer for those coming from Mexico). A U.S. citizen who petitioned for a sibling is only now being rejoined with that sister or brother after a wait of *11 years*. If that brother or sister is coming from the Philippines, the wait has been more than 22 years. For most countries, the adult unmarried children of U.S. citizens are only now getting their visas if their U.S. citizen family member filed a petition in April 2001—a backlog of more than five years.

The current State Department projections of the backlogs may actually understate the wait an immigrant will eventually have. For reasons having to do with the ability of the government to keep up with the demand for “adjustment of status” cases, the “current” priority date may actually go *backwards* from one month to the next. For example, in May 2001, the priority date for which visas were being allocated for the category of adult children of U.S. citizens was March 1, 1999. By July of 2001, the priority date had actually receded to January 1, 1997.

Backlogs are so long that immigrants are often moving from one long line to a longer line as they age or get married while waiting for an immigrant visa. The minor child of a legal permanent resident, for example, may become an adult during the course of the nearly five-year wait for an immigrant visa. When that child becomes an adult, he or she gets shifted to another line, for the category of adult children of permanent residents, where the wait may be longer for that individual.

Given that we have already decided, in the structure of our immigration law, to make family unity a priority, it does not make sense to have an outdated quota system that keeps families separated for many years. If we as a nation continue to believe that it is important to keep families together, then we must reform our immigration system so that the category and per-country limits that we now have on family-based immigration meet our needs.

Current law regarding family unification should be updated

The emphasis we place in our immigration law on the reunification of families makes sense in terms of helping our newcomers adapt to their new home. Family members help each other adjust to their new surroundings by pooling resources and sharing responsibilities (for example, for the care of children or elderly parents).

The inability to bring family members makes it harder for U.S. companies to attract the workers they need. Workers who do come may be less productive if forced to endure a long separation from their families. Additionally, immigrants coming to the U.S. as a result of family ties also get jobs and become valuable contributors to our economy. Finally, strong families help stabilize communities.

As the backlogs grow, an increasing number of immigrants coming to join American families are facing the choice of remaining separated for several years or keeping the family intact by entering illegally. The backlogs are also yielding consequences contrary to some of our other policy goals. For Filipinos, for example, becoming a U.S. citizen may mean a longer separation from adult children. The backlog for the adult children of Filipinos who become citizens is longer than the wait to bring in adult unmarried children of permanent residents. As a practical matter, reuniting with family in this case may mean postponing citizenship.

Comprehensive immigration reform is needed to speed the reunification of families

The 106th Congress began to address the harsh consequences of the backlog problem. As part of the Legal Immigration Family Equity Act (LIFE Act), the minor children and spouses of U.S. Lawful Permanent Residents who had been waiting more than three years for an immigrant visa were given the opportunity to apply for a new temporary visa (a “V visa”) that allowed them to come to the U.S. and stay and work here until their permanent immigrant visa became available. However, these visas were available for a limited time only.

The 107th Congress acted to protect the children of U.S. citizens from the immigration consequences of turning 21 while waiting for the government to process the immigrant petition filed by their parent.

Congress should make comprehensive changes to speed the reunification of families

Congress is now considering a much-needed comprehensive overhaul of our immigration system. In order for immigration reform to be comprehensive, it must include, as one important element, changes to the family preference system so that families might be re-united in a more timely manner. Updating our family immigration laws

will reduce the pressure for family members to migrate outside of legal channels. By creating wider legal channels for immigrants to come here, the number of people who come illegally will be reduced or eliminated.

There are a number of things Congress could do to alleviate the backlogs and their consequences.

- ★ *Update the immigrant quota system:* Our immigrant quota system has not been updated in a decade and a half, despite increased demand. There are several ways that Congress could reform the system. “Immediate relatives” could be exempted from the family-sponsored immigrant cap. The definition of immediate relative might be expanded to include the spouses and minor children of legal permanent residents. (Additionally, the children of immediate relatives could also be included in the definition of immediate relative.) This would free up visas in the limited family preference system so they could be re-allocated to the remaining categories of family-sponsored immigrants. With these extra visas, there would be much progress in reducing the long backlog now experienced by these categories of immigrants.
- ★ *Place a cap on the backlog:* Congress could provide for waivers to the per-country and world-wide numerical limits to family reunification that would be triggered when an immigrant’s wait exceeded a period of time—five years, for example. Any eligible family-sponsored immigrant who had waited five years or more would be given a visa whether or not that year’s quotas had been reached.
- ★ *Re-allocate unused visas from the prior year:* Even though there is more demand for visas than there are available visas, it sometimes happens (usually, because of processing delays or security screening) that some of the visas that should be allocated in a given year are not allocated. Congress could change the law so that when that happens, the unused visas are made available the following year, outside of the per country limits.
- ★ *Protect immigrant eligibility from delays:* Congress could clarify that someone does not become ineligible for an immigrant visa because, while waiting for a visa to become available or during processing delays, he or she enters a different age category or gets married. This would solve the problem some immigrants now have of getting shuffled from one backlog to another.
- ★ *Increase administrative resources:* The administrative costs of processing immigrant applications are covered by fees immigrants pay with their applications. However, Congress has mandated that the immigration service also use these fees to cover the costs of processes and infrastructure unrelated to the immigrant’s application. Congress should allocate resources to the immigration agency so that the revenue from application fees are put to work processing applications in a timely manner, and are not diverted to cover the cost of unrelated functions. Otherwise, an increase in the availability of visas to solve the problem caused by the backlog in the quota system will only result in frustrating backlogs in the processing of applications. These can be avoided if the administration of our immigration system has sufficient resources to run smoothly.

Comprehensive reform must include the removal of barriers to family re-unification

In recent years, in a failed effort to stop illegal immigration by passing harsh laws aimed at legal and undocumented immigrants, Congress has erected legal barriers that, unless they are removed, will keep families apart. Comprehensive reform, if it is to meaningfully speed family unification, must include the removal of these barriers.

- ★ *Congress should remove the bar to re-entry that places immigrants in a catch 22:* Certain people who are in the U.S. without permission, but who have qualified and are on the verge of gaining immigration status, are required to leave the country to pick up their immigrant visas in their home countries. However, a 1996 law prohibits anyone who leaves the country after having been here a minimum of six months without permission from re-entering the country for three years—regardless of whether they have qual-

ified for an immigrant visa through family or employer sponsorship. Those here for twelve months or more are prohibited from re-entering the country for ten years. There is even a permanent bar to re-entry for certain immigrants who have been here illegally. These immigrants face the choice of a very long separation from their family or remaining in the U.S. with no status and forgoing the immigrant visa for which they have qualified.

These prohibitions on re-entry into the U.S.—the three- and ten-year bars (and the permanent bar)—should be repealed. The main effect is to hold the threat of splitting apart families, and so family members who may be here unlawfully don't risk opportunities to become legal. The bars to re-entry have so far been ineffective in deterring people from coming here illegally. Repealing the bars would allow intending immigrants to go through the normal screening processes that other immigrants must go through when applying for permanent residence in the U.S.

- ★ *Reduce income requirements that close off opportunities for some hardworking, but low-paid Americans to reunite with family members:* In 1996, a new provision was added to the immigration law requiring all citizens or legal permanent residents wishing to petition for a family member must earn at least 125 percent of the federal poverty level and sign a legally enforceable *affidavit of support* promising to support the immigrant financially. While this requirement was added to the law to ensure that immigrants will be provided for by family members and will not become a “public charge,” for some hardworking but low paid Americans, it shuts off an opportunity to reunite with close family members. For example, immigrants in certain occupations, if they earn the median income for that occupation, might earn less than 125 percent of the federal poverty level for their family size. Though they may be hard working, these Americans may lose the chance to reunite with close family members because of the new income requirements. The income requirement should be lowered, so that hardworking but low-paid workers are not penalized and kept from reuniting with family members simply because they do not earn enough in their jobs.

This backgrounder is available on the website of the National Immigration Forum at <http://www.immigrationforum.org/documents/TheDebate/ImmigrationReform/FamilyBacklogBackgrounder.pdf>.

The National Immigration Forum is a non-partisan pro-immigrant advocacy group in Washington, DC. The mission of the National Immigration Forum is to embrace and uphold America's tradition as a nation of immigrants. <http://www.immigrationforum.org>

Immigration Policy Center
American Immigration Law Foundation
Immigration Policy in Focus, Volume 5, Issue 1- January 2006

More Than a Temporary Fix: The Role of Permanent Immigration in Comprehensive Reform

by *Walter A. Ewing, Ph.D.*

Executive Summary

The immigration debate once again is dominated by narrow thinking and the search for simplistic solutions to complex problems. Most lawmakers and the press have come to equate “immigration reform” with the question of whether or not enhanced immigration enforcement should be coupled with a new guest worker program that is more responsive than current immigration policies to the labor needs of the U.S. economy. All but lost in this debate have been the calls by prominent immigration reform advocates to improve and expand pathways for permanent immigration as well. But immigration reform will not be truly comprehensive, or effective, unless it recognizes the vital contributions of temporary workers and permanent immigrants alike, and the inadequacy of the current immigration system in providing legal channels for either to enter the country. Both temporary workers and permanent immigrants fill critical gaps in the U.S. labor force, but permanent immigrants are far more likely to acquire new job skills, achieve upward mobility, learn English, buy homes, create businesses, and revitalize urban areas.

Among the findings of this report:

- ★ In 2003, 48 percent of immigrants who were not U.S. citizens and had been in the United States for 3 years or less reported that they spoke English well, compared to 63 percent for those who had been in the country between 7 and 9 years.
- ★ Among non-citizen immigrants from Mexico, the share who spoke English well in 2003 rose from 10 percent for those in the country 3 years or less to 26 percent for those in the country between 7-9 years.
- ★ A workforce composed mostly of temporary workers who leave the country after 6 years would consist in large part of workers who never become highly proficient in English.
- ★ Among non-U.S. citizen immigrants, only 11 percent who had been in the country 3 years or less owned a home in 2003, compared to 37 percent of those who had been here between 7 and 9 years.
- ★ The share of non-citizen immigrants from Mexico who owned a home in 2003 rose from 7 percent among those who had been in the country 3 years or less to 26 percent of those who had been here between 7 and 9 years.
- ★ A temporary-only approach to immigration reform would limit, rather than expand, the number of long-term immigrants who fuel a large portion of the U.S. housing market.
- ★ Temporary workers have an important role to play in the U.S. economy, but they are no substitute for permanent immigrants who integrate into U.S. society, move up in their jobs, and earn higher incomes over time, thus more fully realizing their economic potential as workers, taxpayers, entrepreneurs, and consumers.

“More Than a Temporary Fix: The Role of Permanent Immigration in Comprehensive Reform” is available in its entirety at http://www.aifl.org/ipc/infocus/2006_morethantemporary.pdf.

The Immigration Policy Center (IPC) is dedicated exclusively to the analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States. The IPC is a division of the American Immigration Law Foundation, a nonprofit, tax-exempt educational foundation under Section 501(c)3 of the Internal Revenue Code.

Visa Bulletin for January 2007

Immigrants who come to the United States legally using employment-based and family-based green cards often face waits of several years or even decades to obtain the visas that allow them to fill jobs in industries plagued by worker shortages or to reunite with family members already living in the U.S. The severity of the backlogs for family-based and employment-based green cards, particularly in certain categories and for certain nationalities, can be seen on the following page, in an excerpt from a recent State Department Visa Bulletin.

The left column of each chart indicates the preference category. Dates listed are the priority date cut-offs; only applicants who have a priority date earlier than the cut-off date may be allotted a number for these oversubscribed categories. A “C” indicates that a category is current and numbers are available for all qualified applicants.

Visa Bulletins are issued by the State Department each month. Current and past issues may be viewed in their entirety at: http://travel.state.gov/visa/frvi/bulletin/bulletin_1360.html.

VISA Bulletin Number 101, Volume VII, January 2007 —continued on next page

Family	All Chargeability Areas <i>Except Those Listed</i>	CHINA <i>Mainland Born</i>	INDIA	MEXICO	PHILIPPINES
1st	22APR01	22APR01	22APR01	01JAN94	15DEC91
2A	15MAR02	15MAR02	15MAR02	15MAR00	15MAR02
2B	08APR97	08APR97	08APR97	01MAR92	08SEP96
3rd	01JAN99	01JAN99	01JAN99	01JAN95	08FEB91
4th	08JAN96	22JUN95	01OCT95	22JAN94	01JUL84

VISA Bulletin Number 101, Volume VII, January 2007 —continued from previous page

Employment-Based	All Chargeability Areas <i>Except Those Listed</i>	CHINA <i>Mainland Born</i>	INDIA	MEXICO	PHILIPPINES
1st	C	C	C	C	C
2 nd	C	22APR05	08JAN03	C	C
3 rd	01AUG02	01AUG02	08MAY01	15MAY01	01AUG02
Schedule A Workers	15JUN04	15JUN04	15JUN04	15JUN04	15JUN04
Other Workers	01OCT01	01OCT01	01OCT01	01OCT01	01OCT01
4 th	C	C	C	C	C
Certain Religious Workers	C	C	C	C	C
Iraqi & Afghani Translators	18SEP06	18SEP06	18SEP06	18SEP06	18SEP06
5 th	C	C	C	C	C
Targeted Employment Areas/ Regional Centers	C	C	C	C	C

Additional Resources and Contacts

Coalition for Comprehensive Immigration Reform

The Coalition for Comprehensive Immigration Reform (CCIR) is a new collaborative developed by national and local community, immigrant, labor and policy leaders in 2004. Based in Washington, DC, the mission and central purpose of the CCIR is to pass progressive comprehensive immigration reform.

1775 K Street, NW
Suite 620
Washington, DC 20006
(202)661-3689
<http://www.cirnow.org>

The Migration Policy Institute

The Migration Policy Institute (MPI) is an independent, non-partisan, non-profit think tank dedicated to the study of the movement of people worldwide.

1400 16th St NW, Ste 300
Washington, DC 20036
(202) 266-1940
<http://www.migrationpolicy.org/>

Other Helpful Resources and Contacts:

Visit www.aila.org/resourceguide for an index of national, state, and community groups that, as advocates, activists, and direct service providers, are dedicated to the just treatment of immigrants in laws and in practice.

AILA State Chapters can also provide contact information for local immigration attorneys who have expertise on legal issues related to comprehensive immigration reform. To contact the AILA Chapter Chair for your state, please see p. 108 of this publication, or download a list of Chapter Chairs at www.aila.org/resourceguide.

V. SMART ENFORCEMENT THAT RESPECTS DUE PROCESS

Introduction: Enforcement

Most observers agree that undocumented immigrants who come to the United States are interested in finding jobs and reuniting with their families, not in launching a terrorist strike. Since 9/11, however, concern has mounted among policymakers and law-enforcement authorities that foreign terrorists might rely on the same people-smuggling networks as undocumented immigrants and become lost in the large undocumented flow. Safeguarding the homeland from another terrorist attack therefore has become the main justification for accelerating the already massive buildup of border-enforcement resources that began in the early 1990s. From Fiscal Year (FY) 1993 to FY 2005, the Border Patrol budget quadrupled from \$362 million to \$1.4 billion and the number of Border Patrol agents nearly tripled from 3,965 to 11,300. Most of these resources and personnel have been devoted to fortifying traditional border-crossing locales along the U.S.-Mexico border.

Despite these efforts, the pace of undocumented immigration to the United States has increased. To date, heightened border enforcement has succeeded primarily in shifting undocumented immigration from place to place and motivating more prospective immigrants to hire people smugglers to guide them into the country. The growing profitability of people smuggling, particularly from countries other than Mexico, has attracted the interest of some criminal networks that also traffic in drugs, weapons, and human beings. As a result, the current border-enforcement strategy has had the ironic effect of fostering greater sophistication in the illicit pathways by which a foreign terrorist might cross the southern border into the United States. If the movement of workers across the border were channeled into legal avenues, the demand for people smugglers would diminish dramatically, thereby curbing the growth of an illicit trafficking industry that could pose a real threat to our national security.

The most practical and effective response to the problem of undocumented immigration is to couple smart border and interior enforcement initiatives with more flexible 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. As stated unequivocally by former Secretary of Homeland Security Tom Ridge: “border enforcement will continue to fail so long as we refuse to allow willing workers a chance to work legally for a willing employer.” Similarly, the Coalition for Immigration Security, a group of nine former high-ranking members of the Department of Homeland Security, has urged Congress 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. Not only would this better serve the labor needs of the U.S. economy than the current reliance on undocumented workers, but it would extract undocumented immigration from the border-security equation. A continuation of the enforcement-only strategy implemented since the early 1990s, which lumps together terrorists and jobseekers from abroad as groups to be kept out, decreases the chances that a foreign terrorist actually will be caught.

No amount of border enforcement can compensate for the fact that U.S. immigration policies are outdated. Over the past two decades, the economic integration of North America, the western hemisphere, and the world as a whole have increased dramatically. The U.S. economy continues to create large numbers of less-skilled jobs even as native-born workers grow older and better educated and are increasingly unavailable to fill such jobs. Yet the federal government persists in trying to impose numerical caps and other restrictions on immigration that were formulated in the 1960s. As a result, border-enforcement resources are devoted in large part to stemming labor migration which the U.S. economy attracts and which is an outcome of globalization. Until lawmakers create new avenues for both permanent and temporary immigration that are realistic and flexible, U.S. national security will continue to be undermined by border-enforcement efforts that divert labor migration through undocumented channels and into the hands of people smugglers.

Beyond Soundbites: The Straight Facts About Our Border Enforcement Agenda

Many observers frustrated with unabated undocumented immigration ask, “Why can’t we just seal the border?”

- ★ *Even if it were possible, “sealing the border” would be economically and politically indefensible.* Virtually everyone agrees that the status quo is untenable and that undocumented immigration raises a number of obvious security concerns. However, the question that flows from those concerns should be: “how can we stymie undocumented immigration and gain control of our borders?”, not “how can we seal our borders?” Why? Because the U.S.-Mexico border is a highly integrated social and economic region. Thousands of families live legally on both sides of the border and have done so for generations. Countless businesses in important industries have operations running on both sides of the border. Many individuals live in one country and go to work or school in the other country. In such a fluid, dynamic, and integrated region, sealing the border – if it were even possible – would wreak havoc on our national and regional economic and political interests.

What is the government’s current strategy to secure the border?

- ★ *Since 1994, the U.S. Border Patrol’s strategy for “securing” the U.S.-Mexico border has been “prevention through deterrence.”* That is, agents and new technologies are concentrated in “high traffic” areas so as to increase the “certainty of apprehension” and therefore deter would-be immigrants, smugglers, and, presumably, terrorists from crossing into the United States.
- ★ *The government has funded unprecedented increases in the Border Patrol budget and number of agents.* From Fiscal Year (FY) 1993 to FY 2005, the Border Patrol budget quadrupled from \$362 million to \$1.4 billion and the number of Border Patrol agents nearly tripled from 3,965 to 11,300. The number of hours agents spent patrolling the border grew by a factor of *eight*.
- ★ *The Border Patrol has concentrated resources on the U.S.-Mexico border.* Most of these resources and personnel have been devoted to fortifying traditional border-crossing locales in the southwest (about 90 percent of all Border Patrol agents are deployed along the U.S.-Mexico border).

Has this strategy and the attendant infusion of significant resources succeeded in establishing operational control over the border?

- ★ *No, the prevention through deterrence strategy has failed.* Despite the commitment of historic levels of funding to border security efforts, the pace of undocumented immigration has increased. The Pew Hispanic Center estimates that the number of immigrants entering the country in an undocumented status, or falling into undocumented status by overstaying a valid visa, rose from about 400,000 per year between 1990 and 1994, to 575,000 per year between 1995 and 1999, to 850,000 per year between 2000 and 2005 (anywhere from 25 percent to 40 percent of undocumented immigrants are visa overstays rather than undocumented arrivals).
- ★ *Increased enforcement has driven migrants into more remote and dangerous areas, making them more difficult to apprehend and their journeys more deadly:*
 - Between 1986 and 2002 the probability of apprehension along the border steadily declined.
 - In 2006, the Government Accountability Office found that annual border crossing deaths have doubled since 1995. A record 472 migrants lost their lives during 2005 alone.
- ★ *Perversely, increased enforcement has led migrants who would have returned home more quickly to stay in the U.S. longer.* Facing increased costs and danger in crossing the border, the average length of stay has doubled from 1.7 years before 1986 to 3.5 years today.

Would the strategy of “attrition” promoted by some immigration restrictionists work better?

- ★ *Implementing an “attrition” strategy would wreak havoc on our national economy and our communities.* The attrition theory posits that simply putting the squeeze on employers who hire undocumented workers will eliminate the pull of economic opportunity and force the current undocumented population to abandon ship. But at what ultimate cost? The vast majority of employers only hire undocumented workers because they cannot find willing and available U.S. workers. More than 5% of the current U.S. workforce is now undocumented. Do we want or expect these employers to go out of business because our immigration system makes it impossible to hire willing workers?

How can we restore legality at our borders and reverse the trend towards large-scale undocumented immigration without crippling our economy and devastating border communities?

- ★ *We need to chart a strategic change in course that embraces a holistic view of the enforcement challenges confronting us.* To be sure, effective deployment and management of technology and resources, along with focused deterrence strategies, play a critical role in the enforcement equation. However, Congress must also recognize what the Department of Homeland Security has repeatedly acknowledged: the inexorable movement of a southern labor supply toward an unmet northern labor demand will continue to trump intensive enforcement efforts.
- ★ *We need to create legal opportunities for immigrants to fill worker shortages.* Until we create adequate channels for workers to come to this country and legally fill shortages in labor-intensive industries, the push to provide for one’s family and the pull of economic opportunity will doom the best-laid enforcement plans.
- ★ *We need to provide immigrants a secure, orderly alternative to illegal entry.* Until we can channel this flow of labor into secure, legal avenues, our enforcement efforts will only result in more dangerous illegal crossings and greater sophistication in human smuggling, ultimately undermining our national security and doing nothing to address the root causes of undocumented immigration.

Prepared by the National Immigration Forum
November 2005

Enforcement Alone is Not the Answer We Need a Comprehensive Approach

While some in Congress continue to recommend an “enforcement only” or “enforcement first” approach to border security and immigration, opinion leaders from across the country are beginning to understand that following this prescription over the last decade or two has not only failed to create a more secure country, it has been counterproductive.

Below is a sampling of quotes from opinion leaders, including members of the Bush Administration.

President Bush: “As we improve and expand our efforts to secure our borders, we must also recognize that enforcement cannot work unless it's part of a comprehensive immigration reform that includes a Temporary Worker Program. If an employer has a job that no American is willing to take, we need to find a way to fill that demand by matching willing employers with willing workers from foreign countries on a temporary and legal basis.” (*President Bush's Radio Address on Homeland Security, October 22, 2005*)

Secretary Michael Chertoff: “... [F]or a Secure Border Initiative to be fully effective, Congress will need to change our immigration laws to address the simple laws of supply and demand that fuel most illegal migration and find mechanisms to bring legal workers into a regulated, legal Temporary Worker Program, while still preserving national security.” (*Remarks by Homeland Security Secretary Michael Chertoff at the Houston Forum, November 2, 2005*)

Secretary Michael Chertoff: “The effectiveness of our border security and interior enforcement is closely tied to establishing a workable and enforceable Temporary Worker Program. A well-designed Temporary Worker Program will provide legal channels for U.S. employers and foreign born workers to match needs in the best interest of the U.S. economy without disadvantaging American workers.” (*Homeland Security Secretary Michael Chertoff's Testimony before the Senate Judiciary Committee, October 18, 2005*)

Princeton Professor Douglas S. Massey: “The attempt to stop the flow of Mexican labor into the United States through unilateral enforcement has not only failed miserably, it has backfired. It has not deterred would-be immigrants from entering the United States nor has it reduced the size of the annual inflow. What it HAS done is channel migratory flows away from traditional crossing points to remote zones where the physical risks are great but the likelihood of getting caught is small. As a result, the number of deaths has skyrocketed to a record 460 persons per year while the probability of apprehension has fallen to forty year low. We are spending more tax dollars to catch fewer migrants and cause more deaths.” (*Douglas S. Massey, Ph.D Testimony before the Senate Judiciary Committee, October 18, 2005*)

Conservative activist Stuart Anderson: “Conservatives should not abandon belief in markets simply because the issue is immigration. Those who say we should not permit more people to work on legal temporary visas until we “control the border” have it backward: The only proven way to control the border is to open up paths to legal entry, allowing the market to succeed where law enforcement alone has failed.” (*Stuart Anderson, Executive Director of the National Foundation for American Policy, Letter to The Washington Times, Market forces dictate the best immigration policy, October 26, 2005*)

Conservative activist Tamar Jacoby: “In the wake of 9/11, it goes without saying: We need to find a way to enforce our immigration laws. But tempting as it is to talk tough and make a show of throwing money at the problem, we can't get the control we need just by cracking down — and any politician who promises we can isn't serious about solving the problem.” (*Tamar Jacoby, Los Angeles Times, Op-Ed, “A Law That Means Business,” July 12, 2005*)

NCLR President Janet Murguia: “Congressional leaders face a choice: We can beef up failed enforcement strategies for the umpteenth time, or we can do the hard work of passing comprehensive reforms that stand a chance of making a difference. Surely a nation of laws which is also a nation of immigrants can strike the right balance.” (*Janet Murguia, president and CEO of the National Council of La Raza, Op-Ed, October 26, 2005*)

“Noticiero Univision” Co-Anchor Maria Elena Salinas: “The United States cannot afford to invest billions of dollars in border security without creating a program that would allow legal, orderly entry into our country to a much-needed labor force and dealing with the millions of undocumented workers already here. It's time to go from talking to taking action.” (*Syndicated Column, “Immigration reform all talk, no action,” Bergen County, Record, November 7, 2005*)

San Francisco Chronicle Columnist Louis Freedberg: “What is depressing about fence proposals that refuse to die is that they make a mockery of the talk in recent months of coming up with a “comprehensive” solution to the immigration problem. From the president on down, the rhetoric is increasingly focused on labeling illegal immigrants as potential terrorists, and less and less on coming up with a real solution to the presence of millions of undocumented workers in the United States.” (*Louis Freedberg, “The border fence fantasy,” San Francisco Chronicle, November 7, 2005*)

The National Immigration Forum is a non-partisan pro-immigrant advocacy group in Washington, DC. The mission of the National Immigration Forum is to embrace and uphold America's tradition as a nation of immigrants. <http://www.immigrationforum.org>

The Washington Times
www.washingtontimes.com

Immigration and Security

By Tom Ridge
Published September 10, 2006

At a young age, I learned all work has dignity. My father taught me that invaluable lesson, and I understood it clearly after working several different labor-intensive jobs as a young man. Like most fathers and sons, mothers and daughters, we are blessed with the birthright of citizenship because our ancestors saw America as we still want to see America now — a welcoming society that thrives on the diversity of ideas and hard work of a nation comprised of many peoples.

Over the last several months, the immigration debate has shown a spotlight on people who have come to this country illegally or refused to leave as they promised. The majority of these people work hard at jobs that many Americans prefer not to do. The construction laborers, the health-care assistants, the cleaning crews, the hospitality workers — these individuals contribute daily to the economy and continuity of the American way of life. Their work has value; it has dignity; their work ethic is commendable. Yet they are here by unlawful means in a country that asks its citizens to respect and uphold the rule of law. There is no getting around that notion, so the debate we are engaged in presently is a good and necessary one. However, a solution based solely on enforcement is not.

Without question, enforcement is an important and vital component of the immigration piece. During my tenure at Homeland Security, we moved aggressively to mend decades of lax border control. Overall border enforcement spending rose nearly 60 percent. We increased the number of Border Patrol agents by 40 percent. We deployed sophisticated detection equipment, including unmanned aerial vehicles and sensors. We created a single agency, U.S. Customs and Border Protection (CBP), that could devote its primary mission to securing our borders and another, U.S. Immigration and Customs Enforcement (ICE), that devoted its people to enforcing our immigration laws within our country.

We deployed a pivotal entry-exit immigration enforcement system, US-VISIT, that has enrolled more than 50 million travelers and identified more than 1,000 criminals and inadmissible aliens. We began using Expedited Removal to deter illegal entry by non-Mexicans and to maximize use of available detention beds.

We achieved a record number of deportations. We integrated legacy databases to identify tens of thousands of persons arrested or wanted by federal or local law enforcement. And we reduced the backlog of benefit applications by more than two-thirds to encourage people to use legal channels to come to the United States. My successor, Michael Chertoff, has continued this record of enforcement, including an expansion of Expedited Removal, increased crackdowns on employers and the Secure Border Initiative procurement.

Here's the rub: All these accomplishments have been made by swimming upstream against the tide of illegal migrants and visa overstayers who have had few if any legal options to work in the United States. Trying to gain operational control of the borders is impossible unless our enhanced enforcement efforts are coupled with a robust Temporary Guest Worker program and a means to entice those now working illegally out of the shadows into some type of legal status.

Yes, we need to continue to do more at the border. We need to continue deploying US-VISIT to track the entry and exit of foreign guests legally entering the country, since at least 40 percent of our illegal population arrived legally to start. Additionally, much-needed budgetary enhancements will allow CBP and Border Patrol to hire more inspectors and agents and provide the technological support those dedicated individuals need.

These proposals would bring our enforcement capabilities to the level Americans deserve. However, even a well-designed, generously funded enforcement regimen will not work if we don't change the immigration and labor laws that regulate how would-be workers can come to the United States. Moreover, once we create a lawful means for Mexican workers to transit our border, their government can no longer avoid its obligation to protect the integrity of our mutual border and an immigration system that protects their citizens.

With each passing year, our country's shifting demographics leaves a shrinking number of workers, especially at the less-skilled end of the economy. Entire industries in a growing number of urban and rural areas depend on large illegal populations. Existing law allows only a fraction of these workers to enter the country legally, though our unemployment rate has fallen below 5 percent.

This labor market entices thousands of individuals, most from Mexico, to cross our border or remain after a temporary visa expires. The Department of Homeland Security apprehends roughly 1 million migrants illegally entering the United States each year, but perhaps 500,000 succeed in crossing or refusing to leave on time.

Thus, border enforcement will continue to fail so long as we refuse to allow willing workers a chance to work legally for a willing employer. The current flow of illegal immigrants and visa overstayers has made it extremely difficult for our border and interior enforcement agencies to focus on terrorists, organized criminals and violent felons who use the cloak of anonymity offered by the current chaos.

That chaos has left us with a mass of illegal workers, most of whom have committed no serious crime other than their illegal entry. Despite a record performance on deportations from ICE the past two years, at current rates it would take nearly 70 years to deport all of the estimated 11 million people living here illegally, even if not a single new illegal alien entered our territory.

Attempting to deport everybody is neither feasible nor wise. Instead, we need to prioritize our enforcement against the small percentage of illegal residents who have established criminal enterprises, committed violent crimes or are associated with terrorism. The overwhelming majority of long-term residents who have maintained employment in the United States without evidence of criminal or terrorist ties should be granted the opportunity to make, in essence, a plea bargain with law enforcement. By paying a stiff fine and undergoing a thorough security check, these individuals can make amends for their mistake without crippling our economy and communities in the process.

To those who call this amnesty, each day we fail to bring these people out of the shadows is another day of amnesty by default. Each day that passes calls for a comprehensive approach to immigration reform. Each day calls for a long-term plan to legally fill the jobs our economy is creating. Each day calls for us to give our enforcement agencies a fighting chance to detect and deport those who would use our welcoming nature to do us harm.

All work has dignity. So let us seek a solution with dignity — as well as practicality and in complement to the character of a nation that brought so many of our citizens and our families here these last 230 years.

Tom Ridge served as governor of Pennsylvania and as the first secretary of the U.S. Department of Homeland Security.

Immigration Policy Center
American Immigration Law Foundation
Immigration Policy in Focus, Volume 4, Issue 7-September 2005

Beyond the Border Buildup: Towards a New Approach to Mexico-U.S. Migration

by Douglas S. Massey, Ph.D.

Executive Summary

A proper understanding of the causes of international migration suggests that punitive immigration and border policies tend to backfire, and this is precisely what has happened in the case of the United States and Mexico. Rather than raising the odds that undocumented immigrants will be apprehended, U.S. border-enforcement policies have reduced the apprehension rate to historical lows and in the process helped transform Mexican immigration from a regional to a national phenomenon. The solution to the problems associated with undocumented migration is not open borders, but frontiers that are reasonably regulated on a binational basis.

Among the findings of this report:

- ★ Between 1986 and 2002 the number of Border Patrol officers tripled and the number of hours they spent patrolling the border grew by a factor of around eight.
- ★ The proportion of migrants to the United States crossing at “non-traditional” sectors along the U.S.-Mexico border rose from 29 percent in 1988 to 64 percent in 2002.
- ★ The probability of apprehension along the U.S.-Mexico border fell from about 33 percent during the 1970s and early 1980s, to 20-30 percent in 1993 and 1994, to an all-time low of 5 percent in 2002.
- ★ The cost of making one arrest along the U.S.-Mexico border increased from \$300 in 1992 to \$1,700 in 2002, an increase of 467 percent in just a decade.
- ★ From 1980 to 1992, the cost of hiring a *coyote* (smuggler) averaged around \$400 per crossing, but rose to \$1,200 in 1999 before leveling off.
- ★ The average probability of return migration among Mexican migrants to the United States declined from around 45 percent prior to 1986 to around 25 percent in 2002.
- ★ Between 1986 and 1996, the number of Mexicans being naturalized in the United States increased by a factor of nine.
- ★ After 1990 the rate of Mexican population growth in the United States shifted sharply upward, with the population growing from 7 million in 1997 to around 10 million in 2002 – an increase of 43 percent in just five years.

“Beyond the Border Buildup: Towards a New Approach to Mexico-U.S. Migration” is available in its entirety at http://www.aifl.org/ipc/infocus/2005_beyondborder.pdf.

The Immigration Policy Center (IPC) is dedicated exclusively to the analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States. The IPC is a division of the American Immigration Law Foundation, a nonprofit, tax-exempt educational foundation under Section 501(c)3 of the Internal Revenue Code.

American Immigration Law Foundation
Special Report, April 2006

BORDER INSECURITY: U.S. Border-Enforcement Policies and National Security

by *Walter A. Ewing, Ph.D.*

Report Summary

Since 9/11, concern has mounted among policymakers and law-enforcement authorities that foreign terrorists affiliated with al Qaeda might use Mexico as a transit point to enter the United States, relying on the same people-smuggling networks as undocumented immigrants and becoming lost in the large undocumented flow. Some lawmakers have voiced fears that terrorists might be among the growing number of undocumented non-Mexicans crossing the southern border, although these Other Than Mexicans (OTMs) come principally from Central and South America. There is no evidence this has happened, despite suggestions by several lawmakers that the extremely small number of Arab and Muslim OTMs apprehended at the border constitutes a threat to national security.

Ironically, the U.S. government's efforts to stem undocumented immigration by fortifying the U.S.-Mexico border have increased the profitability of the people-smuggling business and fostered greater sophistication in the smuggling networks through which a foreign terrorist might enter the country. U.S. national security would be better served if undocumented labor migration were taken out of the border-security equation by reforming the U.S. immigration system to accommodate U.S. labor demand. In the process, fewer immigrants would try to enter the country without authorization, the market for people smugglers would be undercut, and foreign terrorists would be deprived of the large undocumented flows and smuggling infrastructure that might aid their entry into the United States. Moreover, the U.S. Border Patrol could focus more on finding terrorists and less on apprehending jobseekers.

Among the findings of this report:

- ★ Immigrant smuggling across the U.S.-Mexico border is a growth industry. The share of undocumented immigrants apprehended along the southern border who reportedly were smuggled into the United States rose from 5.5 percent in Fiscal Year (FY) 1992 to 22.2 percent in FY 2004.
- ★ The OTM share of apprehensions along the U.S.-Mexico border rose from 1.1 percent in FY 1997 to 5.8 percent in FY 2004 and then, according to preliminary estimates, spiked to 13.2 percent in FY 2005. More than three-quarters of OTMs are from Honduras, El Salvador, and Guatemala.
- ★ The largest increases in OTM apprehensions at the southern border since 1998 have occurred among citizens of Honduras, El Salvador, and Brazil, none of which is a likely source of terrorists bent on attacking the United States.
- ★ From FY 1999 through FY 2004, apprehensions along the U.S.-Mexico border of OTMs from Middle Eastern, North African, and South Asian countries of "special interest" to national security amounted to only 0.02 percent of all apprehensions and 0.7 percent of all OTM apprehensions. The number of such apprehensions declined after 2001.
- ★ Until lawmakers create new avenues for both permanent and temporary immigration that are realistic and flexible, U.S. national security will continue to be undermined by border-enforcement efforts that divert labor migration through undocumented channels and into the hands of people smugglers.

"Border Insecurity: U.S. Border-Enforcement Policies and National Security" is available in its entirety at http://www.aifl.org/ipc/border_insecurity_spring06.pdf.

The Immigration Policy Center (IPC) is dedicated exclusively to the analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States. The IPC is a division of the American Immigration Law Foundation, a nonprofit, tax-exempt educational foundation under Section 501(c)3 of the Internal Revenue Code.

Statement of the Coalition for Immigration Security

The undersigned each have held high-ranking positions in the Executive Branch with responsibilities for enforcing our immigration laws and securing our borders from those who would seek to harm the United States or violate its laws. We are proud to have been part of the effort since September 11, 2001, to secure our borders and bring integrity back to our immigration system.

As the Congress considers immigration legislation, some have portrayed the debate as one between those who advocate secure borders and those who advocate liberalized employment opportunities. This is a false dichotomy. The reality is that stronger enforcement and a more sensible approach to the 10-12 million illegal aliens in the country today are inextricably interrelated. One cannot succeed without the other. Without reform of laws affecting the ability of temporary, migrant workers to cross our borders legally, our borders cannot and will not be secure.

Since 9/11, the Executive Branch and Congress have worked together to make significant but incomplete efforts to secure our borders. Among the many accomplishments achieved are:

- ★ Spending: Overall border enforcement spending is up 58% to \$7.3 billion in 2005;
- ★ Creation of CBP and ICE: The Department of Homeland Security (DHS) created a single agency, U.S. Customs and Border Protection (CBP), devoted to securing our borders and with a priority mission of keeping terrorists and terrorist weapons out of the country, and we created a single agency, U.S. Immigration and Customs Enforcement (ICE), devoted to enforcing our immigration laws in the interior of our country.
- ★ US-VISIT: DHS deployed an integrated entry-exit immigration enforcement system, enrolling over 50 million travelers and identifying over 1000 criminals and inadmissible aliens.
- ★ A Single, Consolidated Terrorist Watchlist: At the President's direction, the Terrorist Screening Center now maintains the nation's single, consolidated watchlist of known and suspected terrorists against which all applicants for entry into the country and all detained illegal entrants are now checked.
- ★ SEVIS: DHS developed a student tracking system confirming over 870,000 students in the 2004-05 academic year and removing over 60,000 questionable schools from the program.
- ★ Border Patrol: We have increased the number of agents by over 40% and deployed sophisticated equipment, including UAVs and sensors, to secure our borders.
- ★ Expedited Removal: ER is now operational at all Southern Border sectors to deter illegal entry by non-Mexicans and to maximize use of available detention bedspace.
- ★ Detention and Removal: ICE achieved a record number of approximately 160,000 deportations, including a historic number of 13,000 fugitives with outstanding orders of removal in FY04.
- ★ Database Integration: DHS has integrated legacy databases such as IDENT and IAFIS to identify tens of thousands of persons arrested or wanted by federal or local law enforcement to be detained by CBP inspectors and Border Patrol agents.
- ★ Application Backlog Reduction: U.S. Citizenship and Immigration Services has reduced the backlog of benefit applications from a high of over 3.8M in January of 2004 to under 700,000 in January of 2006, a reduction of 83%.

These accomplishments and others have significantly improved the security to our international travel systems and laid the groundwork to achieve operational control of our land borders with Canada and Mexico.

Clearly, more must be done to strengthen enforcement, and we support additional programs and spending, such as increasing the numbers of Border Patrol agents, deploying more sophisticated technology through the Secure Border Initiative and additional infrastructure to build a “virtual” fence along the Southern Border; ending the “catch and release” policy, deportation procedures that allow for more streamlined litigation to deport illegal aliens, further build-out of entry-exit tracking and facilities, and strengthening our interior enforcement capabilities, such as fugitive operations teams at ICE.

But enforcement alone will not do the job of securing our borders. Enforcement at the border will only be successful in the long-term if it is coupled with a more sensible approach to the 10-12 million illegal aliens in the country today and the many more who will attempt to migrate into the United States for economic reasons. Accordingly, we support the creation of a robust employment verification system and a temporary worker program in the context of an overall reform of our border security and immigration laws.

With each year that passes, our country’s shifting demographics mean we face a larger and larger shortage of workers, especially at the low-skilled end of the economy. Entire segments of the economy in a growing number of urban and rural areas depend on large illegal populations. Existing law allows only a small fraction of these workers even to attempt to enter the United States legally, even though our unemployment rate has fallen below 5 percent.

Thus, each week our labor market entices thousands of individuals, most from Mexico but many from numerous other countries, to sneak across our border, or to refuse to leave when a temporary visa expires. These numbers add up: DHS apprehends over 1 million migrants illegally entering the United States each year, but perhaps as many as 500,000 get through our defenses every year and add to our already staggering illegal immigrant population. As believers in the free market and the laws of supply and demand, we believe border enforcement will fail so long as we refuse to allow these willing workers a chance to work legally for a willing employer.

Most such migrants are gainfully employed here, pay taxes, and many have started families and developed roots in our society. And an attempt to locate and deport these 10 to 12 million people is sure to fail and would be extraordinarily divisive to our country.

But others seeking to cross our borders illegally do present a threat – including potential terrorists and criminals. The current flow of illegal immigrants and people overstaying their visas has made it extremely difficult for our border and interior enforcement agencies to be able to focus on the terrorists, organized criminals, and violent felons who use the cloak of anonymity that the current chaotic situation offers.

An appropriately designed temporary worker program should relieve this pressure on the border. We need to accept the reality that our strong economy will continue to draw impoverished job seekers, some of whom will inevitably find a way to enter the country to fill jobs that are available. A successful temporary worker program should bring these economic migrants through lawful channels. Instead of crossing the Rio Grande or trekking through the deserts, these economic migrants would be interviewed, undergo background checks, be given tamper-proof identity cards, and only then be allowed in our country. And the Border Patrol would be able to focus on the real threats coming across our border. This will only happen, however, if Congress passes a comprehensive reform of our border security and immigration laws.

Moreover, current law neither deters employers who are willing to flout the law by hiring illegal workers, nor rewards employers who are trying to obey the law. Bogus documents abound, and there is currently no comprehensive and mandatory mechanism for employers to check the legality of a worker’s status. An effec-

tive temporary worker program would include a universal employment verification system based on the issuance of secure, biometrically-based employment eligibility documents and an “insta-check” system for employers to confirm eligibility. We recognize the cost of such programs but believe the cost of the current morass is much greater.

Lastly, individuals who have maintained employment in the United States for many years without evidence of ties to criminal or terrorist behavior should be granted the opportunity to make in essence a plea bargain with law enforcement. By paying a stiff fine and undergoing a robust security check, these individuals can make amends for their mistake without crippling our economy and social structures by being part of a mass deportation. Each day that we fail to bring these people out of the shadows is another day of amnesty by default.

In conclusion, we encourage the Congress and Administration to work together to enact legislation that takes a comprehensive approach to immigration reform. We support strong immigration enforcement but it will only be successful when coupled with realistic policies related to our labor markets and economic needs.

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Former Assistant Secretary for Border and Transportation Security, U.S. Department of Homeland Security

Joseph D. Whitley

Partner, Alston & Bird
Former General Counsel, U.S. Department of Homeland Security

Additional Resources and Contacts

University of California, San Diego, The Center for Comparative Immigration Studies

A campus-wide research unit of the University of California-San Diego, established in 1999, CCIS conducts basic and policy-oriented Research Projects on international migration and refugee flows throughout the world. CCIS seeks to illuminate the U.S. immigration experience through systematic comparison with other countries of immigration, especially in Europe and the Asia-Pacific region.

University of California–San Diego
La Jolla, California 92093-0548
Telephone: (858) 822-4447
<http://www.ccis-ucsd.org/>

Other Helpful Resources and Contacts:

Visit www.aila.org/resourceguide for an index of national, state, and community groups that, as advocates, activists, and direct service providers, are dedicated to the just treatment of immigrants in laws and in practice.

AILA State Chapters can also provide contact information for local immigration attorneys who have expertise on legal issues related to comprehensive immigration reform. To contact the AILA Chapter Chair for your state, please see p. 108 of this publication, or download a list of Chapter Chairs at www.aila.org/resourceguide.

Introduction: Due Process

In the midst of the current debate over border security, undocumented immigration, and temporary workers, a crucial element of comprehensive immigration reform is often overlooked: the restoration of basic due-process rights for immigrants. In 1996, Congress passed and the President signed into law the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA). Both were enacted after the first World Trade Center bombing. Touted as legislation that would control illegal immigration and combat terrorism, these laws did very little to address those issues. Rather, many provisions of IIRAIRA and AEDPA trampled upon the most basic of rights and infused a rigidity into the system that has created serious and unnecessary hardship for countless immigrants, U.S. families, and communities.

Among the numerous provisions of the two laws was a greatly expanded definition of “aggravated felony” for immigration purposes that includes non-violent crimes, such as shoplifting and check kiting, that may be neither felonies (some misdemeanors also qualify) nor aggravated (in any natural sense of the word). Moreover, the laws were applied retroactively, subjecting thousands of immigrants to the danger of deportation for often minor offenses that occurred many years ago, some of which were not deportable offenses at the time they occurred. Individuals, including long-term legal permanent residents, deemed to have committed an “aggravated felony” as broadly defined are subject to the harshest legal consequences. These individuals are mandatorily detained (even when a judge determines they pose no danger to the community or risk of flight), precluded from all discretionary relief, denied access to judicial review, and permanently barred from reentering the country. Furthermore, these laws allow the U.S. government to deport or detain immigrants based on evidence they are not permitted to see and, hence, cannot possibly refute. The 1996 laws are merciless: they provide for no second chances, change the rules in the middle of the game, and deny people their day in court.

After 9/11, the Bush Administration added insult to injury by responding to the attacks with a series of constitutionally dubious policies and practices that negate our historical commitment to the fair treatment of every individual before the law. These measures include regulations that authorize arbitrary detention, increase government secrecy, and limit government accountability. More than four years after 9/11, the assault on due process and civil liberties for non-citizens continues. In 2005, President Bush signed into law the REAL ID Act as part of an Emergency Supplemental Military Appropriations bill. The REAL ID Act includes measures that threaten to foreclose relief for people fleeing persecution in their homelands, eliminate judicial review, punish lawful speech and association, and further marginalize undocumented immigrants. Although proponents of this ill-conceived measure once again infused their justifications with national security rhetoric, the bill’s provisions will not make us safer. On the contrary, the 1996 laws and post-9/11 policies are tearing families apart and must be reformed.

Restore Fairness and Due Process: 1996 Laws Go Too Far

The Issue: In 1996, the 104th Congress passed and the President signed into law the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA). Touted as legislation that would control illegal immigration and combat terrorism, these laws did very little to address those issues. Instead, IIRAIRA and AEDPA include many provisions that significantly and negatively affect American families, legal immigrants, and others seeking to enter the United States legally. Under the 1996 laws, legal immigrants routinely are detained without bond, deported without consideration for discretionary relief, restricted in their access to counsel, and barred from appealing to the courts. The laws expand the grounds of deportation, subjecting long-term immigrants to mandatory detention and automatic deportation for relatively insignificant crimes. Low-level immigration officials act as judge and jury, and the federal courts have been denied the power to review most agency decisions. Moreover, these laws are being applied retroactively. As a result, many immigrants have been expelled from their adoptive country for one-time offenses and youthful indiscretions that occurred, in some cases, many years ago. The 1996 laws are merciless: they provide for no second chances, change the rules in the middle of the game, and deny people their day in court. These laws are tearing families apart and need to be reformed.

AILA's Position: AILA strongly supports comprehensive immigration reform proposals and legislative initiatives designed to correct the injustices resulting from IIRAIRA and to restore due process and fairness for legal permanent residents. AILA believes that our laws must embody the following principles:

Make the punishment fit the crime. Current laws punish legal immigrants out of proportion to their crimes. AILA supports restoring balance and fairness by:

- ★ **Not changing the rules in the middle of the game.** The 1996 laws were written to apply retroactively. Thousands of legal immigrants thus face removal for offenses that occurred many years ago, some of which were not deportable offenses at the time they occurred. Making laws retroactive is unconstitutional in criminal law, and should be prohibited in immigration law as well.
- ★ **Amending the definition of “aggravated felony” to include only serious offenses.** IIRAIRA greatly expanded the definition of “aggravated felony” for immigration purposes. This definition is unrelated to any criminal definitions and includes non-violent crimes such as shoplifting and writing bad checks. The definition should be amended to ensure that legal immigrants with relatively minor offenses are not classified as “aggravated felons” and thereby subject to automatic deportation with no discretion by an immigration judge.
- ★ **Restoring the definition of “conviction” and “term of imprisonment.”** IIRAIRA fundamentally changed the meaning of these terms so that a person who never spent a night in jail is treated the same as a person who has served years in prison. A state judge’s decision to suspend or withhold sentencing is given no consideration. Even an expunged conviction is now treated as a conviction under immigration law. These laws should be changed to ensure that immigration laws respect criminal court judge and jury decisions.
- ★ **Restoring the definition of “crimes involving moral turpitude” to require imposing a sentence.** Prior to the 1996 laws, an immigrant had to be sentenced to a year in prison for a crime involving moral turpitude in order to be deportable. As a result of IIRAIRA, this deportability ground is applied to any crime that *could* lead to a year’s sentence—even relatively minor crimes for which no jail time was imposed.
- ★ **Allowing immigrants who have been wrongly deported, or who were ordered deported because of the overly harsh 1996 immigration laws, to reopen their cases.**

Authorize immigration judges to make decisions based on the facts of the case. The 1996 laws stripped immigration judges of the discretion they had to evaluate cases on an individual basis and grant relief to deserving immigrants and their families. AILA supports returning integrity to the process by:

- ★ **Returning to long-time legal residents—who have not committed a serious offense—the right to apply for relief from deportation.** The 1996 laws took away an immigration judge’s discretion to consider the facts of a case, the length of time the person has lived in the U.S., or evidence of rehabilitation. Immigration judges should have the authority to consider all the facts of a case before making a decision to deport a legal resident, and they should have the discretion to grant relief in deserving cases.
- ★ **Repealing the “stop-time” rule.** The 1996 laws created a legal fiction: immigrants who committed an offense in the past are not allowed to claim that they have been residing in this country since that time. As a result, immigrants face removal based on something they did many years ago, and are unable to show that since that time they have been law-abiding members of their community. Immigration judges should be able to make decisions based on all the real facts of a case, not legal fictions.
- ★ **Restoring the opportunity for long-time residents to apply for relief from deportation if they can prove extreme hardship to themselves.** The 1996 laws took away the ability to consider the effect of deportation on the person seeking relief. People who have resided in this country for many years should be given back the opportunity to show the effects that removal would have on their lives.
- ★ **Ending the use of secret evidence.** Under the 1996 laws, the government is given unprecedented authority to deport or detain immigrants based on evidence they have never seen and, hence, cannot possibly refute. In rejecting this principle, one court has said, “One would be hard pressed to design a procedure more likely to result in erroneous deprivations. Secrecy is not congenial to truth seeking. No better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against him and the opportunity to meet it.” This simple statement is a fundamental requisite of any fair legal system. Proceedings conducted out of sight of the accused and their attorneys are a feature of totalitarian governments, not of our own.

Empower federal judges to review agency decisions. The decision to deport is momentous, especially for refugees fleeing persecution and for those legal immigrants who have lived most of their lives in this country. Important issues of fairness and justice are at stake, and we should ensure that there is adequate judicial review of immigration orders and decisions. Our judicial system is one of checks and balances. Immigrants deserve their day in court.

Use detention only when needed. The detention of individuals is an extraordinary power that should only be used in extraordinary circumstances. To ensure that detention is not used to separate American families needlessly, AILA supports these reforms:

- ★ **Ending the practice of mandatory detention.** The 1996 laws require ICE to put immigrants in jail even when they pose no danger or flight risk. AILA supports reforms that would require the Attorney General to release an immigrant from detention if he or she does not pose a danger to the safety of other persons or of property and is likely to appear for any scheduled proceeding.
- ★ **Ending the practice of indefinite detention.** Due to the 1996 laws, thousand of immigrants are being held in jail indefinitely (the government refers to them as “lifers”) because they cannot be removed from the U.S. AILA supports reforms that would require: (1) the release of long-term detainees who cannot be removed to their countries of origin if the Attorney General cannot negotiate their return with that country’s government; and (2) regular review of an immigrant’s continued long-term detention.

Recognize immigrants' strong ties to their American families and communities. Family unification has always been the cornerstone of our immigration system. Our immigration laws should be reformed to unite families instead of dividing them by:

- ★ **Repealing the 3/10-year bars and the permanent bar to re-entry.** These bars divide and separate families and force people underground. They do not deter people from overstaying their visas as intended.
- ★ **Modifying and/or expanding waivers for grounds of inadmissibility.** The 1996 laws resulted in new grounds of inadmissibility and the severe restriction of waivers. For example, false claims of U.S. citizenship, unlawful voting, and alien smuggling (for no commercial gain, as when a son drives his mother across the border) result in a permanent bar with no opportunity for a waiver or review. The policy of creating broad grounds of inadmissibility with no opportunity for relief must be changed to allow discretion to take into account such humanitarian considerations as family ties or innocent intent.
- ★ **Ending the practice of excluding legal permanent residents returning from short trips abroad.** After passage of the 1996 laws, as a result of a minor offense that may have occurred years in the past, a legal permanent resident returning from abroad is treated as though he or she were applying for admission to the United States for the first time. Immigrants who leave the United States temporarily do not necessarily abandon their homes here, and they should not be treated as if they do.

Allocate our resources wisely. We need to focus on the people who mean to do us harm, and not the legal permanent residents who have jobs and families here, contribute to their communities, and share the same security concerns as the rest of us.

Recent Legislation: The national media has profiled the cases of many people who have been hurt by the 1996 immigration laws. Many members of Congress who supported these laws now recognize that the laws went too far and must be changed. A variety of bills have been introduced over the last several years in an effort to restore fairness and basic due process.

In the 107th Congress, several bipartisan bills were introduced in the House and the Senate that recognized the need to change these laws. Senators Edward Kennedy (D-MA) and Bob Graham (D-FL) introduced the Immigrant Fairness Restoration Act, S. 955, and Representative John Conyers (D-MI), with bi-partisan support, introduced the Restoration of Fairness in Immigration Act, H.R. 3894. Both of these bills offered meaningful reform on the issues of due process, judicial review, detention standards, refugee protection, and family unification.

In July 2002, the House Judiciary Committee approved the Family Reunification Act of 2001 (H.R. 1452), bipartisan legislation targeted the harshest aspects of the 1996 laws. H.R. 1452 would have restored some discretion in cases involving long-term legal permanent residents, addressed the problem of mandatory detention, and made other important changes. AILA strongly supported this compromise measure as an important first step in addressing the overly harsh laws passed in 1996.

In the 108th Congress, Rep. Conyers, along with 22 co-sponsors, introduced H.R. 47, which mirrored his 107th Congress due process bill, H.R. 3894. Representative Bob Filner (D-CA) introduced the Keeping Families Together Act of 2003 (H.R. 3309), which would have amended the INA to restore certain pre-IIRAIRA provisions. Representative Ed Pastor (D-AZ) introduced a bill, the Restoration of Pre-IIRAIRA Avenues of Relief Act (H.R. 836), that would have amended the INA to restore the avenues for relief from removal that existed for aliens lawfully admitted for permanent residence prior to the IIRAIRA's enactment.

In the 109th Congress, Representative Sheila Jackson-Lee (D-TX) introduced the Save America Comprehensive Immigration Act (H.R. 2092). In addition to broad reforms addressing undocumented immigration and other problems, this bill contained a number of important provisions designed to restore fairness and basic safeguards to our system, including: restoring waivers for certain grounds of inadmissibility and removal, making the immigration consequences of crimes commensurate with the offense, eliminating mandatory detention during expedited removal proceedings, and restoring fairness to the asylum and refugee systems.

AILA supports these efforts to restore a modicum of justice and fairness in our broken system, and urges the 110th Congress to pass similar measures as part of comprehensive immigration reform.

The Importance of Independence and Accountability in Our Immigration Courts

Issue: Our immigration system is seriously deficient in training, coordination, and decision-making. Despite this fact, the Bush Administration has dismantled the only review apparatus currently in place, the immigration appeals system. 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. In a one-year period, the rate of rejected appeals skyrocketed from 59 percent to 86 percent, and appeals of these decisions to the U.S. courts of appeals have surged. The Attorney General's directives systematically stripping the courts of any meaningful discretionary review highlight the urgent need for major reform of the immigration court system and increased independence for the courts.

The need for reform that would ensure efficiency and accountability, restore public confidence, and safeguard due process has been clear for many years. In 1980, a Congressional commission on immigration found that the structure of the immigration courts lacked an adequate framework for achieving efficient and fair proceedings. The United States Commission on Immigration Reform concluded in 1997, after years of study, that the Immigration Courts and the BIA should be removed from the DOJ and given the status of an independent agency within the Executive Branch. The report observed that: "Experience teaches that the review function works best when it is well-insulated from the initial adjudicatory function and *when it is conducted by decision-makers entrusted with the highest degree of independence*. Not only is independence in decision-making the hallmark of meaningful and effective review, it is also critical to the reality and the perception of fair and impartial review."¹

Yet despite this clear prescription for improving the fairness and efficacy of our system, the DOJ elected to undermine rather than strengthen the independence of the BIA. In a single-minded effort portrayed as an initiative that would improve the BIA's efficiency and reduce the backlog of pending cases, regulations were issued that, among other changes, limited the consideration that Board Members could accord to each case. A report commissioned by the American Bar Association to evaluate the regulations determined that the increased speed in the decision-making process has had a significant impact on substantive outcomes: "Decisions in favor of the respondents have decreased alarmingly from 1 in 4 to 1 in 10." Not only have the regulations failed miserably from a fairness perspective, they also have failed to achieve their stated purpose of improving efficiency. As a direct result of these regulations, the United States Courts of Appeals have experienced a massive surge in BIA appeals, in both volume and rate. Hence, the net effect of the streamlining measures has been to shift the backlog to another branch of government—the federal courts—rather than eliminate it, and raise serious concerns about due process and the adequacy of appellate review.

AILA's Position: 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 also 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.

¹ United States Commission on Immigration Reform, 1997 Report to Congress, *Becoming An American: Immigration and Immigrant Policy*, at 175 (September 1997) (emphasis added).

In the immediate term, AILA believes the following changes are necessary to improve the level of due process available to non-citizens appearing before our immigration courts:

The three-judge deliberative panel must be reinstated. The DOJ regulation that broadly expanded the types of cases that warrant single-member review 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 must end its practice of issuing one- to two-sentence summary opinions. The regulation also broadly expanded the class of cases deemed appropriate for summary opinions. The Supreme Court has held, however, that an agency's statement of reasons for its decisions is one of several "minimal" due process requirements that must be observed. 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. Moreover, the efficiency gains touted by DOJ in reducing some of the backlog are illusory. 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. (Fewer than half of the individuals who appear before an immigration judge are assisted by counsel.) The federal courts, in turn, have no underlying decision to review and must remand back to the BIA. This circularity plainly breeds inefficiencies.

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 11, in the context of reducing current backlogs and preventing future ones, was plainly bad policy. The reduction in members, combined with the backlog reduction deadline, also sent a chilling message to Board members: reduce your backlog or lose your job. This message was not lost, as evidenced by the dramatic increase in the rate of rejected appeals. From October 2001, around the time the deadline was announced, to October 2002, the rate of rejected appeals skyrocketed from 59 percent to 86 percent.

The Board of Immigration Appeals must maintain its important role in ensuring that decisions are fair and correct by having de novo 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. The Board needs to be able to review all aspects of an immigration judge's findings before making a decision on appeal.

The Board has a strict policy for deferring to the findings of fact made by immigration judges. However, there are situations where a de novo review and analysis of an immigration judge's findings of fact are appropriate. Although regulations require that immigration hearings be recorded, in the vast majority of cases immigration judges render oral decisions immediately upon the completion of testimony. As a result, immigration judges occasionally will misstate or omit important factual information in their decisions. Further, 56 percent of all people who appear before an immigration judge do not have an attorney. When combined with the language barriers that many people face, immigration decisions are sometimes based on confusion or the innocent mistakes of an unrepresented person.

The unique perspective of the Board and the use of de novo review are particularly compelling in asylum cases. As the Board itself has recognized, “in many cases, the expertise, independence, and sound judgment of this Board is all that stands between an asylum applicant and return to a place where he or she will face persecution or death.” For example, the Board established the right of a woman to seek political asylum based on genital mutilation (*Matter of Kasinga*, 21 I&N Dec. 357 (BIA 1996)) after a de novo review of an immigration judge’s decision denying relief. Without de novo review authority, this ground of asylum would not exist.

Recent Legislation: The Civil Liberties Restoration Act (CLRA) (H.R. 1502), introduced on April 6, 2005, by Representatives Berman (D-CA) and Delahunt (D-MA), sought to roll back some of the most egregious post-9/11 policies. Among other things, the CLRA would have established an independent immigration court system with, for the first time, explicit statutory parameters for its makeup and functions. A similar bill was introduced in the 108th Congress. Provisions of that bill were rolled into H.R. 10, the intelligence overhaul bill, but were not included in the Senate version that was enacted.

In addition to the CLRA, S. 2611, the comprehensive immigration reform bill that passed the Senate on May 25, 2006, proposed some improvements to the process and structure at the Board of Immigration Appeals, and would have increased the number of BIA Members, staff attorneys, and immigration judges.

AILA strongly supports passage of the provisions contained in the Civil Liberties Restoration Act or similar provisions developed pursuant to the principles set forth above. AILA believes that such measures should be included in any comprehensive immigration reform legislation introduced during the 110th Congress.

Due Process, Civil Liberties, and Security: All Essential for a Strong America

One of the great challenges of our time is to preserve and embrace our fundamental commitment to due process and civil liberties while enhancing our national security. Sadly, to date we have not met this challenge. A dramatic diminution in due process and civil liberties protections for noncitizens commenced with passage of the Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA, P.L. 104-208) and the Anti-Terrorism and Effective Death Penalty Act (AEDPA, P.L. 104-132), both enacted after the first World Trade Center bombing. As a result of IIRAIRA and AEDPA, legal immigrants routinely are detained without bond, deported without consideration for discretionary relief, restricted in their access to counsel, and barred from appealing to the courts.

A bi-partisan push to roll back some of the most egregious provisions of IIRAIRA and AEDPA and to restore some fairness and discretion to the system evaporated after the September 11, 2001, terrorist attacks. The Bush Administration responded to the attacks by implementing a series of constitutionally dubious policies and practices that negate our historical commitment to the fair treatment of every individual before the law. None of these measures, which include regulations that authorize arbitrary detention, increase government secrecy, and limit accountability, has enhanced our security.

Now more than five years removed from that fateful day and the assault on due process and civil liberties for noncitizens continues. On May 11, 2005, President Bush signed into law the so-called REAL ID Act as part of an Emergency Supplemental Military Appropriations bill (P.L. 109-13). The REAL ID Act includes measures that threaten to foreclose relief for people fleeing persecution, restrict judicial review, punish lawful speech and association, and further marginalize the undocumented population. Although proponents of this ill-conceived measure once again infused their justifications with national security rhetoric, the bill's provisions will not make us safer.¹

AILA supports effective steps to protect the American public from further terrorist acts. For example, the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458) included many immigration-related provisions that will help make our nation safer. In addition, the Enhanced Border Security and Visa Entry Reform Act (P.L. 107-173), also passed in response to the 9/11 attacks, took important steps toward enhancing our security while recognizing that immigration is and will continue to be a source of enormous vitality for the United States.

The review below traces the last decade's laws and policies that undermine core rights of noncitizens, including:

- ★ The 1996 legislation (IIRAIRA and AEDPA);
- ★ Post-9/11 regulations and policies; and
- ★ The REAL ID Act.

This review also touches upon the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458). In response to findings from the 9/11 Commission, the House passed legislation (H.R. 10) that had the potential to be a further assault on noncitizens' rights. After a conference between House and Senate

¹ More recently, on December 16, 2005, the House passed the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437). Although it fortunately died at the end of the 109th Congress without becoming law, that measure exemplified the relentless efforts of anti-immigrant activists and legislators to advance their agenda by exploiting national security fears. A disastrous measure for both immigrants and U.S. citizens alike, H.R. 4437 would have: made felons out of immigration status violators; stripped the courts of much of their remaining jurisdiction over immigration matters; gutted the due process rights of aliens and permanent residents; significantly expanded expedited removal; broadened the definition of alien smuggling to include churches, employers, family members, and immigrant advocates; expanded the definition of aggravated felony; created new grounds of deportability and inadmissibility; and increased mandatory detention. For an analysis of the bill's most harmful provisions, see AILA's documents entitled "Top 10 'Poison Pills' in H.R. 4437" and "Section-by-Section Summary of H.R. 4437."

designees to reconcile the differences between H.R. 10 and the Senate's alternative response to the Commission's findings, a compromise was reached, and the anti-immigrant, anti-civil liberties provisions were stripped from the final bill.

1996 Legislation: As noted above, Congress passed IIRAIRA and AEDPA partly as a response to the first World Trade Center bombings and partly as an effort to "crack down" on illegal immigration. Those two measures dramatically reshaped our immigration laws and the rights of noncitizens in this country. Adopting a false construct in which rights are pitted against security, these laws have denied noncitizens the fair treatment and due process that are hallmarks of our democracy. The 1996 laws provided for no second chances, changed the rules in the middle of the game, and denied people their day in court. Some of the most troubling provisions in IIRAIRA and AEDPA include the following:

- ★ *Expansion of grounds of deportation:* IIRAIRA greatly expanded the definition of "aggravated felony" for immigration purposes. This definition is unrelated to any criminal definitions and includes non-violent crimes such as shoplifting and check kiting. Individuals convicted of such crimes are subject to exceedingly harsh consequences from which virtually no relief is available.
- ★ *Retroactive application of the laws:* Because these laws were made retroactively effective, thousands of legal immigrants face removal for offenses that occurred many years ago, some of which were not deportable offenses at the time they occurred. This is fundamentally unjust. Making laws retroactive is unconstitutional in criminal law, and should be prohibited in immigration law as well.
- ★ *Creation of a mandatory detention regime:* The 1996 laws required that all individuals deemed to have committed an "aggravated felony," as that term of art was broadly expanded, be subject to mandatory detention even when a judge determines they pose no danger to the community or risk of flight.
- ★ *Elimination of discretionary relief:* The 1996 laws terminated agency authority to consider the effect of deportation on the person seeking relief. They eliminated an immigration judge's discretion to consider the facts of a case, the length of time the person has lived in this country, or any evidence of rehabilitation. People who have resided in this country for many years should be given the opportunity to show the effects that removal would have on their lives.
- ★ *Stripping of federal court jurisdiction:* These laws divested federal courts of the power to review many deportation decisions and other agency activities. The decision to deport is momentous, especially for refugees fleeing persecution and for those legal immigrants who have lived most of their lives in this country. Important issues of fairness and justice are at stake, and our system of checks and balances should apply to decisions that the agency makes.
- ★ *Establishment of expedited removal procedures:* Low-level immigration officials were empowered to act as judge and jury by removing individuals seeking admission to the U.S. without any review process and subjecting such individuals to a five-year bar on reentry. Not only does this measure heighten the risk of erroneous, arbitrary decisions, it makes little sense from a security perspective. Instead of detaining individuals suspected of posing a national security risk and investigating them further, we simply turn them around and send them on their way.
- ★ *Creation of 3-year, 10-year, and permanent bars to reentry:* These bars, which are triggered by periods of unlawful presence in the U.S., serve only to divide and separate families, and force people underground. They do not fulfill their intended purpose of deterring people from overstaying their visas.

- ★ *Authorization to use secret evidence in immigration proceedings:* The 1996 laws accorded the government unprecedented authority to deport or detain an immigrant based on evidence he or she has never seen and thus can't possibly refute. Proceedings conducted out of sight of the accused and their attorneys are a feature of totalitarian governments, not of our own.

Post-9/11 Regulations and Policies: Slowly but surely, the fundamental unfairness of the 1996 laws as applied to real people began to register in the halls of Congress. Case after case highlighting how merciless these laws are, how they have torn families apart and ruined lives, made an impression, and a push was afoot to provide some relief. That initiative was another casualty of the September 11 attacks. The impetus to restore some sense of balance in our immigration laws was replaced by a single-minded enforcement mentality that pushed the pendulum even further away from protecting noncitizens' rights.

The most troubling post-9/11 regulations and policies include, among others, the following:

- ★ *Closing immigration hearings and refusing to disclose basic information on detainees:* On September 21, 2001, the Department of Justice (DOJ), through what is now known as the "Creppy memo," ordered immigration judges to close all hearings related to individuals detained in the course of the 9/11 investigation. Not only were the hearings held in secret—excluding all visitors, family, and press—but the very identities of the jailed individuals were withheld from public disclosure. Although these cases involved no classified evidence, the records of these proceedings were never released and court officials were prohibited from confirming or denying the mere existence of the cases. To this day, the government refuses to provide any information about these cases despite repeated Freedom of Information Act (FOIA) requests. These FOIA denials were litigated up to the Supreme Court, which recently declined to grant certiorari, leaving intact a split federal appeals court decision upholding the denials. The immigration process should be open to the public; secret hearings are the practice of repressive regimes, not open and democratic societies.
- ★ *Holding noncitizens in jail indefinitely without charges:* The DOJ issued regulations on September 20, 2001, authorizing the INS to hold any noncitizen in custody for 48 hours or an unspecified "additional reasonable period of time" before charging the person with an offense. Congress subsequently weighed in on this subject in the USA PATRIOT Act when it authorized detention of up to seven days before charges must be brought *in the case of certified suspected terrorists*. The DOJ, however, has never invoked that provision and has relied instead on its own open-ended regulation as the legal justification for the detention of noncitizens without charge. The DOJ rule is unlimited in its application and can be applied to any noncitizen. A DOJ Inspector General Report (April 2003) on post-9/11 detainees documents how INS detained noncitizens for weeks, and in some cases months, before charging them with immigration violations. Tellingly, none of the detainees ever was charged with an offense related to the 9/11 attacks.

As amply manifest in its implementation, this rule violates a fundamental principle in our constitutional system and in internationally recognized standards of fair legal process—that no person should be subject to arrest and imprisonment without reason, explanation, and due process. It also demonstrates that DOJ willfully circumvented Congress's mandate about how long an individual suspected of terrorist activity can reasonably be detained before being charged.

- ★ *Keeping noncitizens jailed even after an immigration judge has found them eligible for release:* The Attorney General issued regulations on October 31, 2001, that require people in immigration proceedings to remain in custody even though an immigration judge has found them eligible for bond. In its rationale, the DOJ does not assert that immigration judges or the Board of Immigration Appeals (BIA) were abusing their power or failing to keep terrorist suspects in detention. Rather, the DOJ argues that the new regulation will "avoid the necessity for a case-by-case determination of whether a stay [of a release order] should be granted in particular cases." This regulation effectively enables prosecutors to circumvent the considered deci-

sion of independent adjudicators regarding the likelihood that an individual will appear for future proceedings and the threat a detainee poses to the community. Prosecutors present their case before the court, and if they should lose, they can simply overrule the judge. It thus completely eviscerates the longstanding role of immigration courts in making bond determinations and the BIA in reviewing those decisions.

When an individual faces detention—a fundamental deprivation of liberty—a case-by-case review is exactly what the principles of our judicial system demand. Allowing the agency with the chief interest in prosecution (DHS) to also determine whether an individual can be released from jail is a violation of fundamental principles of due process.

- ★ *Denying bond to whole classes of noncitizens without individual case consideration:* The detention of noncitizens for indefinite periods without an individualized assessment of their eligibility for release on bond or other conditions raises serious constitutional questions. Although the Supreme Court has upheld mandatory detention when Congress has expressly required such detention for a discrete class of noncitizens, it has not authorized the executive branch to make sweeping group-wide detention decisions. Nevertheless, since September 11, 2001, DOJ and DHS have established policies mandating the detention of certain classes of noncitizens without any possibility for release until the conclusion of proceedings against them. For example, all of the individuals who were detained on immigration violations during the course of the post-9/11 investigation were subjected to a “hold until cleared” policy. Even individuals who did not contest their removability, and against whom final orders of removal had been entered, remained in detention until the FBI cleared them. It bears repeating that the government never charged any of these detainees with a terrorism-related offense.

DOJ and DHS also have extended mandatory detention policies to certain noncitizens seeking asylum. In *Matter of D-J*, the Attorney General (AG) reversed a BIA decision upholding bond to a detained asylum seeker from Haiti. The AG’s precedent decision argues that releasing the individual on bond would trigger a wave of seagoing migrations from Haiti and would divert Coast Guard resources from the fight against terrorism. He then concludes, on that specious basis, that national security interests necessitated the mandatory detention of all similarly situated asylum applicants during the pendency of their proceedings. DHS’s (now defunct) Operation Liberty Shield initiative reinforced this harsh and inappropriate policy by subjecting all asylum seekers from 30-plus unspecified countries to mandatory detention.

Unilateral executive branch decisions to mandatorily detain whole classes of individuals contravene important due process principles and individual liberty interests.

- ★ *Entering certain immigration status violators into a criminal database and exempting the data from accuracy requirements of the Privacy Act:* The DOJ reversed a legal opinion drafted under a previous Administration, concluding that states and localities, as sovereign entities, have the “inherent authority” to enforce federal immigration laws, including civil violations of immigration law. This opinion conflicts with the longstanding legal tradition that immigration is exclusively a federal matter. Moreover, if local police begin to serve as federal immigration agents, immigrant communities will lose confidence in the police, and decades of successful community-based policing initiatives will be undone.

DOJ also announced in December 2001 that it would begin entering the names of hundreds of thousands of immigration status violators into the National Crime Information Center (NCIC) database so that local police could apprehend them. Compounding the potentially disastrous consequences of this initiative is a regulation DOJ issued in March 2003 that exempts the NCIC database from the accuracy requirements of the Privacy Act. The database thus will provide information of dubious accuracy to local law enforcement officials who have little or no training in immigration law, increasing the likelihood of unfair or unlawful arrests and detentions or other civil rights abuses.

- ★ *Implementing a discriminatory “special registration” policy:* The National Security Entry-Exit Registration System (NSEERS or special registration) imposes new registration requirements on certain applicants for admission to the U.S. as well as on certain noncitizens already living in the U.S. The latter requirement, known as call-in registration, required all males 16 years of age or older, who were citizens or nationals of one of 25 designated predominantly Muslim countries, and who entered the U.S. as nonimmigrants before certain designated dates, to be interrogated, fingerprinted, and photographed. Administration protests to the contrary notwithstanding, the call-in registration program targeted people based on national origin, race and religion, rather than on specific intelligence information. Billed as a national security initiative, NSEERS obligated men from Muslim countries to register so that the government could get a better sense of who was in the country. Dutifully, more than 85,000 people registered; tragically, more than 13,000 of the registrants were placed into removal proceedings due to immigration status violations. Although many of the violations were technical and many registrants were on the path to normalizing their status, they were placed in proceedings nevertheless.

As with the post-9/11 detainees, none of the call-in registrants was charged with a terrorist-related offense, providing further evidence that this initiative succeeded only in alienating immigrant communities, straining international relations, and diverting precious law enforcement resources from identifying people who intend to harm us.

- ★ *Instituting “reforms” that severely undermine due process rights for immigrants appearing before the BIA:* Despite nearly universal agreement that our immigration system is replete with serious deficiencies, the Administration has begun dismantling the only review apparatus currently in place, the immigration appeals system. Through a series of regulations issued by former Attorney General John Ashcroft, the BIA—the court of last resort for many immigrants fighting deportation—has been stripped of its ability to serve as a meaningful watchdog over the lower courts. Because the Executive Office for Immigration Review (which currently houses the immigration courts) is a regulatory creation, the Attorney General possesses virtually unfettered discretion to reconstitute the system in whatever way he deems appropriate. The “reforms” at issue include the following: reducing the overall number of judges sitting on the Board of Immigration Appeals from 23 to 11 and reassigning the 5 most “immigrant friendly” judges to other positions; making one-judge review of lower court decisions the norm as opposed to the traditional three-judge panels; expanding dramatically the range of cases which can be affirmed without any opinion; and eliminating the Board’s de novo review authority. (See the AILA Position Paper entitled “The Importance of Independence and Accountability in Our Immigration Courts.”)

The results of this initiative have been stunning. A report commissioned by the American Bar Association that evaluated the regulations determined that the increased speed in the decision-making process has had a significant impact on substantive outcomes: “decisions in favor of the respondents have decreased alarmingly from 1 in 4 to 1 in 10.” Not only did the regulations fail miserably from a fairness perspective, they also failed to achieve their stated purpose of improving efficiency. The United States Courts of Appeals have experienced a massive surge in BIA appeals, in volume and rate, since the regulations were implemented. Hence, the net effect of the Attorney General’s streamlining measures has not been to eliminate the backlogs, but merely to shift the backlog to another branch of government, the federal courts.

The 9/11 Commission and the Intelligence Reform Act of 2004: In August 2004, the 9/11 Commission issued recommendations for improving national security. Among numerous findings, the 9/11 Commission highlighted the failures of our immigration system to help prevent the tragic attacks. The Commission made a number of important recommendations designed to rectify some of the failings in that system and encouraged Congress to enact these recommendations into law. The Senate took up the call and drafted legislation that the 9/11 Commissioners endorsed. The House, by contrast, included a stunning array of anti-immigrant provisions in the bill it passed (H.R. 10).

After a protracted and often acrimonious conference between House and Senate designees to reconcile the differences between the different chambers' versions of the bill, a compromise was reached in which the anti-immigrant, anti-civil liberties provisions were stripped. On December 17, 2004, President Bush signed into law the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458), a measure containing some 43, mostly sensible, immigration-related provisions. Among others, these provisions:

- ★ Required testing of advanced technology (including sensors, video, and unmanned aerial vehicles) that would secure our northern border;
- ★ Required the Department of Homeland Security (DHS) to devise plans for systemic surveillance of the southwest border by remotely piloted aircraft;
- ★ Increased the number of full-time border patrol agents by 2,000 per year for five years;
- ★ Increased the number of full-time Immigration and Customs Enforcement Investigators by 800 per year for five years;
- ★ Increased the number of detention beds available to DHS for immigration detention and removal by 8,000 a year for five years;
- ★ Strengthened visa application requirements;
- ★ Criminalized alien smuggling;
- ★ Made receipt of military-type training from designated terrorist organizations a deportable offense;
- ★ Mandated a GAO study on potential weaknesses in the U.S. asylum system;
- ★ Made inadmissible and deportable any alien who commits acts of torture, extrajudicial killing, or atrocities abroad;
- ★ Established counterterrorist travel intelligence strategy;
- ★ Established the Human Smuggling and Trafficking Center;
- ★ Authorized funding for an immigration security initiative;
- ★ Required DHS to develop an integrated screening system;
- ★ Required DHS to develop a biometric entry and exit data system;
- ★ Established minimum federal standards for birth certificates and driver's licenses;
- ★ Required enhanced security features for social security cards;
- ★ Established a visa and passport security program in the State Department; and
- ★ Required DHS to establish minimum ID standards to board commercial aircraft and make recommendations for ID standards that would allow access to other federal facilities.

The REAL ID Act: Many of the troubling provisions that were wisely stripped from the intelligence reform bill resurfaced at the beginning of the 109th Congress in the form of the REAL ID Act. House Republican leadership attempted to leverage security concerns to enact restrictionist measures that would not make us safer but would severely diminish due process and civil liberties. Unfortunately, this renewed assault on the rights of noncitizens was successful and President Bush signed the REAL ID Act (P.L. 109-13) into law on May 11, 2005. This ill-conceived measure includes the following deeply troubling provisions:

- ★ *Restrictions on Asylum:* The REAL ID Act changed the standards and evidentiary burdens governing asylum applications, applications for withholding of removal, and other discretionary grants of relief from removal. It will deny asylum to legitimate applicants who cannot prove that an enumerated ground (race, religion, nationality, social group, or political opinion) was one of the “central” motives of their persecutor, who cannot produce corroborating evidence of their account, who provide inconsistent testimony on minor facts irrelevant to their claim, or whose demeanor is inconsistent with an immigration judge’s preconceived expectations. Asylum applicants already undergo more extensive security checks than any other foreign nationals who come to this country. Terrorists and others who pose a danger to our security already are ineligible for asylum. While these provisions will do nothing to make us safer, they clearly will preclude some legitimate asylum seekers from obtaining relief.
- ★ *Expansion of Grounds of Inadmissibility and Removal:* The REAL ID Act amended the PATRIOT Act by expanding the terrorism-related grounds of inadmissibility and removal. It permits the deportation of noncitizens who are or were members of or who have at any time supported a political organization that has used, or threatened to use, violence, even if the organization was not designated as a “foreign terrorist organization.” This provision is unnecessary and potentially unconstitutional. By imposing guilt by association, the REAL ID Act confounds our basic understanding of liberty and could subject long-term, lawful residents to deportation for activity that was lawful when undertaken.
- ★ *Restrictions on Habeas Review:* The REAL ID Act expanded the restrictions on judicial review imposed by the 1996 laws. Indeed, the bill restricts for the first time since the Civil War *all* judicial review, including habeas review, for many individuals with legitimate challenges to their orders of detention or deportation. This provision, which like the others in this Act was never subject to debate or hearings, will prevent some noncitizens from challenging unlawful or unconstitutional government action and will lead to years of litigation.
- ★ *Driver’s License Restrictions for Noncitizens:* The REAL ID Act repealed the carefully considered driver’s license provisions enacted just months earlier as part of the intelligence reform legislation. It replaces the federal-state consultative approach with federally mandated restrictions on noncitizens’ access to driver’s licenses. Such a linkage will undermine, not enhance, national security by pushing people deeper into the shadows and fueling a black market in false documents. Moreover, it will severely diminish the law enforcement utility of Department of Motor Vehicles databases by reducing, rather than expanding, government data about individuals in this country.

Restoring Due Process and Civil Liberties: AILA strongly supports comprehensive immigration reform proposals and legislative initiatives designed to correct the injustices resulting from IIRAIRA, REAL ID, and other post-9/11 policies outlined above. For more information on AILA’s position on legislative proposals to restore due process and fairness for noncitizens in the United States, please see “Restore Fairness and Due Process: 1996 Laws Go Too Far” on page 86.

AILA strongly supports efforts to restore a modicum of justice and fairness in our broken immigration system, and urges the 110th Congress to pass measures to reinstate due process rights and fair treatment of noncitizens as part of comprehensive immigration reform.

Additional Resources and Contacts

American Civil Liberties Union

The American Civil Liberties Union seeks to defend and preserve the individual rights and liberties that the Constitution and laws of the United States guarantee everyone in this country.

915 15th Street NW, Washington, DC 20005
<http://www.aclu.org>

Center for Constitutional Rights

The Center for Constitutional Rights (CCR) is a non-profit legal and educational organization dedicated to protecting and advancing the rights guaranteed by the U.S. Constitution and the Universal Declaration of Human Rights. CCR uses litigation proactively to advance the law in a positive direction, to empower poor communities and communities of color, to guarantee the rights of those with the fewest protections and least access to legal resources, to train the next generation of constitutional and human rights attorneys, and to strengthen the broader movement for constitutional and human rights.

666 Broadway, 7th Floor, New York, NY 10012
Phone: (212) 614-6464 • <http://www.ccr-ny.org/v2/home.asp>

Detention Watch Network

The Detention Watch Network (DWN) is the only national coalition in the United States that addresses the detention crisis head-on and helps detainees and their loved ones make their voices heard. Formed in 1997 in response to the rapid growth of the immigration detention system in the United States, DWN is a network of individuals and organizations working in support of, and in service to, immigrants in detention.

1536 U Street, NW., Washington, D.C. 20009
202.339.9354 • <http://detentionwatchnetwork.org/>

Immigrant Legal Resource Center

The ILRC works with immigrants and citizens to make critical legal assistance and social services accessible to all, regardless of income, and to build a society that values diversity and respects the dignity and rights of all people.

1663 Mission Street, Suite 602, San Francisco, CA 94103
415-255-9499 • <http://www.ilrc.org>

Rights Working Group

The Rights Working Group, a coalition of civil rights, civil liberties, human rights and immigrant rights advocates who seek to develop a coordinated response to policies and attitudes leading to the deterioration of civil and human rights in the aftermath of 9/11.

1140 Connecticut Ave, NW, Suite 1200, Washington, DC 20036
(202) 296-2300 x 123 • <http://www.rightsworkinggroup.org>

Other Helpful Resources and Contacts:

Visit www.aila.org/resourceguide for an index of national, state, and community groups that, as advocates, activists, and direct service providers, are dedicated to the just treatment of immigrants in laws and in practice.

AILA State Chapters can also provide contact information for local immigration attorneys who have expertise on legal issues related to comprehensive immigration reform. To contact the AILA Chapter Chair for your state, please see p. 108 of this publication, or download a list of Chapter Chairs at www.aila.org/resourceguide.

VI. PUBLIC SUPPORT FOR COMPREHENSIVE IMMIGRATION REFORM

Introduction

Immigration now is among the top issues of concern to the American public. However, contrary to the claims of many politicians and commentators, the public does not favor a continuation of the current “enforcement only” strategy. As it turns out, the public is far more pragmatic and interested in real solutions than immigration restrictionists would like us to believe. In fact, a wide range of public opinion polls over the last year indicates that significant majorities of Americans across the political, ethnic, and geographic spectra support comprehensive reform that provides a workable, long-term solution to our nation’s broken immigration system. To be sure, those polls show that: yes, Americans want border control; yes, Americans want to halt undocumented immigration; and no, Americans do not support amnesty. But they also show that Americans don’t believe that we can or should deport 12 million undocumented workers and that Americans (a) support providing a path to citizenship for undocumented workers who pay a fine, pay back taxes, learn English, and get to the back of the line, and (b) don’t believe that such a program constitutes amnesty.

Perhaps more instructive than opinion polling, however, were the November election results which highlighted how poorly the anti-immigration campaign rhetoric of many restrictionist candidates resonated with voters. The electoral defeats of J.D. Hayworth and Randy Graf in Arizona and Rick Santorum in Pennsylvania should provide a stark lesson for other politicians who might attempt to use anti-immigrant rhetoric to win votes. The aggressive restrictionist stance of these candidates held little appeal for moderate voters and drove away Latino voters, whose growing numbers and increased mobilization make them a key demographic for elections in 2008 and beyond.

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 their different perspectives, the majority of these 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 to deliver comprehensive reform in 2007.

Press Release from Immigration2006.org
November 8, 2006

IMMIGRATION FAILS AS WEDGE ISSUE FOR GOP; SUCCEEDS IN EXPANDING BASE FOR DEMOCRATS

Fear and Hysteria Give Way to Public Demand for Solutions in Key Bell Wether Races

Immigration2006.org is a group of activists and pollsters tracking the impact of the immigration issue on the 2006 elections. Our preliminary analysis of last night's results strongly suggests that very few toss up races were won by restrictionist candidates who attempted to exploit immigration as a voter motivator. Democrats that back comprehensive immigration reform mostly won their races. And the Republican Party is likely to get smaller as its hard line on immigration drives away Hispanic voters.

Of the 15 key races tracked by Immigration2006.org (see www.Immigration2006.org) – races where immigration played a key role in the race – the tally sheet currently stands as follows: 12 – 2 – 1 (Kyl kept his Senate seat in Arizona, as expected; Katherine Harris's House seat, FL-13, was won by the Republican; and PA-06 is still undecided).

“The political strategy of the Republican candidates was just like Republican energy policy: drill deeper and deeper looking for more votes out of the same well,” said Christopher Dorval, co-chair of Immigration2006.org along with Andrea LaRue. “And the well has run dry. The party not only didn't win, but it has once again failed to expand its base. The Democrats have an opportunity to seize the moment, enact comprehensive immigration legislation that is supported by the mainstream voters of both parties, and reap a windfall with Latino voters going into 2008.”

“With respect to immigration, the Republican Party handed the Democratic Party a gift. The GOP's mishandling of this issue has alienated the fastest growing group of new voters in the nation. Democrats now have a clear opportunity to realize a demographic realignment of historic proportions and redraw the nation's electoral map for a generation,” said Democratic activist Andrea LaRue, co-chair of Immigration2006.org. “The implication for the presidential race of 2008 and for the future viability of both parties is profound.”

Here are some of the highlights from last night related to how immigration fared:

- ★ *Arizona*: Democratic Gov. Janet Napolitano, a strong advocate of comprehensive immigration reform, won a resounding victory over her opponent. In the closely watched Arizona 8th Congressional district Democrat Gabrielle Giffords (D), a strong advocate of comprehensive immigration reform, clobbered Minuteman candidate Randy Graff (R) by a decisive margin. And in a stunning upset, comprehensive reform advocate Harry Mitchell (D) defeated hardliner incumbent J.D. Hayworth (R).
- ★ *Colorado*: Comprehensive reform advocates Bill Ritter (D) and Rick Perlmutter (D) handily won their races for Governor and Congress over hardliners.
- ★ *Pennsylvania*: Comprehensive reform advocate Bob Casey (D) trounced incumbent hardliner Rick Santorum (R) – who featured tough attacks on Casey's stance early and late in the campaign and launched www.caseyforamnesty.com – by 18%.
- ★ *Governor's races*: In numerous Governors' races Democratic candidates came under attack for being “soft on illegal immigration,” and in all of these races – MD, KS, OR, WI, MA, CO, AZ – the Democrat won.

- ★ *Schwarzenegger*: In a display of Republican savvy lacking in most races, Governor Schwarzenegger moved away from hard line views on immigration, deftly repositioning himself in the middle on immigration, and won going away.
- ★ *Social Security canard*: Many Republicans attacked Democrats on the spurious charge that they voted to “give social security benefits to illegal immigrants,” most notably in the Michigan and Washington Senate races, and it failed to make a dent.

According to Dorval, “The fact that the anti-immigration card didn’t work in Arizona and Colorado shows that this Republican strategy was a loser, and that voters are smarter than the Republicans thought. It turns out that Americans who are deeply concerned with our nation’s broken immigration system want solutions not sound bites, pragmatism not posturing.”

This is what the *Washington Post* reported this morning on the exit polling, “...Republicans hoped to capitalize on...immigration, but fewer than one in three cited it as extremely important in influencing their decision, and they only narrowly favored Republican candidates. About six in 10 voters said that they believe illegal immigrants working in the United States should be offered a chance to apply for legal status, a position that was supported by Bush but rejected by House Republicans who have pushed an enforcement-first approach to controlling illegal immigration. Democratic candidates won support from 61 percent of those who backed a path to citizenship, according to the poll.”

Two new polls out yesterday echo this analysis. The first, released by the Manhattan Institute and the National Immigration Forum, found that immigration would not be a top vote determining issue nor a top turnout motivator. Furthermore; voters remain supportive of comprehensive immigration reform and expect Congress to take action next year.

Another poll released yesterday by the National Council of La Raza and the National Association of Latino Elected and Appointed Officials of likely Latino voters found that Republican attempts to use immigration as a wedge issue were driving down Latino support for Republicans by some 20 points.

These findings correspond with today’s exit polling results: more than 7 out of 10 Hispanic voters supported Democrats, and only 27% supported Republicans. This is in stark contrast to the 2004 election in which President Bush attracted an estimated 40 to 44% of the Hispanic vote.

“It seems that the vaunted Republican strategy of trying to use immigration as political wedge produced little more than self-inflicted wounds that could take a long time to heal,” said LaRue.

• • •

Polling Summary: Public Support for Comprehensive Immigration Reform

The American public wants action from Congress, and many politicians and pundits suggest that what the public wants is to continue our current “get-tough and get-tough only” policy. In fact, a more careful reading of public opinion research indicates strong support for a more intelligent and realistic approach to controlling immigration, including enhanced border security, workplace and employer enforcement, earned legalization for undocumented immigrants with a path to citizenship, and expanded visas for future immigrant workers and families.

I. POLLING OF THE GENERAL PUBLIC

Quinnipiac University (November 13-19, 2006)

A national survey of 1,623 registered voters (MoE \pm 2.4)

- ★ 69% — *Nearly 7 out of 10 of Americans (69%) agree that, if the law is changed to allow illegal immigrants to register into a guest worker program, such a program should offer illegal immigrants the ability to work toward citizenship over a period of several years.*
- ★ *Support for a path to citizenship is solid across party lines, including:*
 - 66% of Republicans,
 - 73% of Democrats, and
 - 71% of Independents.
 - Only 31% of Republicans, 23% of Democrats, and 24% of Independents oppose such a program.

Tarrance Group (November 3-5, 2006)

A national survey of 800 registered “likely” voters (MoE \pm 3.5)

- ★ 75% — *Three quarters of Americans (75%) agreed that immigration reform, including creating a guest worker program and creating an earned legalization program for current illegal immigrants, is an issue they expect Congress to deal with in 2007.*

Tarrance Group (July 9-13, 2006)

A national survey of 1,000 registered “likely” voters (MoE \pm 3.1)

- ★ 71% — *Almost three quarters of Americans (71%) favored comprehensive immigration reform legislation that would: provide resources to greatly increase border security; impose much tougher penalties on employers who hire illegal workers; allow additional foreign workers to come to the U.S. to work for a temporary period; create a system in which illegal immigrants could come forward and register, pay a fine, and receive a temporary work permit; and provide these temporary workers with a multi-year path to earned citizenship, if they get to the end of the line and meet certain requirements like living crime-free, learning English, and paying taxes. Twenty-three percent opposed such legislation.*
- ★ *Support for such legislation was solid across political affiliations, including:*
 - 73% of Republicans,
 - 67% of Independents, and
 - 70% of Democrats.

CBS News (May 16-17, 2006)

A national poll of 636 adults (MoE \pm 4).

- ★ 77% — *More than three quarters of Americans (77%) favored a plan allowing illegal immigrants who have paid a fine, been in the U.S. for at least five years, paid any back taxes they owe, can speak English, and have no criminal record to stay and work in the United States, while only 19% oppose.*

CNN/Opinion Research Corp. (May 16-17, 2006)

A national poll of 1,012 adults conducted.

- ★ 79% — *Almost 8 in 10 Americans (79%) favored allowing illegal immigrants already living in the United States for a number of years to stay in this country and apply for U.S. citizenship if they had a job and paid back taxes. Eighteen percent opposed such a measure.*

CNN/Opinion Research Corp. (April 21-23, 2006)

A national poll of 1,012 adults conducted.

- ★ 77% — *More than three-quarters of Americans (77%) favored allowing illegal immigrants who have been in United States for more than five years to stay and apply for citizenship if they have a job, and pay a fine and back taxes. Twenty percent said they opposed such a measure.*
- ★ *A majority opposed a proposal to allow illegal immigrants who have been in the United States for two to five years to stay on a temporary basis, without a chance to apply for U.S. citizenship. Fifty-four percent opposed that measure, and 40% favored it.*
- ★ *A majority (56%) opposed making illegal immigration a felony, while 39% favored it.*

Democracy Corps/Greenberg Quinlan Rosner (April 20-24, 2006)

A national poll of 1,000 “likely” voters.

- ★ 75% — *Three-quarters favor a “guest worker” program that allows immigrants to work in the U.S. and offers them an opportunity to apply for citizenship if they pay fines and back taxes. Forty percent strongly favor this approach while 22% oppose it.*

Los Angeles Times/Bloomberg (April 8-12, 2006)

A national poll of 1,357 adults.

- ★ 63% — *Sixty-three percent of Americans select an approach to immigration laws that includes both tougher enforcement and a “guest worker” program.*

Gallup/USA Today (April 7-9, 2006)

A national poll of 1,004 adults conducted.

- ★ 75% — *Three-quarters of the American people feel it is important that the government take steps this year to deal with the large number of illegal immigrants already living in the country (34% think this “very important”).*
- ★ 63% — *Sixty-three percent believe the government should deal with illegal immigrants by allowing immigrants to remain in the U.S. and become U.S. citizens if they meet certain requirements.*

ABC News/Washington Post (April 6-9, 2006)

A national survey of 1,027 adults.

- ★ 63% — *Sixty-three percent select a plan that allows illegal immigrants to become a citizen if they meet certain conditions.*

TIME Magazine/SRBI (March 29-30, 2006)

A national poll of 1,004 adults.

More Border Security and More Legality

Americans want both enhanced border security, workplace and employer enforcement, and less illegality, and they simultaneously want more legality in the immigration system.

- ★ 79% favor allowing illegal immigrants to register as “guest-workers.”
- ★ 78% favor allowing illegal immigrants in the U.S. citizenship if they learn English, have a job and pay taxes.
- ★ 82% say the U.S. is not doing enough to keep “illegals,” from entering the country.
- ★ 71% favor providing and enforcing penalties for employers convicted of hiring illegal immigrants.
- ★ A majority (62%) favor stopping illegal immigrants from entering the U.S. “by whatever steps necessary.”
- ★ A minority (47%) support deporting all illegal immigrants.

Associated Press/Ipsos Public Affairs (March 28-30, 2006)

A national poll of 1,003 adults, 796 registered voters.

- ★ 56% — *A majority of Americans (56%) favor allowing immigrants who are in the United States illegally to apply for legal, temporary worker status, with 41% opposed.*

FOX News/Opinion Dynamics (March 24-26, 2006)

A national poll.

- ★ 62% favor, 31% oppose the following: *Do you favor or oppose allowing illegal or undocumented immigrants who have jobs in the United States to apply for legal, temporary-worker status?*

TIME Magazine/SRBI (January 24-26, 2006)

A national poll of 1,002 adults.

- ★ 76% — *About 3-in-4 Americans (76%) favor allowing illegal immigrants in the U.S. citizenship if they learn English, have a job and pay taxes.*

II. POLLING OF REPUBLICAN VOTERS

Tarrance Group/Manhattan Institute (June 12-15, 2006)

A national poll of 804 “likely” Republican voters.

- ★ 75% — *Three quarters of likely Republican voters support passage of a comprehensive immigration reform plan that contains the following elements:*
 - Provide resources to greatly increase border security;
 - impose much tougher penalties on employers who hire illegal workers;
 - allow additional foreign workers to come to the United States to work for a temporary period;
 - create a system in which illegal immigrants could come forward and register, pay a fine, and receive a temporary worker permit; and
 - provide these temporary workers with a multi-year path to earned citizenship, if they get to the end of the line and meet certain requirements like living crime free, learning English, paying taxes.
- ★ *Support for this plan is strong even among base Republican voter demographics like strong Republicans (77%), very conservative Republicans (72%), white conservative Christians (76%), and those who listen to news talk radio on a daily basis (72%).*
- ★ *A strong majority (60%) of likely Republican voters say they would be more likely to support a candidate who supports this type of plan.*

Tarrance Group/Manhattan Institute (October 2-5, 2005)

A poll of 807 registered “likely” Republican voters conducted by the Tarrance Group for the Manhattan Institute.

- ★ 72% — *More than seven-in-ten (72%) likely Republican voters favor an earned legalization immigration reform plan that would:*
 - Provide resources to greatly increase border security;
 - impose much tougher penalties on employers who hire illegal worker;
 - create a system in which illegal immigrants could come forward and register, pay a fine, and receive a temporary worker permit; and
 - provide these temporary workers with a multi-year path to citizenship, if they meet certain requirements like living crime free, learning English, and paying taxes.
- ★ *Only 21% of likely Republican voters oppose this reform plan and 7% are unsure.*
- ★ *71% — Seventy one percent of likely Republican voters say they would be more likely to support their Member of Congress or a candidate for Congress who supported this reform plan.*

III. POLLING OF LATINO CITIZENS

Lake Research Partners/Public Opinion Strategies (November 2-6, 2006)

A survey of 800 likely Latino/a voters in the 23 states with the highest density of Latino/as. Commissioned by the National Council of La Raza. (MoE ± 3.5)

- ★ *51% — Over half (51%) of Latino voters said the issue of immigration was important to their vote in the 2006 mid-term elections.*
- ★ *When asked specifically about the importance of immigration, 32% of Latinos said the issue was the most important in deciding their vote and 19% said it was one of the most important issues.*

- ★ Almost half of Latinos (47%) said that events related to immigration in the year preceding the elections made them more likely to support Democrats, while only 11% said immigration-related events made them more likely to vote Republican.

Latino Policy Coalition/Lake Research Partners (April 20-26, 2006)

Survey of 1000 Latino adults in 23 states with the highest Latino population.

- ★ 80% — *Eight in 10 Latino registered voters favor an earned citizenship program* that allows immigrants in the U.S. to gain eventual citizenship by paying a fine, learning English and U.S. history, and paying all owed taxes. This includes 65% of Latino registered voters who support it strongly.
- ★ Support is similarly robust (80%) for a guest worker program that would allow immigrants who are in the U.S. illegally to apply for work permits allowing them to stay and work in the U.S. Two-thirds of Latino registered voters (67%) support this proposal strongly.
- ★ By wide margins, a majority of Latino voters would prefer to allow illegal immigrants to become U.S. citizens if they meet certain requirements, rather than make illegal immigrants felons or become guest workers for a limited amount of time.
- ★ When given a choice, 61% favor allowing illegal immigrants to remain in the U.S. and become U.S. citizens, but only if they meet certain requirements like working and paying back taxes over a period of time. Fifteen percent of Latino voters prefer to have a guest worker program that allows immigrants to remain in the U.S. in order to work, but only for a limited amount of time, and just 16% favor making all illegal immigrants felons and send them back to their home country.

IV. POLLS OF UNDOCUMENTED LATINO IMMIGRANTS

Bendixen & Associates (October 11-15, 2005)

Long-form, one-on-one interviews with 233 undocumented, Latin American immigrants in Miami, Chicago, and Los Angeles, conducted in Spanish for the Manhattan Institute and the National Immigration Forum.

- ★ If the government of the United States approved a new law that would allow the undocumented to legalize their status, would you make an effort to become legal or is it just easier to remain undocumented? *Almost all (98%) would make an effort to become legal.*
- ★ Would you be willing to go to a government office, admit that you were here illegally and give them your real name and other information if this was the first step to legalize your status? *Almost all (94%) would report themselves to a government office.*
- ★ Would you be willing to notify the government of any address changes during the time your status was being legalized? *Almost all (99%) would notify.*
- ★ Would you be willing to be fingerprinted and agree to a criminal background check as part of the process that would legalize your status? *Almost all (96%) would submit to a criminal background check and fingerprinting.*
- ★ Would you be willing to pay a fine of \$1,000 to the government as a condition to begin the process of legalizing your status? *Nine out of 10 (91%) would pay a \$1,000 fine.*
- ★ What if the fine were \$2,000? *A majority (58%) would pay a \$2,000 fine.*
- ★ Would you be willing to enroll in a class that would help you learn English as part of the process that would legalize your status? *Nine out of 10 (87%) would enroll in English classes.*
- ★ Would you be willing to pay any taxes you owe as part of the process to legalize your status? *Seven out of 10 (70%) would be willing to pay back taxes.*
- ★ Let's summarize...the new law would require you to do all of the things we discussed...if the new law was approved, would you make the effort to legalize your status or is it easier to remain undocumented? *Nine out 10 (92%) would go through all of these steps in an effort to legalize.*

Polling summary produced by the National Immigration Forum (www.immigrationforum.org) in July 2006, and updated by the American Immigration Lawyers Association in January 2007.

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APPENDIX I

Key Definitions and Concepts

- ★ **ADJUSTMENT OF STATUS.** The process of obtaining **LAWFUL PERMANENT RESIDENT STATUS** in the United States without having to leave the United States to do so. Adjustment of status should be distinguished from “change of status,” which generally applies to **NONIMMIGRANTS** moving from one non-immigrant status to another. The adjustment of status option is unavailable to many (but not all) persons who entered the United States without **INSPECTION**, or who violated status while in the United States, or on whose behalf an application for labor certification or a preference petition was not filed on or before April 30, 2001. See 8 USC §1255, INA §245.
- ★ **ADMISSION.** The process of allowing someone to physically and legally be permitted to be in the United States. Admission is part of the **INSPECTION** process. A person may be inspected and admitted or **PAROLED** into the United States or, instead of being admitted, placed in **REMOVAL** proceedings or removed through **EXPEDITED REMOVAL**. Once a person is admitted, a number of legal rights and protections attach.
- ★ **AFFIDAVIT OF SUPPORT.** An affidavit given by a U.S. citizen or **LAWFUL PERMANENT RESIDENT** who resides in the United States and who will provide financial support to an alien who is seeking to enter the United States or adjust status.
- ★ **AGGRAVATED FELONY.** Any one of a number of crimes specifically defined in 8 USC §1101(a)(43), INA §101(a)(43), that may make a person deportable. Aggravated felon status creates numerous substantive and procedural disabilities with respect to, e.g., **ASYLUM**, **INADMISSIBILITY**, **REMOVAL**, and judicial review, set forth in 8 USC §§1158, 1182, 1127–1252, INA §§208, 212, 237–42. An aggravated felon is ineligible for most forms of immigration relief from removal, and following completion of his or her criminal sentence, will likely be placed in an expeditious process for removal.
- ★ **ALIEN.** Any person who is not a citizen or a national of the United States. Only “aliens” are subject to the immigration laws. Even a person who is a lawful permanent resident is considered an “alien” until he or she becomes a U.S. citizen, and as such, is still subject to the immigration laws—including all of the grounds for removal.
- ★ **ASYLUM.** A discretionary benefit accorded to certain persons inside the United States who are able to demonstrate that they are unable or unwilling to return to their country on account of persecution or a well-founded fear of persecution based on race, religion, nationality, membership in a particular social group, or political opinion. 8 USC §§1101(a)(42), 1158; INA §§101(a)(42), §208. One year after the receipt of asylum status, the asylee may apply for lawful permanent residence. See also **REFUGEE**.

The new recently passed REAL ID Act, Pub. L. No. 109-13 (May 11, 2005), altered the standards and evidentiary burdens governing asylum applications, applications for **WITHHOLDING OF REMOVAL**, and other discretionary grants of relief from removal. It requires asylum applicants to demonstrate that one of the enumerated grounds was or will be “at least one central reason” for their persecution, and allows immigration judges to require credible asylum and withholding applicants to obtain corroborating evidence “unless the applicant does not have the evidence and cannot reasonably obtain the evidence.”

- ★ **BORDER CROSSING CARD (BCC).** An identity card issued to an alien who is lawfully admitted for permanent residence, or to an alien who is a resident in Mexico or Canada, by a consular officer or an immigration officer for the purpose of crossing the border from Canada or Mexico. 8 USC §1101(a)(6), INA §101(a)(6). The new biometric BCC is a laminated, credit-card-style document with many security features and has a validity period of 10 years. Called a “laser visa,” the card is both a BCC and a B1/B2 visitor’s visa. Mexican visitors to the United States, whether traveling to the border region or beyond, receive a laser visa.
- ★ **CANCELLATION OF REMOVAL.** A discretionary remedy for a **LAWFUL PERMANENT RESIDENT** who has been a permanent resident for at least five years and has resided continuously in the United States for at least seven years after having been admitted in any status and has not been convicted of an **AGGRAVATED FELONY**, or anyone physically present in the United States for a continuous period of not less than 10 years immediately preceding the date of such application or the date of a Notice to Appear (NTA), who has been a person of good moral character during such period, has not been convicted of certain offenses, and who establishes that removal would result in exceptional and extremely unusual hardship to the applicant’s U.S. citizen or permanent resident spouse, parent, or child. 8 USC §1229b, INA §240A. Applicant can be absent from the United States for up to 180 days during the 10 years.
- ★ **CONSULAR PROCESSING.** The process of applying for an **IMMIGRANT VISA** at a U.S. consular post outside the United States for prospective **IMMIGRANTS** who are not in the United States or who are ineligible to **ADJUST STATUS** in the United States. See 22 CFR Parts 40 and 42.
- ★ **CRIME OF MORAL TURPITUDE (CMT).** A particularly depraved offense that rises to the level of serving as a ground for inadmissibility or removal under 8 USC §1182(a)(2)(A)(i)(I), INA §212(a)(2)(A)(i)(I). Defined in the Department of State’s Foreign Affairs Manual (9 FAM 40.21(a) N2.2) as the following: “Statutory definitions of crimes in the United States consist of various elements, which must be met before a conviction can be supported. Some of these elements have been determined in judicial or administrative decisions to involve moral turpitude. A conviction for a statutory offense will involve moral turpitude if one or more of the elements of that offense have been determined to involve moral turpitude. The most common elements involving moral turpitude are: (1) Fraud; (2) Larceny; and (3) Intent to harm persons or thing.”
- ★ **DEPARTMENT OF HOMELAND SECURITY (DHS).** The agency into which INS was folded effective March 1, 2003. The benefits functions of the former INS transferred to the U.S. Citizenship and Immigration Services (USCIS), while the enforcement functions transferred to Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE).
- ★ **DEPORTABILITY.** Acts that, when proven by the government, make a person subject to deportation. The specific grounds of deportability appear in the immigration statute at 8 USC §1227(a), INA §237(a).
- ★ **DEPORTATION.** The removal, ejection, or transfer of a person from a country because his or her presence is deemed inconsistent with the public welfare. Prior to 1996, the term “deportation” was used to describe the ejection of a person who had managed to gain “entry” to the United States either legally or illegally. IIRAIRA replaced the term “deportation” with “REMOVAL.” Deportation is not considered to be a form of punishment. Grounds for deportation are set out at 8 USC §1251, INA §241. **LAWFUL PERMANENT RESIDENTS** are subject to removal if any of the grounds of deportability apply to them.
- ★ **DERIVATIVE CITIZENSHIP.** Citizenship conveyed to children through the naturalization of parents or, under certain circumstances, to foreign-born children adopted by U.S. citizen parents, provided certain conditions are met. 8 USC §1431, INA §320; 8 CFR §320.

- ★ **DIVERSITY LOTTERY.** The generic name given to the immigrant visa lottery program established by the Immigration Act of 1990 (IMMACT90), Pub. L. No. 101-649, that makes available up to 55,000 immigrant visas per federal fiscal year to persons from low-admission states and low-admission regions. 8 USC §1153, INA §203(c). The Diversity Immigrant Visa Lottery (DV) program is administered by the Department of State, which establishes the rules for the lottery and tracks the available visa numbers.
- ★ **DUAL NATIONALITY.** The simultaneous possession of two citizenships. It results from the fact that there is no uniform rule of international law relating to the acquisition of nationality. Dual nationality can occur by birth in one country to citizens of another country, by marriage to a foreign national, and by foreign naturalization. Though dual nationality is not favored under U.S. law, and U.S. naturalization law requires renunciation of allegiance to all other sovereigns, U.S. law does not require that the country whose allegiance a naturalization applicant is renouncing act in any way to withdraw or revoke citizenship upon its renunciation by the naturalization applicant when taking the Oath of Allegiance to the United States in naturalization proceedings. Certain countries do not accept dual citizenship, and require relinquishment of former citizenship upon naturalization to U.S. citizenship.
- ★ **EMPLOYMENT AUTHORIZATION DOCUMENT (EAD).** A USCIS document, Form I-688B, evidencing the right of certain aliens to accept employment while in the United States. See WORK PERMIT.
- ★ **EXCHANGE VISITOR.** An foreign national coming temporarily to the United States as a participant in a program approved by the Secretary of State for the purpose of teaching, instructing or lecturing, studying, observing, conducting research, consulting, demonstrating special skills, or receiving training.
- ★ **EXCLUSION.** The procedure existing prior to IIRAIRA for the ejection of persons seeking admission to the United States. The term “exclusion” under current immigration law refers to the various bases under which a person could be found to be inadmissible to the United States. The grounds for exclusion (now inadmissibility) are set out at 8 USC §1182, INA §212.
- ★ **EXPEDITED REMOVAL.** A procedure, established by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA), Pub. L. No. 104-208, that authorizes ICE to quickly remove certain inadmissible aliens from the United States. The authority covers aliens who are inadmissible because they have no entry documents or because they have used counterfeit, altered, or otherwise fraudulent or improper documents. The authority covers aliens who arrive in, attempt to enter, or have entered the United States without having been admitted or paroled by an immigration officer at a port of entry. ICE has the authority to order the removal, and the alien is not referred to an immigration judge except under certain circumstances after an alien makes a claim to legal status in the United States or demonstrates a credible fear of persecution if returned to his or her home country. 8 USC §1225, INA §235; 8 CFR §235.3(b).
- ★ **GREEN CARD.** An expression that refers to the document carried by a LAWFUL PERMANENT RESIDENT, which provides proof of his or her status. The document is officially referred to as an “I-551” (Alien Registration Receipt Card or Permanent Resident Card). The card is no longer green.
- ★ **IMMIGRANT.** A LAWFUL PERMANENT RESIDENT of the United States. Defined, in the negative, as “every alien except an alien who is within one of the . . . classes of NONIMMIGRANT aliens” under the INA. 8 USC §1101(a)(15), INA §101(a)(15). This characterization of immigrants shifts the burden to the person seeking admission to establish his or her clear eligibility. Accordingly, all aliens are, with some exceptions, generally presumed to be immigrants until they establish that they are entitled to nonimmigrant status. 8 USC §1184(b), INA §214(b).

- ★ **IMMIGRANT VISA.** Permission obtained from a U.S. consul (abroad) to seek admission to the United States. A visa is issued subsequent to establishing eligibility for admission on a permanent basis under the Immigration and Nationality Act, as amended. An immigrant visa permits an alien to be admitted to the United States for permanent residence. It has a six-month validity and the intending immigrant must apply for ADMISSION during this period. See also PREFERENCE CATEGORIES, LABOR CERTIFICATION, and VISA.
- ★ **IMMIGRATION JUDGE.** Sometimes referred to in the U.S. Code/INA and Code of Federal Regulations as “Special Inquiry Officer,” the person responsible for presiding over removal hearings. 8 USC §§1101(b)(4), 1229a; INA §§101(b)(4), 240. Immigration judges are employed by the Executive Office for Immigration Review (EOIR), a division of the Department of Justice.
- ★ **INADMISSIBILITY.** Any one of numerous grounds listed in 8 USC §1182(a), INA §212(a), that make a person ineligible for lawful admission into the United States.
- ★ **INSPECTION.** The process that all persons must go through when they arrive at the border. A person is questioned and asked to present proof of his or her right to enter the country. At the end of the process of inspection, a person is either ADMITTED, REMOVED, or PAROLED into the country.
- ★ **LABOR CERTIFICATION.** Certification by the Department of Labor (DOL) that there exists an insufficient number of U.S. workers who are able, willing, qualified, and available at the place of proposed employment, and that employment of the alien for whom certification is sought will not adversely affect the wages and working conditions of U.S. workers similarly employed (the employer must therefore be offering the job at the “prevailing wage” in the particular market). 8 USC §1182(a)(5), INA §212(a)(5). An employer’s obtaining a labor certification does not entitle the person to admission if there is an annual QUOTA on the numbers of foreign workers who may be admitted to the United States. In December 2004, DOL issued its long-awaited PERM regulations, which, effective March 28, 2005, established a new system for filing labor certifications. 69 Fed. Reg. 77325 (Dec. 27, 2004).
- ★ **LABOR CONDITION APPLICATION (LCA).** An attestation by an employer seeking to hire an H-1B non-immigrant to four conditions of employment: (1) that the employer is paying the H-1B nonimmigrant at least the higher of the actual wage paid by the employer to others in the same occupation with similar experience and qualifications or the prevailing wage for the occupation in the geographical area of the work site; (2) that the employment of the H-1B nonimmigrant will not adversely affect the working conditions of similarly employed workers; (3) that there is not a strike, lockout, or work stoppage in the occupation for which the H-1B nonimmigrant is being hired; and (4) that notice of the hiring of the H-1B nonimmigrant has been provided.
- ★ **LASER VISA.** See BORDER CROSSING CARD.
- ★ **LAWFUL PERMANENT RESIDENT (LPR).** A person accorded the benefit of being able to reside in the United States on a permanent basis. Such a person may engage in employment but may not vote in U.S. elections. LPR status is the status gained by a person who is admitted to the United States with an IMMIGRANT VISA or has had his or her status adjusted to permanent residence after having first been admitted as a NONIMMIGRANT. Lawful permanent residence also may be obtained after a person has been granted ASYLUM or was admitted to the United States as a REFUGEE. In addition, a person who has been in the United States for more than 10 years and is able to establish the requisite degree of hardship may be granted permanent residency following the “cancellation” of his or her removal proceeding. LPR status may be taken away for the commission of certain acts that can result in deportability or inadmissibility or lost through “abandonment.” Also called legal permanent resident or GREEN CARD holder.

- ★ **LEGACY INS**—A reference to the Immigration and Naturalization Service (e.g., “a legacy INS memo”) that acknowledges its status as the predecessor to the DEPARTMENT OF HOMELAND SECURITY.
- ★ **LEGALIZATION.** A program established by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. No. 99-603, that permitted the grant of temporary residence status to certain aliens, who were later entitled to apply for permanent residence. 8 USC §1255a, INA §245A. Also referred to as “temporary resident status” and “amnesty.”
- ★ **NATURALIZATION.** “[T]he conferring of nationality of a state upon a person after birth.” 8 USC §1101(a)(23), INA §101(a)(23).
- ★ **NONIMMIGRANT.** A person who can establish that he or she has a residence abroad that he or she has no intention of abandoning, who is coming to the United States for a temporary period, and who fits into specifically defined categories under 8 USC §1101(a)(15), INA §101(a)(15). Some of the nonimmigrant categories include students, tourists, treaty investors, and foreign government officials. See IMMIGRANT.
- ★ **NONIMMIGRANT VISA.** A document signifying that a consular officer believes that the alien to whom the visa was issued is eligible to apply for ADMISSION in a particular nonimmigrant category. However, a visa does not guarantee admission; an immigration inspector can deny entry if he or she believes that a particular alien is not eligible to be admitted in the category for which the visa was issued. The period of validity of a particular visa establishes the time during which the alien may present him- or herself at a U.S. port of entry. Visas may be valid for as few as 30 days or up to 10 years; visas may be limited to a single entry or may be valid for multiple entries during the period of their validity. The period of validity of a visa is not the same as the authorized period of temporary stay in the United States. The authorized period of temporary stay, which is indicated on a small white card—Form I-94, Arrival-Departure Record—stapled into the passport, may be less than the period of validity of the visa, or may be much longer than the period during which the visa itself is valid (typically when single-entry visas are valid only for a limited period of time). It is important to understand that it is always the I-94, and not the visa in the passport, that determines a nonimmigrant alien’s status and its validity as to time and purpose. An alien is not out of status if he or she was properly admitted pursuant to a valid visa and the visa has expired, provided the person is still within the authorized period of stay indicated on Form I-94.
- ★ **PAROLE.** Permission granted by DHS allowing a person to physically enter the United States yet still be considered to have not legally entered the country. Parole is a legal fiction. A person paroled into the United States is treated in a legal sense as if he or she were still at the border’s edge seeking permission to enter. See 8 USC §1182(d)(5), INA §212(d)(5). While parolees are not afforded any legal rights or benefits greater than those seeking admission, they are provided with legal documents that permit their presence in the United States. Examples include parole for humanitarian or family unification purposes, and parole to proceed with the process of adjustment of status that would otherwise be considered to have been abandoned.
- ★ **PERM.** A new system, effective March 28, 2005, for filing LABOR CERTIFICATIONS. PERM (for Program Electronic Review Management System) uses automated computer systems to scan attestation forms filed by employers regarding their compliance with all regulatory requirements. 20 CFR Parts 655 and 656.
- ★ **PREFERENCE CATEGORIES.** Immigrant visas are allocated on the basis of an annual QUOTA. In order to qualify for admission, the intending immigrant must show that: (1) he or she is married to a LAWFUL PERMANENT RESIDENT or is the unmarried son or daughter of a lawful permanent resident; or (2) he or she is the son, daughter, or sibling of a U.S. citizen (irrespective of marital status); or (3) his or her employer has obtained a LABOR CERTIFICATION for eventual employment in the United States. Whether the person meets the quota restriction will depend on his or her relationship as described above with a U.S. citizen or lawful permanent resident, or whether the employment is of a skilled or unskilled nature.

- ★ **PREINSPECTION.** Complete immigration inspection of airport passengers before departure from a foreign country. No further immigration inspection is required upon arrival in the United States other than submission of Form I-94 for nonimmigrant aliens. See 8 USC §1225a, INA §235A.
- ★ **PRIORITY DATE.** The date on which a person submitted documentation establishing prima facie eligibility for an immigrant visa. For family-based immigrants, a person's priority date is the date on which he or she filed the family-based preference petition. 8 CFR §204.1(c). If the alien relative has a priority date on or before the date listed in the Visa Bulletin, then he or she is currently eligible for an immigrant visa. For employment-based cases, it is the date of the filing of the LABOR CERTIFICATION application, or if no labor certification is required, the date the immigrant visa petition is filed. 8 CFR §204.5(d).
- ★ **QUOTAS.** There are annual numerical restrictions on many forms of immigration status. Certain nonimmigrant visa categories are restricted to a set number of persons who may be admitted in any given fiscal year. Similarly, the number of persons who may be granted permanent residency is also restricted each fiscal year and allocated between family and employment immigrant categories under a quota system. In allocating the quota system, strict attention is paid to the immigrant category, as well as making sure that persons are issued visas in the order in which they applied and that no more than 25,620 (7 percent of the total) are issued to nationals of any one country in a given fiscal year. See PREFERENCE CATEGORIES.
- ★ **REDUCTION IN RECRUITMENT (RIR).** An alternative method of LABOR CERTIFICATION under the system in place before March 28, 2005. Since that time, RIR and conventional labor certification were completely revamped by the Department of Labor's PERM rules.
- ★ **REFUGEE.** A person outside of the United States who is unable or unwilling to return to his or her country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 USC §1101(a)(42), INA §101(a)(42). Refugee admission to the United States is based on annual allocations as established between the executive and legislative branches. A refugee, once admitted, may apply in one year for permanent resident status. See also ASYLUM.
- ★ **REMOVAL.** The procedure used to eject persons who are seeking admission as well as those who have been admitted to the United States. Prior to enactment of IIRAIRA in 1996, the terms "DEPORTATION" and "EXCLUSION" were used.
- ★ **SERVICE CENTERS.** Five offices established to handle the filing, data entry, and adjudication of certain applications for immigration services and benefits. The applications are mailed to USCIS service centers; service centers are not staffed to receive walk-in applications or questions.
- ★ **SEVIS (Student and Exchange Visitor Information System).** An Internet-based software application to track and monitor nonimmigrant students and exchange visitors and their dependents.
- ★ **TEMPORARY PROTECTED STATUS (TPS).** A status allowing residence and employment authorization to nationals of foreign states for a period of not less than six months or no more than 18 months, when such states have been appropriately designated by the government because of extraordinary and temporary political or physical conditions in such state(s). See 8 USC §1254a, INA §244; 8 CFR §§244.2, 1244.2.

- ★ **UNLAWFUL PRESENCE.** Presence in the United States after the expiration of the authorized period of stay, or presence in the United States without having been admitted or paroled. The period of authorized stay, which is usually noted on Form I-94, or Form I-94W, must end on a date certain. Thus, Canadians admitted without being issued an I-94, and F, J, and M students and exchange visitors admitted for “duration of status” (D/S) who overstay, do not accrue unlawful presence until and unless an immigration judge or DHS official finds such person to be out of status. Violation of status (e.g., the F-1 student who works without authorization) does not constitute unlawful presence. Depending on the period of unlawful presence, a person may be barred from re-admission for a period of three or 10 years. See 8 USC §1182(a)(9)(B), INA §212(a)(9)(B).
- ★ **US-VISIT** (U.S. Visitor and Immigrant Status Indicator Technology program). A program designed by the Department of Homeland Security to collect and share information on foreign nationals traveling to the United States. This system allows the U.S. government to record the entry and exit of non-U.S. citizens and verify the identity of travelers coming in and out of the United States.
- ★ **VISA.** An official endorsement, obtained from a U.S. consul (abroad), certifying that the bearer has been examined and is permitted to proceed for purposes of seeking admission to the United States at a designated port of entry. There are both immigrant visas and nonimmigrant visas. A visa does not grant the bearer the right to enter the United States; it merely allows one to attempt to seek admission at a port of entry.
- ★ **VISA WAIVER PROGRAM (VWP).** A program under which nationals of countries with which the United States has certain agreements can enter the United States for up to 90 days as visitors for business or pleasure without first obtaining a visa from a U.S. embassy or consulate. No extension or change of status is permitted. It was a pilot program (Visa Waiver Pilot Program or VWPP) until October 30, 2000, when it became a permanent program.
- ★ **VOLUNTARY DEPARTURE.** A procedure granting permission for a removable alien to leave the United States voluntarily. There is a limit of 120 days for pre-hearing voluntary departure or 60 days for post-hearing voluntary departure.
- ★ **WAIVERS.** Certain grounds of inadmissibility, as well as the two-year home-country physical presence requirement for an exchange visitor, can be waived under certain circumstances. These waivers remove an impediment to obtaining a visa or status. Also, USCIS can grant a waiver of labor certification and job offer to professionals with advanced degrees and aliens of exceptional ability if in the national interest.
- ★ **WITHHOLDING OF REMOVAL.** A remedy available to persons able to establish that their lives or freedom would be threatened if deported to their home country on account of race, religion, nationality, membership in a particular social group, or political opinion. 8 USC §1231(b)(3), INA §241(b)(3). Withholding of removal does not confer on persons a right to stay in the United States, as they may be removed to any country willing to accept them. Also known as “restriction on removal.”
- ★ **WORK PERMIT.** There is no single document in U.S. immigration law that is a “work permit.” Citizens, nationals, and **LAWFUL PERMANENT RESIDENTS** of the United States are automatically authorized to be employed in the United States. Certain **NONIMMIGRANT VISA** categories include, as an incident of their status, employment authorization in the United States either with or without limitation to a particular employer or after application and approval from USCIS for authorization to be employed. Virtually all employment authorization for nonimmigrants or undocumented aliens (where authorized) is limited as to time, and most such authorization is limited as to nature of employer and employment. Other aliens physically present in the United States may have the right to apply for an **EMPLOYMENT AUTHORIZATION DOCUMENT (EAD)**.

APPENDIX II

Abbreviations and Acronyms

AAO—Administrative Appeals Office (formerly the Administrative Appeals Unit (AAU))

AC—Associate Commissioner (of INS)

AC21—American Competitiveness in the 21st Century Act of 2000

ACE—Accelerated Citizen Examination

ACPA—Assistant Chief Patrol Agent

ACWIA—American Competitiveness and Workforce Improvement Act of 1998

ADD—Assistant District Director. Also, ADDE (Examinations); ADDI (Investigations); ADDM (Management)

ADIT—Alien Documentation, Identification and Telecommunications system

AEDPA—Antiterrorism and Effective Death Penalty Act of 1996

AFACS—A-Files Accountability and Control System

AG—Attorney General of the United States

AILA—American Immigration Lawyers Association

AILF—American Immigration Law Foundation

ALC—Alien Labor Certification

ALJ—Administrative Law Judge

AMIS—Asset Management Information System

AO—(1) Administrative Officer; (2) Asylum Officer

AOC—Asylum Officer Corps

AOIC—Assistant Officer-in-Charge

AOS—(1) Adjustment of Status (as used by USCIS and most immigration lawyers);
(2) Affidavit of Support (as used by the Dep't of State)

ARC—Alien Registration Card (also called Permanent Resident Card or Green Card)

A/S—Adjustment of Status

ASC—Application Support Center

ASVI—Alien Status Verification Index

AVLOS—Automated Visa Lookout System

AWO—Affirmance Without Opinion

BALCA—Board of Alien Labor Certification Appeals

BAR—Board of Appellate Review

BCA—Bureau of Consular Affairs

BCC—I-186 or I-586 Nonresident Alien Border Crossing Card

BIA—Board of Immigration Appeals

BIT—Bilateral Investment Treaty

BOP—Bureau of Prisons; also, Burden of Proof

BP—Border Patrol

CAT—United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

CBP—U.S. Customs and Border Protection

CCA—Child Citizenship Act

CFR—Code of Federal Regulations

CGFNS—Commission on Graduates of Foreign Nursing Schools

CIJ—Chief Immigration Judge

CIS—(1) Central Index System; (2) (now, more commonly, USCIS) U.S. Citizenship and Immigration Services. (The use of CIS may possibly be confused with Center for Immigration Studies (CIS))

CLAIMS—Computer Linked Application Information Management System

CLN—Certificate of Loss of Nationality

CMT—Crime of Moral Turpitude (also known as Crimes Involving Moral Turpitude (CIMT))

CO—Certifying Officer (of DOL)

ConOff—Consular Officer

CORAP—Central Office of Refugee, Asylum and Parole

COS—Change of Status

CPT—Curricular Practical Training

CR—Conditional Resident

C/S—Change of Status

CSC—California Service Center

CSPA—Child Status Protection Act

CUSA—Citizenship U.S.A.

D&D—Detention and Deportation

DAO—(1) District Adjudication Officer; (2) Deputy Adjudications Officer

DCPA—Deputy Chief Patrol Agent

DD—District Director

DDD—Deputy District Director

DED—Deferred Enforced Departure

DFS—Designated Fingerprint Service

DHS—Department of Homeland Security

DO—(1) District Office; (2) Deportation Officer
DOE—Date of Entry
DOJ—Department of Justice
DOL—Department of Labor
DOS—Department of State
DOT—Dictionary of Occupational Titles
D/S—Duration of Status
DSO—Designated School Official
DV—Diversity Visa Lottery Program
EAC—Eastern Adjudication Center (now Vermont Service Center)
EAD—I-688B Employment Authorization Document
EAJA—Equal Access to Justice Act
ENFORCE—Enforcement Case Tracking System
EOIR—Executive Office for Immigration Review
EOS—Extension of Stay
ER—Expedited Removal
E/S—Extension of Status or Stay
ETA—Employment and Training Administration
EVD—Extended Voluntary Departure
EWI—Entry Without Inspection
EWIC—Essential Worker Immigration Coalition
FAM—Foreign Affairs Manual
FARES—Fees and Applications Receipt and Entry System
FCCPT—Foreign Credentialing Commission on Physical Therapy
FCN—Treaty of Friendship, Commerce, and Navigation
FED. REG.—Federal Register
FGM—Female Genital Mutilation
FMG—Foreign Medical Graduate
FOIA—Freedom of Information Act
FR—Federal Register
FSN—Foreign Service National
FSO—Foreign Service Officer
FTA—Free Trade Agreement
FTO—Free Trade Officer
GAL—General Administration Letter of DOL

GEMS—General Counsel Management System
GPO—Government Printing Office
HB—House Bill
HR —House Report
HRIFA—Haitian Refugee Immigration Fairness Act
IA—Immigration Agent
IBIS—Interagency Border Inspection System
ICE—U.S. Immigration and Customs Enforcement
ICMS—Investigations Case Management System
IDENT—Automated Fingerprint Identification System
IE—Immigration Examiner
IFM—Inspector’s Field Manual
IG—Inspector General
II—Immigration Inspector
IIO—Immigration Information Officer
IIRAIRA—Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (also IIRIRA)
IJ—Immigration Judge
ILT—AILA’s Immigration Law Today
IMFA—Immigration Marriage Fraud Amendments Act
IMMACT90—Immigration Act of 1990
INA—Immigration and Nationality Act
INS—Immigration and Naturalization Service
INSPASS—INS Passenger Accelerated Service System
INTCA—Immigration and Nationality Technical Corrections Act of 1994
INV—Investigations
IO—Immigration Officer
IRCA—Immigration Reform and Control Act of 1986
IR—Interpreter Releases (Thomson West)
ISD—Immigrant Services Division (now Service Center Operations)
IV—Immigrant Visa
LAPR—Lawfully Admitted for Permanent Residence
LAU—Legalization Appeals Unit
LAW—Lawfully Authorized or Admitted Worker
LCA—Labor Condition Application
LC—Labor Certification

LIFE—Legal Immigration and Family Equity Act of 2000
LIN—Northern Service Center (now Nebraska Service Center)
LPR—Lawful Permanent Resident
MRD—Machine Readable Document
MSC—Missouri Service Center
MS&D—Maintenance of Status and Departure bond
MTINA—Miscellaneous and Technical Immigration and Nationality Act Amendments of 1991
NACARA—Nicaraguan Adjustment and Central American Relief Act
NACS—Naturalization Automated Casework System
NAFTA—North American Free Trade Agreement
NAILS—National Automated Immigration Lookout System
NATZ—Naturalization
NBCOTA—Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998
NBCOT—National Board for Certification of Occupational Therapists
NOIF—Notice of Intent to Fine
NIV—Nonimmigrant Visa
NIW—National Interest Waiver
NOF—Notice of Findings
NRC—National Record Center
NSC—Nebraska Service Center
NSEERS—National Security Entry Exit Registration System
NTA—Notice to Appear
NVC—National Visa Center
OARS—Outlying Area Reporting Station
OCAHO—Office of the Chief Administrative Hearing Officer
ODP—Orderly Departure Program
OES—Occupational Employment Statistics
OIC—Officer-in-Charge
OIL—Office of Immigration Litigation of DOJ's Civil Division
OI—Operations Instructions
OMB—Office of Management and Budget
O*NET—Occupational Information Network
ONO—Office of Naturalization Operations (now ISD)
OOH—Occupational Outlook Handbook (DOL)
OPT—Optional Practical Training

O/S—Out of Status, or overstay
OSC—Order to Show Cause; also, Office of Special Counsel
OTM—Other than Mexican
PA—(Border) Patrol Agent
PERM—Program Electronic Review Management System
PLC—Permanent Labor Certification
POE—Port of Entry
PRC—Permanent Resident Card (also called an Alien Registration Card or Green Card)
PT—Practical Training
QDE—Qualified Designated Entity
RAW—Replenishment Agricultural Worker
RC—Regional Commissioner of USCIS
RD—Regional Director of USCIS
RFE—Request for Evidence
RIR—Reduction in Recruitment Labor Certification Procedure
RN—Registered Nurse
RO—Responsible Officer of J-1 Exchange Visitor Program
RSC—Regional Service Center
RTD—Refugee Travel Document
RVIS—Remote Video Inspection System
SAO—Security Advisory Opinion
SAO—Supervisory Adjudication Officer
SA—Special Agent
SAW—Special Agricultural Worker
SB—Senate Bill
SC—Service Center
SDAO—Supervisory District Adjudications Officer
SENTRI—Secure Electronic Network for Travelers Rapid Inspection
SEVIS—Student and Exchange Visitor Information System
SIE—Supervisory Immigration Examiner
SII—Supervisory Immigration Inspector
SIO—(1) Supervisory Immigration Officer; (2) Special Inquiry Officer
(former title for Immigration Judges)
SK—Specialized Knowledge for L Visa
SRC—Southern Regional Center (now Texas Service Center)

SR—Senate Report
SVP—Specific Vocational Preparation
SWA—State Workforce Agency
TA—Trial Attorney
TAG—Technical Assistance Guide No. 656—Labor Certifications (1981)
TCN—Third Country National
TPCR—Transition Period Custody Rules
TPS—Temporary Protected Status
TN—Trade NAFTA
TSA—Transportation Security Administration
TSC—Texas Service Center
TWOV—Transit Without Visa
UNHCR—United Nations High Commissioner for Refugees
UPL—Unauthorized Practice of Law
US-VISIT—United States Visitor and Immigrant Status Indicator Technology Program
USA PATRIOT Act—Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001
USC—(1) U.S. Code; (2) U.S. Citizen
USCIS—U.S. Citizenship and Immigration Services
USCS—U.S. Customs Service
VAWA—Violence Against Women Act
VD—Voluntary Departure
VO—Visa Office
VOLAG—Volunteer Agency
VSC—Vermont Service Center
VTC—Video Teleconferencing
VWPP—Visa Waiver Pilot Program
VWP—Visa Waiver Program
WAC—Western Adjudication Center (now California Service Center)



Naturalization Ceremony: New citizens pledge allegiance to the United States.



American Immigration Lawyers Association

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