BREAKING DOWN THE PROBLEMS

WHAT'S WRONG WITH OUR IMMIGRATION SYSTEM?

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ABOUT SPECIAL REPORTS ON IMMIGRATION

The Immigration Policy Center's *Special Reports* are our most in-depth publications which provide detailed analyses of special topics in U.S. immigration policy.

ABOUT THE IMMIGRATION POLICY CENTER

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EXECUTIVE SUMMARY

Over the past two decades, America has experienced dramatic political, cultural, and scientific advances that have redefined its role in the world. From the rapid expansion of new technologies that have changed the way we communicate, to two costly and consuming wars, to drastic economic changes, it is obvious that this is not the America of the 1990s. Yet, while the country changes and evolves, our immigration system remains frozen in time, locked into legal limits on immigration that were set in 1990 and subsequently restricted by laws passed in 1996. The impact of this outdated and inefficient immigration system on American society has been far-reaching. And as the problems have grown, so too has the level of emotion. Inflamed rhetoric often obscures the genuine problems and therefore hinders consensus on effective solutions. The first step in solving our immigration crisis is to understand the complex nature of these problems.

THE PROBLEMS

It is misleading to characterize our immigration crisis as solely a question of what to do about the 11 to 12 million unauthorized immigrants living in the United States. Our problems extend to a much **broader range of issues**.

For instance:

- **Insufficient numbers of visas** are made available to bring in either high-skilled or less-skilled workers at the levels needed to meet the changing needs of the U.S. economy and labor market.

- **Arbitrary visa caps** have created long backlogs of family members who must wait up to 20 years to be reunited with family living in the United States.

- **Wage and workplace violations** by unscrupulous employers who exploit immigrant workers are undercutting honest businesses and harming **all** workers.

- **Inadequate government infrastructure** is delaying the integration of immigrants who want to become U.S. citizens.

Furthermore, the lack of a comprehensive federal solution has created a range of lopsided, enforcement-only initiatives that have cost the country billions of dollars, while doing little to impede the flow of unauthorized immigrants. In fact, the current immigration system's structural failures, and the inadequate or misguided responses to these failures, have led to the largest unauthorized population in our nation's history.

This paper, while not an exhaustive study of every problem within our immigration system, addresses several key areas and discusses issues stemming from the lack of federal response and long-delayed immigration reform. This paper begins with an explanation of how our current immigration system functions, and then defines and discusses the problems under two broad categories: **Structural Failure** and **Inadequate Responses**.

WHY DON'T THEY JUST GET IN LINE?

Permanent Legal Immigration Is Limited and Difficult. There are few legal ways for most immigrants to come to the United States, and all are restricted to certain categories of persons. For the vast majority of unauthorized immigrants, the idea that they could be legal if they would just "get in line" is incorrect. **There is no "line" for most unauthorized immigrants.** If you don't fit into one of the limited categories, you cannot qualify for permanent legal status.

STRUCTURAL FAILURE

Our nation's immigration laws are outdated and inadequate to meet the needs of the United States in the 21st century.

Failures of the outdated immigration system have created the following issues:

- Outdated visa caps that divide families and hurt U.S. businesses.
- Deterioration of workplace conditions that harm **all** workers.
- Lengthy backlogs on visa and citizenship applications.
- 12 million unauthorized people living in limbo in the country.
- 4 million U.S.-citizen children living in mixed status families with at least one parent who is an unauthorized immigrant.

INADEQUATE RESPONSES

The U.S. government has tried without success to stamp out unauthorized immigration through enforcement efforts without a corresponding effort to address the pull of jobs and family. This approach has deepened the immigration crisis.

A lopsided response to unauthorized immigration has created the following issues:

- Despite spending billions of dollars, the problem is not going away.
- Expensive and ineffective enforcement measures are not working.
- The U.S. border has become more dangerous than ever.

This paper will be followed by a series of solutions-oriented papers that discuss potential fixes to our nation's immigration crisis in the areas of *Legalization*, *Family Immigration*, *Employment Verification*, *Citizenship and Naturalization*, *Enforcement*, and *Future Flow*. While addressed individually, the key to effective immigration reform lies in resolving these issues together through a comprehensive solution that serves our nation's economic and national-security interests.

PART I: HOW THE IMMIGRATION SYSTEM CURRENTLY FUNCTIONS

There are many misconceptions about how the legal immigration system works, leading many Americans to believe that unauthorized immigrants could be legal if they would just "get in line." However, **there was never any "line" for the vast majority of unauthorized immigrants.** They do not have the necessary family relationships or employment connections to apply for legal entry, and very few qualify for refugee status. Those few who might have been eligible for a visa would have faced years or even decades of waiting time.

Permanent Legal Immigration is Limited and Difficult

There are limited **legal** ways for immigrants to come to the United States, and all are restricted to certain categories of persons. The current numerical caps were instituted decades ago and have not been responsive to our nation's changing economic and labor demands. There are four main ways of immigrating legally and permanently to the United States. If you don't fit into one these categories, you cannot qualify for permanent legal status:

- **Family-based immigration.** A legal, qualified family member in the United States can seek permission (by petition) to bring in certain eligible foreign-born family members. U.S. citizens can petition for "green cards"[1] for their spouses, parents, children, and siblings. Legal Permanent Residents (green-card holders) can petition for their spouses and unmarried children. No other family relationships qualify. In all cases, the legal resident or U.S.-citizen family member must demonstrate an income level above the federal poverty line, and legally commit to support those family members brought to the United States.[2]

- **Employment-based immigration**. People who wish to come to the United States on an employment-based visa, and who fit into one of the employment categories, must have a job offer in the United States and an employer willing to sponsor him or her – a process that can be very expensive and time consuming. Most of the qualifying professions are high-skilled and require high levels of education, targeting professionals like scientists, professors, and multinational executives,[3] and there are insufficient legal channels for low-skilled workers.

- **Humanitarian-based immigration**. Each year the U.S. government provides protection within U.S. borders to a limited number of persons who are fleeing persecution in their homelands. These individuals must prove that they have a "well-founded fear of persecution" based on their race, religion, membership in a social group, political opinion, or national origin.[4]

- **Other.** There are other, limited ways that people may obtain a green card, such as the diversity lottery.[5] However, these mechanisms are highly restrictive and limited to extremely small groups of qualified individuals.

Nonimmigrant Visas are Complicated, Confusing, and Often Unavailable When Needed

People also come to the United States as "non-immigrants" for temporary periods of time. The nonimmigrant visa category covers people like tourists, high-skilled workers, musicians on tour, students, farmworkers, and visiting scientists. While many of these workers truly are temporary, others aspire to remain in the United States but cannot do so because of the legal limitations described above.

PART II: STRUCTURAL FAILURE

U.S. immigration laws are outdated and inadequate to meet the needs of our society in the 21st century. The following five points highlight the areas of the immigration system that are broken and need remedy within a full and comprehensive reform package.

1. **Family-based immigration backlogs mean that family members remain separated for long periods of time.** Immigrants eligible to apply for family-based visas must wait for years, even decades, to reunite with their family members. There are three reasons for the enormous backlogs:

   - **Demand exceeds supply.** U.S. citizens are entitled to apply for visas for spouses, children, and parents without regard to overall caps, but other close family members, including children over the age of 21, must wait years to reunite with loved ones. For example, an immigrant residing in the United States legally with a green card must currently wait at least five years to receive a green card for her minor child. A naturalized U.S. citizen from the Philippines must wait over 20 years before obtaining a green card for a brother or sister.[6]

   - **Per-country limits create long backlogs in certain countries.** In 1976, Congress created equal per-country caps for all countries in the world, meaning that Mexico is assigned the same annual quota as Iceland or Belgium. The result is that families from high-immigration countries—such as India, China, the Philippines, and Mexico—must wait disproportionately longer than families from low-demand countries. For example, if the married son or daughter of a U.S. citizen is a resident of Mexico, then he or she must wait 16 years for a U.S. green card.[7]

   - **Processing delays and inconsistent policies heighten problems and create more illegal entry**. In the past, lack of resources and overly rigid bureaucratic procedures have led to breakdowns in the immigration system's ability to conduct quick background checks, coordinate visa procedures between the Department of Homeland Security (DHS) and the Department of State, or make common-sense provisions for family reunification. While U.S. citizens and Legal Permanent Residents wait their turn to get a green card for their family member, it is nearly impossible for that family member to receive permission even to visit the United States. Mothers, fathers, and children therefore face either years of separation or the risks inherent in entering the United States illegally.

   > **CASE IN POINT**
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   > John D. Park immigrated to the United States with his family from Korea when he was ten years old. His family's temporary visas were sponsored by a California company. While in the United States, John worked hard to learn English, and by his senior year in high school was a straight-A student with a 4.55 grade-point average, finishing at the top of his class. Just before college, he received word that his visa would soon expire, so he pursued the idea of having

his U.S.-born sisters sponsor him for a green card. However, he soon found out that the long sibling backlog meant at least an eleven-year wait for a visa. By the age of 17, John had become an unauthorized immigrant. Without legal status, John would not be eligible for legal work or higher education. Returning to Korea meant living without his family in a country that he left as a child.

2. **The employment-based visa system is not responsive to employers' labor needs.** Each year there are 140,000 employment-based green cards available to qualified immigrants. The number was set years ago by Congress, without regard to real labor-market needs, and has not been updated to conform to current economic realities. The numbers of workers who are necessary to fill gaps in our labor supply changes depending on a wide range of economic factors. In times of economic recession, like now, the current limit on employment-based green cards may be sufficient. However, the recession will end, the economy will rebound, and U.S. employers will need more workers. Some employers may need permanent workers to fill permanent jobs; others may require temporary workers to fill transitory gaps in certain industries or during particular seasons. In some cases, employers may only be able to obtain visas for temporary workers when they actually need permanent workers. Workers who arrive on temporary visas may find permanent jobs, but are unable to adjust to a permanent visa under the current system. In other words, the current system does not have the flexibility needed to respond to the country's evolving economic needs.

    Furthermore, the current visa allocation system leaves few visas for less-skilled workers. The types of jobs most associated with unauthorized immigrants are the least likely to qualify for work visas. Each year, the number of green cards available for less-skilled workers—such as hotel workers, landscapers, and construction workers—is limited to just **5,000 for the entire United States.** The insufficient number of green cards available for these types of jobs is at the heart of the unauthorized immigration problem. Employers in restaurants, hotels, and other service-sector jobs who want to petition for immigrant workers because the local labor pool does not meet their demand face visa backlogs approaching 10 years. As a result, the immigration system provides no effective legal avenue for people abroad who wish to come to the United States to work in industries that need them. Until there are more legal avenues for employers to hire immigrant workers to meet economic demands, unauthorized immigration will continue to fill the gap, and we will not be able to regain control over immigration.

3. **Millions of unauthorized workers and other immigrants, many of whom have U.S.-citizen families, reside in the United States with no means to become legal residents.** Moreover, the lack of flexibility and discretion in existing immigration law further weakens their chance to obtain legal status. Efforts to penalize behavior such as overstaying a visa or working without authorization often produce unintended and illogical results. Many U.S. citizens are shocked to find that their immigrant spouse is not eligible for legal status because of non-criminal immigration violations, such as overstaying a visa (even when it happened many years in the past). In fact, there are severe consequences with few safety valves for legitimate exceptions or waivers. For example, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) created bars on admission to the United States for individuals who have been unlawfully present in the country for any period of time. Individuals who have been unlawfully present for more than 180 days, but less than one year, and who voluntarily depart, may not reenter the country for three years. People unlawfully present for an aggregate period of one

year or more are subject to a ten-year bar. Because of such laws, even people otherwise eligible for employment-based or family-based visas are unable to adjust their status in the United States, and if they leave the country in order to get a visa at a U.S. consulate abroad, they cannot reenter the United States until the three- or ten-year period has passed. This means that unauthorized immigrants in the United States who are eligible for visas are encouraged to remain here illegally rather than risk being separated from family members for three years, ten years, or even permanently.

CASE IN POINT

Juan Jose Morales was married to a U.S. citizen and was eligible for a visa. However, because he had been present in the United States without authorization, he was subject to the bars on admissibility. He remained illegally in the United States, rather than leaving to obtain his visa and then being subject to a bar on re-entry. He decided to go to Mexico to visit his mother for Mother's Day in 2003, and used a smuggler to return to his home and his wife. Unfortunately, Morales never made it home to his family because the smuggler left him and 18 other immigrants to suffocate to death in a trailer.[8]

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4. **Unscrupulous employers who hire unauthorized workers in order to maximize profits are lowering wages and working conditions for ALL workers.** Lack of legal status makes unauthorized workers extremely vulnerable to abuse by unscrupulous employers, and at the same time jeopardizes the competitiveness of those employers who try to follow the law. Because they have few labor protections and are often fearful of asserting their rights, joining an organizing campaign, or complaining about poor workplace conditions, unauthorized workers often endure low wages and poor, even dangerous, working conditions. Immigrant workers are often victims of wage theft by employers who pay less than minimum wage or do not pay them at all. This, in turn, is bad for all U.S. workers. When vulnerable unauthorized workers are willing to accept substandard wages and working conditions, it undermines U.S. workers in many industries, and makes it difficult for law-abiding employers to compete with those employers who hire unauthorized workers in order to make a bigger profit.

Researchers have found that on-the-job death rates for Latino workers are disproportionately high. Since records were first collected in 1992, statistics have shown that Latino workers are killed in the workplace at a higher rate than workers of other ethnic or racial groups. Immigrants are especially vulnerable because they tend to work in dangerous industries such as construction and agriculture, they may not be given the same safety equipment as other workers, and their lack of English skills may mean that they cannot read safety warnings. According to the Bureau of Labor Statistics, workplace deaths involving Latinos peaked in 2006, when 990 fatal injuries were reported.[9] Recently, the gap between Latino and non-Latino workers has narrowed, but Mexican-born workers still accounted for 42 percent of foreign-born-worker deaths—the most of any group—in 2008.[10]

CASE IN POINT

In one of the most egregious examples of exploitation, owners of the Agriprocessors meat packing plant in Postville, Iowa, have been accused of a range of labor-law violations, such as sexual harassment, child labor (including 17-hour work days), and abuse (including one incident in which a floor supervisor allegedly blindfolded an immigrant with duct tape, "then took one of the meat hooks and hit the Guatemalan with it").[11]

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5. **Inadequate infrastructure causes delays in the integration of immigrants who want to become U.S. citizens.** Most Americans agree that we want immigrants to integrate into American culture, learn English, and become U.S. citizens. Immigrant integration benefits everyone because it enables immigrants to realize their full potential, contribute more to the U.S. economy, and develop deeper community ties. However, the United States has no comprehensive integration strategy. For example, despite a significant increase in demand for English classes, funding has repeatedly been cut for English as a Second Language (ESL) programs. As a result, there are currently wait lists of one to three years for adult ESL classes in most cities.[12]

Naturalization is a powerful sign and symbol of integration into U.S. society. In order to become a U.S. citizen, an immigrant must first reside in the United States continuously for five years as a Legal Permanent Resident (three years in the case of the spouse of a U.S. citizen), or serve for at least one year in the U.S. Armed Forces. He or she must be of "good moral character" as determined by a criminal background check with the Federal Bureau of Investigation (FBI), be proficient in spoken and written English, and demonstrate a basic understanding of U.S government and history. And the would-be citizen must take an Oath of Allegiance to the United States, its Constitution, and its laws, and renounce allegiance to any other nation. Only by becoming a U.S. citizen can an immigrant vote in federal and most state elections, serve on a jury, run for public office, hold jobs that require a security clearance, or travel abroad for unrestricted periods of time. Moreover, only U.S. citizens can sponsor their siblings and married adult children to come to the United States, or bring their spouses, unmarried minor children, or parents here without being subjected to long waiting times.

Many immigrants are eager to demonstrate their commitment to this country by becoming U.S. citizens, but they face a costly naturalization process filled with bureaucratic obstacles and unfair delays.

- Naturalizations have been on the rise since the mid-1980s. According to a March 2009 report by the Office of Immigration Statistics (OIS), the "average annual number of persons naturalizing increased from less than 120,000 during the 1950s and 1960s to 210,000 during the 1980s, 500,000 during the 1990s and to 680,000 during 2000 to 2008." More than one million immigrants became naturalized citizens in Fiscal Year (FY) 2008 {Figure 1}.[13]

Figure 1: New Naturalized Citizens in the United States, FY 2004-2008
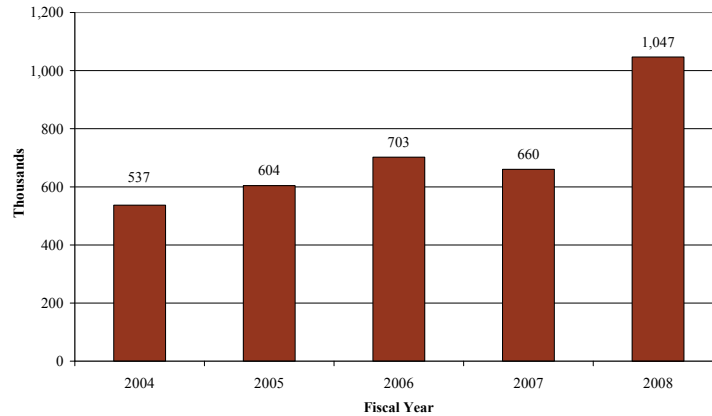
Source: Office of Immigration Statistics, Department of Homeland Security, *2008 Yearbook of Immigration Statistics*, Table 21.

- The number of naturalization applications filed with USCIS nearly doubled from 730,000 to 1,380,000 in 2007.[14]

- Last year, however, the number of immigrants applying to become U.S. citizens plunged 62 percent, as the cost of naturalization rose and the economy soured.[15]

Since the early 1990s, the federal government has repeatedly failed to allocate the resources needed to effectively process the growing number of naturalization applications. The processing of applications for all immigration benefits, including naturalization, has been funded since 1988 primarily through fees paid by applicants themselves—not through direct congressional appropriations. The revenue generated by fees has not only proven insufficient to cover the costs of processing an ever-fluctuating number of applications, but is used to pay for other administrative tasks that are not directly related to the actual processing of applications. As a result, the processing of applications for naturalization, Legal Permanent Residence, and other immigration benefits has become a perpetually underfunded operation subject to chronic backlogs and delays.[16] Yet the application fees continue to increase, which may prevent or delay an immigrant's opportunity to naturalize. In addition, certain elderly and disabled immigrants have difficulty meeting the eligibility requirements. Because of the problems in the naturalization process, immigrants who want to become U.S. citizens have difficulty doing so. The result of these delays is that, for the first time in many years, the number of immigrants attempting to naturalize has gone down.

PART III: INADEQUATE RESPONSES

For more than two decades, the U.S. government has tried to stamp out unauthorized immigration through enforcement efforts at the border and in the interior of the country, but without success— and without fundamentally reforming the broken immigration system that spurs unauthorized immigration in the first place. Missing has been a corresponding effort to address the inevitable pull of jobs and family. The following five points discuss this "enforcement only" strategy which has merely deepened the crisis:

6. **The United States has spent billions of dollars on ineffective border enforcement.** At the same time that spending on immigration enforcement has skyrocketed, the number of undocumented immigrants in the United States has roughly *tripled* from 3.5 million in 1990 to 11.9 million in 2008 {Figure 2}.[17] (Research has shown that recent decreases in the number of unauthorized border crossings have little to do with enforcement, but are due primarily to the downturn in the U.S. economy.) Furthermore, the Pew Hispanic Center estimates that between 25 percent and 40 percent of all unauthorized immigrants do *not* sneak across the border, but come to the United States on valid visas and then stay after their visas expire, meaning that border enforcement is irrelevant to a large portion of the unauthorized population.[18]
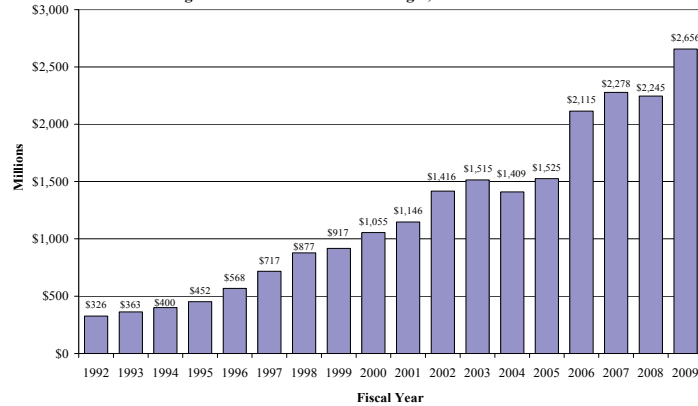
Figure 2: Unauthorized Immigrants in the United States,
1990, 2000 & 2008
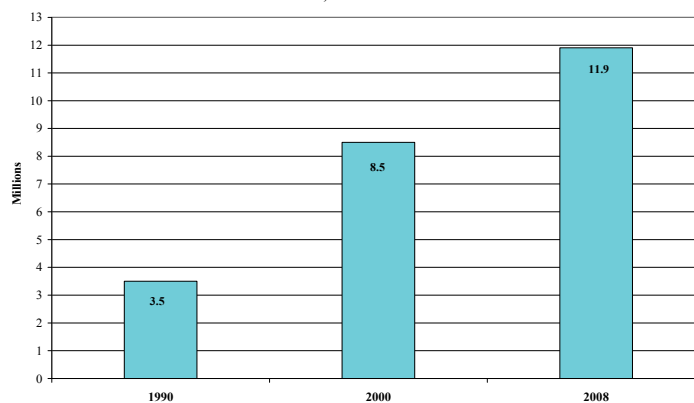
Source: Estimates by the Pew Hispanic Center; Office of Immigration Statistics (U.S. Department of Homeland Security); U.S. Immigration & Naturalization Service.

Yet, since 1992, the annual budget of the U.S. Border Patrol has increased by 714 percent; from $326.2 million in FY 1992 to $2.7 billion in FY 2009 {Figure 3}.[19] At the same time, the number of Border Patrol agents stationed along the southwest border has grown by 390 percent; from 3,555 in FY 1992 to 17,415 in FY 2009 {Figure 4}.[20] The Border Patrol has also increased its technological resources, ranging from fences and cameras to sensors and aircraft.

Figure 3: U.S. Border Batrol Budget, FY 1992-2009

Figure 4: U.S. Border Patrol Agents Stationed Along Southwest Border, FY 1992-2009
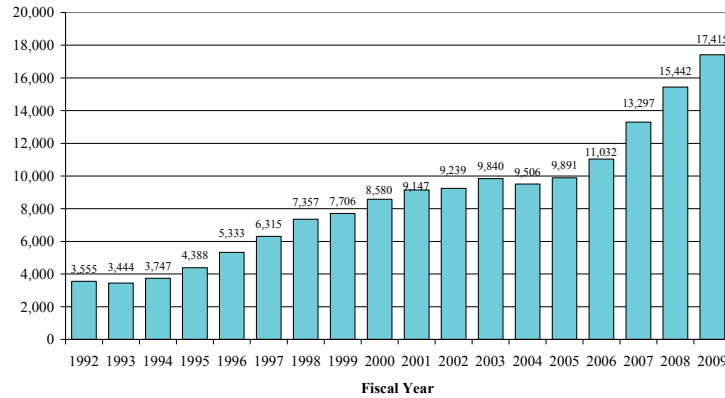
Since the creation of DHS in 2003, the budget of U.S. Customs and Border Protection (CBP), the parent agency of the Border Patrol within DHS, has increased by 92 percent; from $6.0 billion in FY 2003 to $11.3 billion in FY 2009. The budget of U.S. Immigration and Customs Enforcement (ICE), the DHS interior-enforcement counterpart to CBP, has increased by 82 percent; from $3.3 billion in FY 2003 to $5.9 billion in FY 2009 {Figure 5}.[21] Despite all this additional spending, the number of immigrants entering the United States without authorization has not decreased as a result of additional enforcement.

Figure 5: CBP & ICE Budgets, FY 2003-2009
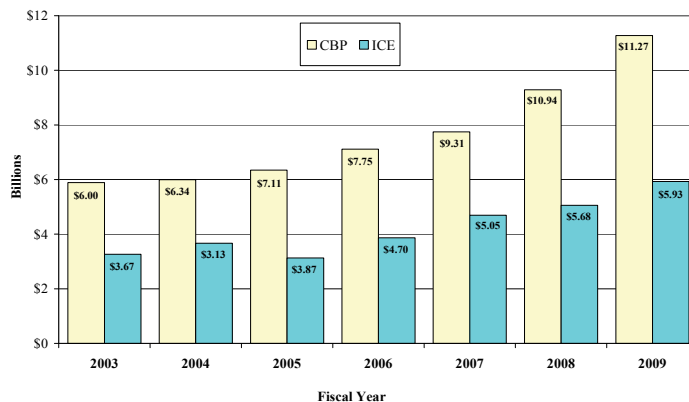
7. **Border security without adequate legal channels for immigration has created a more dangerous border and reduced "circularity" of migration.** Because of increased border enforcement, it has become much more dangerous and expensive to cross the border. Operation Blockade and Operation Gatekeeper (initiated in 1993 and 1994, respectively), and other enhanced border-enforcement measures, have successfully closed off traditional points of entry and diverted unauthorized migrants into more dangerous areas. The probability of death or injury as a result of heat exhaustion, exposure, suffocation, or drowning has increased. The Government Accountability Office (GAO) found, in fact, that border deaths had more than doubled between 1995 and 2005.[22] Data show that the number of border deaths has increased dramatically in recent years, now reaching an average of approximately one death per day. In Arizona alone, the number of deaths increased by 20 percent during FY 2009; between October 1, 2008 and August 31, 2009, 191 immigrants died, according to the U.S. Border Patrol's Tucson Sector.[23] Border deaths typically increase during the hot summer months. At least 5,607 deaths occurred between 1994 and 2008, according to a report released in October 2009 by the American Civil Liberties Union (ACLU) of San Diego & Imperial Counties and Mexico's National Commission of Human Rights {Figure 6}.[24]

Figure 6: Border-Crossing Deaths, 1994-2008

Source: Maria Jimenez, *Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border,* October 1, 2009, p. 17.
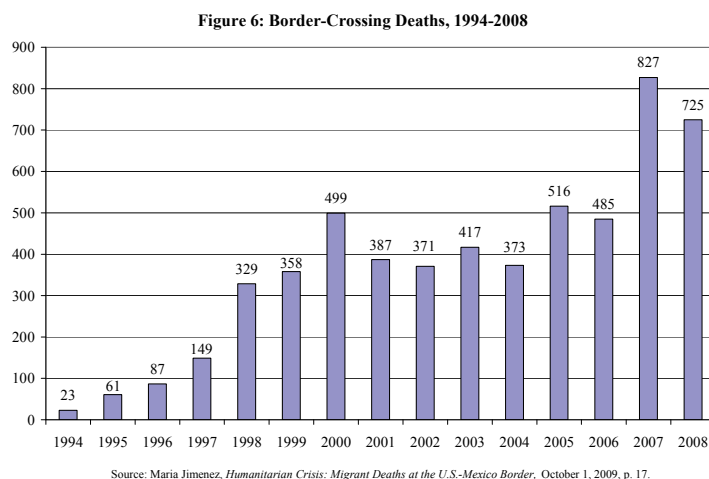
Because of increased enforcement along the U.S.-Mexico border, and the heightened risks of crossing the border, many unauthorized immigrants cannot survive the trip alone and rely on professional smugglers. Since the 1990s, migrants have paid enormous sums to smugglers to assist them and their family members in crossing the border. Smugglers charge over $2,000 to take people across the U.S.-Mexico border.[25] Often, migrants are indebted to the smugglers for years after they arrive in the United States, sometimes working as indentured servants until their debts are paid. Smugglers have also turned to kidnapping the loved ones of immigrants in order to extort additional money from their cargo. "Human smugglers think nothing of engaging in hostage taking and extortion to generate more profit for their illegal activities," said John Morton, DHS Assistant Secretary for ICE.[26] Moreover, there have been increased reports of violence associated with rivalries between smuggling networks, affecting both immigrants and border communities.

Once in the United States, however, unauthorized immigrants are far less likely to leave than they would have been before the buildup of border enforcement in the mid-1990s. In the past, a large portion of unauthorized immigration to the United States tended to be "circular,"

meaning that immigrants came here to work for short periods of time and earn money, and then returned to their home countries, often repeating the cycle. However, this has changed in recent years. Research confirms that migrants who intend to return to their home countries increasingly find themselves "stuck" in the United States. According to researchers Douglas Massey, Jorge Durand, and Nolan J. Malone, "the end result of a border buildup is typically longer trip durations, lower probabilities of return migration, and a shift toward permanent settlement."[27] They found that in the early 1980s, the average stay of an unauthorized immigrant was two to three years; by 1990 it was nine years. Moreover, the probability that any one unauthorized immigrant would return home had decreased.[28] What had been a circular flow of migration had become permanent settlement, or "reduced circularity of migration."

8. **As border enforcement fails, electronic employment-verification programs (such as E-verify) are erroneously hailed as the next "magic bullet" to end unauthorized immigration.** Over the past several years, one of the proposed "solutions" to the problem of unauthorized immigration has been expansion of the E-Verify employment-verification system.[29] E-Verify is a federal web-based program through which U.S. businesses can attempt to verify the work authorization of new hires. E-Verify is a voluntary system, except where state laws require businesses to register to use E-Verify, as well as a few other exceptions in which the federal government has made E-Verify mandatory. There have been multiple attempts to expand E-Verify and make it mandatory for all employers. This is despite the fact that E-Verify is an extremely controversial program because of the high probability for database errors,[30] misuse of the system by employers,[31] and the burden it imposes on the Social Security Administration (SSA).[32] Furthermore, E-Verify does not even identify unauthorized workers effectively. Some unauthorized workers are erroneously confirmed as authorized to work because E-Verify cannot identify counterfeit, stolen, or borrowed identity documents. And E-Verify cannot identify unauthorized workers when employers who knowingly hire them simply do not run their workers through the system, or when work is performed "off the books" in the underground economy.

Perhaps most importantly, while touted as an immigration-enforcement tool, the reach of E-Verify goes well beyond immigrants. If E-Verify were to become a mandatory, nation-wide program, it would affect every single person who works in the United States, including native-born U.S. citizens. Even tiny error rates would mean big problems for large numbers of U.S. citizens and other legal workers. Under a mandatory E-Verify, approximately 60 million new hires would have to be verified annually, and up to 3 million U.S. workers per year would have to navigate government bureaucracy to fix database errors.[33]

Unfortunately, many people still believe that electronic employment verification is a straightforward and simple solution to the problem of unauthorized work in the United States. However, years of experience with employer sanctions, the I-9 system, and the E-Verify program have proven that the devil is in the details, and that even the best intentions can result in harmful consequences for some people. Furthermore, no employment-verification system alone can resolve the problems created by our broken immigration system. A mandatory employment-verification system must be part of comprehensive immigration reform which requires unauthorized immigrants to legalize their status and creates legal pathways for future workers to come to the United States.

9. **Interior immigration enforcement measures are resulting in an enforcement culture that criminalizes immigration violations and results in mistakes and civil rights violations.** Immigration enforcement has consistently focused on identifying individuals for deportation, and then deporting them. One measure of our immigration-enforcement priorities is the ICE detention system. ICE operates the largest detention and supervised-release program in the country. A total of 378,582 immigrants from 221 countries were in custody or supervised by ICE in FY 2008; activities in 2009 remain at a similar level. On September 1, 2009, ICE had 31,075 immigrants in detention at more than 300 facilities throughout the United States and territories, with an additional 19,169 immigrants in Alternative to Detention programs.[35]

Since 1994, the number of detention beds available has increased six-fold, from 6,785 to 33,400 in 2008.[36] At the same time, the number of crimes for which immigrants may be deported, and the categories of crimes for which immigrants may be subject to mandatory detention, have expanded. Since 2005, ICE detention bed space has increased 78 percent. During 2008 alone, ICE detained a record 378,582 persons—a 60 percent increase from 2005.[37] Between 2005 and 2009, the ICE budget for detention nearly doubled from $860 million to $1.72 billion.[38]

The ever-expanding ICE detention program is emblematic of enforcement-only policies which have harmful side effects that go far beyond the unauthorized population. It is important to recognize that unauthorized immigrants live in "mixed-status" families and communities, meaning that U.S. citizens, legal immigrants, and unauthorized immigrants live in the same households and neighborhoods. Policies meant to target unauthorized immigrants also impact their family members, employers, and neighbors. A large number of the people affected are U.S.-citizen children. Nationwide, there are approximately four million U.S.-citizen children with at least one unauthorized-immigrant parent, and policies that target their parents have grave effects on the children. Worksite raids, door-to-door raids, and other policies that lead to the detention and deportation of unauthorized immigrants separate parents from children and husbands from wives. U.S.-citizen children are left in an untenable situation when one (or both) of their parents is deported. Furthermore, because immigration law is so complex, enforcement has led to mistakes and civil rights violations. U.S. citizens have been erroneously detained and even deported.

Juana Villegas, a pregnant woman, was detained by police after being stopped for a traffic violation. On July 3, 2008, she was driving in Nashville (where local police officers have an agreement with ICE to enforce immigration laws) when she was pulled over for "careless driving." Mrs. Villegas, nine months pregnant, was forced to wait in her hot car with her three children for over an hour. Eventually, the children were allowed to leave with a family member without Villegas's permission, and she was taken into custody. By the time Mrs. Villegas was released from the county jail six days later, she had gone through labor with a sheriff's officer standing guard in her hospital room, where one of her feet was cuffed to the bed most of the time. County officers barred her from seeing or speaking with her husband. Up until an hour before the actual birth, Mrs. Villegas's hand and foot remained shackled to the hospital bed. Mrs. Villegas appeared in court and was sentenced to time served for driving without a license. The charge of careless driving was dismissed.

10. **The enforcement-only model has pushed immigrants further underground, undermining community safety and national security.** Unauthorized immigrants are often reluctant to report crimes they have witnessed or been victims of because they fear they may be deported as a result of coming forward. When unauthorized immigrants and their family members are reluctant to cooperate with the police and report crimes, everyone in the community is less safe. The failure to come forward as witnesses and victims makes the work of the police much more difficult, and means that crimes against Americans go unsolved. Law enforcement officials themselves have stated time and time again that trust with immigrant communities is crucial to preventing and investigating crimes, and hence essential to maintaining safe communities.[40] That trust cannot be gained under the current system.

In some communities, it is well known that local police are working with ICE to enforce federal immigration laws. Not only does this frighten the immigrant community and make them less willing to cooperate, but it takes resources away from crime fighting. In Maricopa County, Arizona, for example, Sheriff Joe Arpaio has diverted county resources away from investigating crimes and has spent them on immigration enforcement. As a result, response times to 911 calls have increased, arrest rates have dropped, and thousands of felony warrants have not been served.[41]

Furthermore, the current broken immigration system does not enhance our national security.[42] There are nearly 12 million unauthorized immigrants living in the United States, and billions of dollars are being spent trying to identify and deport them. Americans cannot be secure under a system that allows smugglers and traffickers, rather than the U.S. government, to decide who enters the country. Immigration reforms that bring immigrants out of the shadows, correctly identify them, and encourage people to enter the United States through legal channels would allow law-enforcement and border-enforcement agents to focus on people who pose a threat to national security or public safety.

In 2003, the *Tampa Tribune* reported on the murder of a Mexican national named Petra Martinez and her son Urel Martin. The local police department believed that some members of the community had information on the case, but declined to come forward for fear of immigration-related repercussions. Clearwater Police Department's Hispanic Outreach Officer William Farias said he "wasn't surprised people were hesitant to talk… cultural differences and fear of deportation often keep undocumented immigrants from coming forward."[43]

A 2007 headline read, "Immigrants Deported After Calling Police," after a woman in Carrollton, Georgia, was arrested when she called for help after being attacked in her home.[44]

COMPREHENSIVE IMMIGRATION REFORM IS NECESSARY

While the U.S. immigration system appears to be fair, reasonable, and highly regulated on paper, the facts on the ground illustrate that it is badly broken and in urgent need of reform. A continuation of our "enforcement-only" policies is not a practical or effective solution. Under the existing system, people are dying at the border, immigrants are living and working in abject conditions, families trying to reunite legally are separated for many years, employers are unable to hire the workers that they need, U.S. workers suffer from the unlevel playing field shared with exploited immigrant workers, and law-abiding U.S. employers are in unfair competition with unscrupulous employers who increase profits by hiring cheap and vulnerable labor. Meanwhile, the United States continues to spend billions of dollars maintaining this system.

Most Americans understand that we cannot deport 12 million people or hope that they will choose to "self-deport." It is clear that relentlessly building up enforcement resources has not worked in the past and is not a realistic solution to our current problems. The underlying flaws of the legal immigration system must be addressed first. The United States must create a fair, humane, and practical immigration system for the 21st century that is responsive to the needs of our economy and encourages legal behavior.

Endnotes

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[29] E-Verify (formerly Basic Pilot) is one of three voluntary electronic employment eligibility verification pilot programs that were created under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Originally a pilot project in five states, E-Verify has been expanded to a voluntary system in all 50 states. Employers transmit identity information through E-Verify, where it is electronically checked against both Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. The system then either confirms to the employer that the worker is employment-authorized or it issues a "tentative nonconfirmation"

(TNC) notice indicating that the databases cannot immediately confirm that the worker is employment-authorized. If the employer receives a TNC, the worker then has eight federal working days from the issuance of the TNC to contest the finding with SSA or DHS. If the worker does not contest the finding, the TNC becomes final and the employer must terminate the worker or risk being found in violation of immigration laws. For more information, see National Immigration Law Center, *The History of Basic Pilot/E-Verify* (Washington, DC: October 2008). For detailed instructions about how the program works, see Department of Homeland Security and Social Security Administration, *E-Verify User Manual for Employers*, March 2009.

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FOCUSING ON THE SOLUTIONS:

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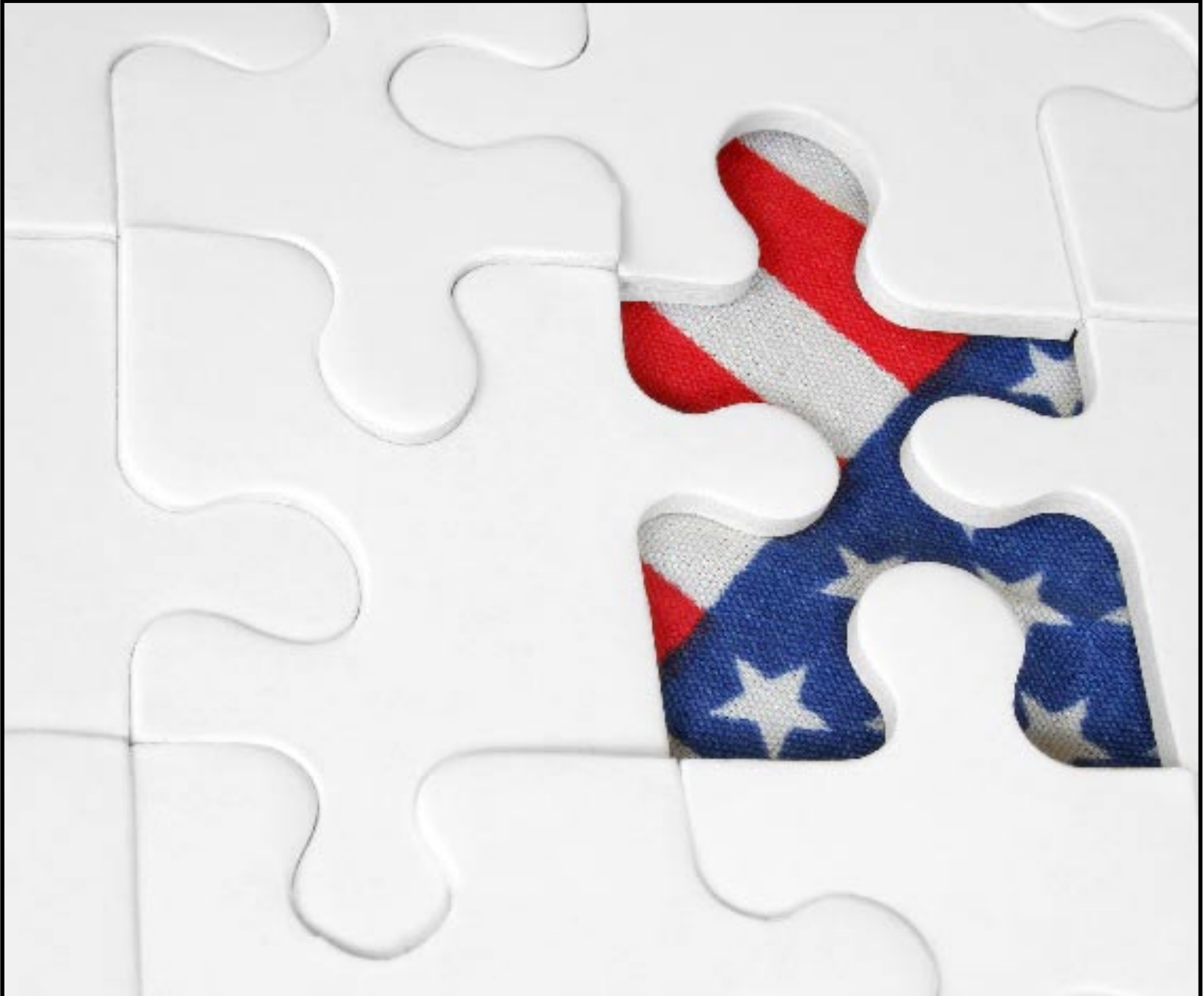
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MARCH 2010

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The Immigration Policy Center's *Special Reports* are our most in-depth publications which provide detailed analyses of special topics in U.S. immigration policy.

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The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational national conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

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EXECUTIVE SUMMARY

Nearly everyone agrees that our immigration system is badly broken and in urgent need of reform. Under the existing system people are dying at the border, immigrants are living and working in abject conditions, families trying to reunite legally are separated for many years, employers are unable to hire the workers that they need, U.S. workers suffer from the unlevel playing field shared with exploited immigrant workers, and law-abiding U.S. employers are in unfair competition with unscrupulous employers who increase profits by hiring cheap and vulnerable labor. Meanwhile, the United States continues to spend billions of dollars on enforcing these broken laws.

"*Focusing on the Solutions: The Key Principles of Comprehensive Immigration Reform*" is a companion piece to the Immigration Policy Center's previous publication which focuses on the underlying problems within our immigration system. In "*Breaking Down the Problems, What's Wrong with Our Immigration System*?" the Immigration Policy Center lays out key structural problems within immigration law, as well as the inadequate, enforcement-only responses that have given rise to our current immigration crisis. *Focusing on the Solutions* paper summarizes the key elements that must be included in a successful legislative package.

THE PROBLEMS

The problems with our immigration system extend well beyond the 10-11 million unauthorized immigrants living and working within our borders. In order to resolve the problem of illegal immigration, we must understand the root causes of illegal immigration and the structural problems that current immigration laws present. The legal immigration system is inadequate to meet the needs of the U.S. in the 21st century.

> **Insufficient numbers of visas** are made available to bring in either high-skilled or less-skilled workers at the levels needed to meet the changing needs of the U.S. economy and labor market.

> **Family members** who are eligible for visas must wait up to 20 years to be reunited with family living in the United States.

> **Wage and workplace violations** by unscrupulous employers who exploit immigrant workers are undercutting honest businesses and harming **all** workers.

> **Inadequate government infrastructure** is delaying the integration of immigrants who want to become U.S. citizens.

The lack of a comprehensive federal solution has resulted in a range of enforcement-only initiatives that have cost the country billions of dollars, while doing little to impede the flow of unauthorized immigrants. In fact, the current immigration system's structural failures, and the

inadequate or misguided responses to these failures, have led to the largest unauthorized population in our nation's history.

Most Americans understand that we cannot deport 10-11 million people or hope that they will choose to "self-deport." It is clear that current enforcement-only responses have not been effective and are not a realistic solution to the current crisis. The underlying flaws of the legal immigration system must be addressed in order to create a fair, humane, and practical immigration system for the 21st century—a system that is responsive to the needs of our economy and encourages legal behavior. Genuine immigration reform requires a thoughtful, coordinated approach which restores balance to the process and gives America the tools it needs to remain a leader in a rapidly changing world.

THE SOLUTIONS

- **Legalization**
  Requiring the 10-11 million unauthorized immigrants residing in the U.S. to register with the government and meet eligibility criteria in order to gain legal status is a key element of comprehensive immigration reform. This section examines key principals to a successful legalization program.

- **Employment Verification**
  It is likely that Congress will transform the way employers verify the work authorization of their workers. Since this will affect immigrants and citizens alike, and because an error in the system can cost a worker his job and paycheck, it is important to make the system effective. This section lays out the must-haves for any broad employment-verification system and explains why a system like this must be implemented as part of broader immigration reform.

- **Enforcement**
  Comprehensively reforming our broken immigration system will necessarily transform the role of immigration enforcement. Legalization of unauthorized immigrants already in the United States will result in a significantly smaller unauthorized population, and the creation of flexible legal channels for those immigrants we need will ensure that future flows of illegal immigration are minimal. However, there will continue to be a need to enforce our nation's immigration laws. The challenge is designing appropriate, effective enforcement mechanisms for a new, well-functioning legal immigration system. This section examines key principles for immigration enforcement within the context of comprehensive immigration reform.

- **Family**
  Family-based immigration has always been a pillar of the U.S. immigration system. However, many close family members of U.S. citizens and legal permanent residents are currently waiting years, if not decades, to reunite with their loved ones. Reforming our broken immigration system will require us to transform our family-based immigration

system, clear out the backlogs, and allow law-abiding families to reunite with loved ones in a humane and reasonable timeline.

➢ **Future Flow**
Comprehensive immigration reform must address the future needs of the U.S economy and create a well-functioning and flexible system of permanent and temporary visas for both high-skilled and low-skilled workers. Policymakers must recognize that if we create a legal immigration system that functions well, there will be less pressure on immigrants to come to the U.S. illegally and for employers to hire unauthorized workers. Given the current weakened economy and high unemployment rates, it is difficult to estimate the U.S.'s future labor needs. However, the economy will eventually improve, and a reasonable, flexible legal immigration system must be put into place to fill our future labor needs. If the U.S. is to thrive in the globalized 21st century economy, employment-based immigration must be seen as a strategic resource that can both meet labor market needs and foster economic growth and competition while still protecting U.S. workers and improving wages and working conditions.

➢ **Naturalization and Citizenship**
Immigrant integration benefits everyone because it enables immigrants to realize their full potential, contribute more to the U.S. economy, and develop deeper community ties. While the United States encourages legal permanent residents to become citizens, there is no national strategy for facilitating integration and insufficient infrastructure to facilitate a smooth transition from immigrant to citizen. Failure to address this problem in the context of comprehensive immigration reform could lead to endless delays for the millions who currently seek services from USCIS and the millions more who will become part of the applicant pool following legalization. This section examines the benefits of a comprehensive integration strategy as well as key principles for naturalization and integration.

CONCLUSION

In the long run, there is significant agreement over the key components of a truly comprehensive immigration reform package.   Immigration reform is complicated precisely because there are so many interconnected pieces that must be addressed as whole, and because each of these pieces has its own political baggage, history, and constraints. Understanding the individual pieces and how they fit together is the first step in building one solution that works for everyone.

I. EARNED LEGALIZATION

We can expect every major piece of comprehensive reform legislation to tackle the issue of creating a legal status for the 10-11 million undocumented immigrants residing in the United States. Ultimately, most politicians and policy makers agree that practically, the U.S. cannot deport this population, and some kind of process for legalizing status is necessary. However, there remains a temptation to create high penalties in exchange for a green card because many politicians want to ensure that people have paid the price for coming to the country illegally. An overly punitive process, however, ultimately defeats the purpose of a legalization program because it will deter people from participating and potentially drive people further underground. A successful legalization program combines measured penalties with clear and achievable goals that will get the maximum number of people into the system, identify the relatively few who do not belong here based on criminal activity, and integrate those who can contribute their talents as quickly as possible.

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

- ➢ It is part of the solution to ending illegal immigration as we know it, which allows federal, state, and local governments to focus scarce resources on other issues.

- ➢ It benefits the economy by transforming undocumented immigrants into legal workers, thereby leveling the playing field for all U.S. workers and employers.

- ➢ It is critical to fully integrating immigrants into our communities.

- ➢ It enables legalized workers to better invest in their education and future and become professionals, homeowners, taxpayers, consumers, and entrepreneurs.

- ➢ It promotes national security and public safety by allowing DHS and the police to focus resources on threats to U.S. communities' safety and security.

The following key principles should be considered when devising a structure:

- ➢ **Cover the maximum number of people possible.** Covering as many of the 12 million undocumented immigrants as possible makes sense from a humanitarian perspective; it also makes sense from a good government perspective. If one of the objectives of legalization is to minimize illegal immigration, any program that leaves a sizeable undocumented population in the U.S. will fail. Step one toward broad legalization is setting the eligibility cut off date (the date by which the qualifying immigrant had to have been in the U.S.) as close to the date of enactment as possible so the majority of the current undocumented population will be eligible.

➤ **Create a simple and straightforward process that measures prospective, rather than retrospective, eligibility.** A straightforward registration program without overly onerous, politically motivated initial requirements will maximize the likelihood of success. Once a law has been enacted, the priority is moving quickly, getting people into the system, and minimizing fraud. Creating overly burdensome documentation requirements will require more time to gather, review, and adjudicate. Similarly, attempting to make people pay huge fines or criminal penalties up front will only slow down the process. Basic proof of identity and a criminal background check should be enough to bring an applicant into the system, with more rigorous requirements tied to later stages in the program.

➤ **Make the program about integration into the community and a commitment to becoming a lawful permanent resident.** Upon registration, applicants should be a on a path that leads to a green card, provided they meet specified criteria. The criteria that most seem to measure commitment—paying taxes, learning English, working hard or going to school, staying out of trouble—can be built into the requirements for successful completion of the program, but the trade off must be legal status that can eventually lead to citizenship. Without the promise of a green card, legalization is nothing more than an expanded temporary worker program, running the risk of creating a second-class citizen with the right to work, but with no incentives to put down roots and no opportunity to remain lawfully. Newly legalized immigrants must not be granted a distinctive status that singles them out from other legal immigrants, inviting discrimination and abuse.

➤ **Minimize the impulse to punish people.** There is likely to be considerable political pressure to impose high fines, require people to leave the country before applying, limit the ability to bring in immediate family, or complete other requirements in exchange for legal status. While these measures sound tough, they are counterproductive. In order to achieve the broadest possible legalization, the eligibility criteria and evidentiary standards must be achievable by a maximum number of people. History has shown that these types of harsh measures will not shield proposals from charges of "amnesty." Nothing is gained, but much can be lost, if we succumb to the belief that a punitive legalization process will change the underlying issues.

➤ **Coordinate with the groups with close ties to immigrant communities.** In order to be successful, the government will need to partner with community-based organizations who know immigrant communities best. These groups will be critical to outreach, education, and application preparation and must receive funding in order to increase their capacity to implement legalization. It will be critical to inform the immigrant community about the program, eligibility standards, and application requirements. Outreach and education must be done in partnership with community-based organizations and must be done in multiple languages.

➤ **Make fees and fines count.** Although USCIS is fee-funded, implementing a large legalization program will require an up-front investment in the agency prior to the first

applications being filed. Congress must also balance the need for funding the program with the desire to keep costs reasonable to ensure maximum participation. While application processing fees and monetary penalties are certain to be included, it is important to develop an affordable cost structure that encourages individuals to come forward rather than deterring participation. In many past proposals, applicants have been able to pay any fines in increments and those monies have been used, in part, to help support state and local initiatives that help people meet their eligibility requirements. Thinking carefully about how to structure any payments requires working with affected communities and the government to maximize the use of limited financial resources.

➢ **Don't create Catch-22s.** In order to achieve the broad goals of legalization and ensure that the maximum number of people will be legalized, it is important that immigrants not be ineligible because they are undocumented. For example, many unauthorized immigrants have used false documents and worked without authorization. Violation of the law for the purpose of remaining in the U.S. illegally cannot make an individual ineligible for legalization.   Applicants for legalization must not fear that coming forward will result in their deportation or any other penalty. Applicants must feel confident that evidence provided as part of the legalization program will not be used for immigration enforcement purposes, except in the case of egregious violations of the law.   Any potential negative consequences of applying for legalization must be made clear through community outreach and education.

➢ **Building upon existing laws and proposals that make sense.** A legalization program does not have to be built from scratch. Many of the basic components can be found in legislation introduced over the last decade. Other more specialized programs, such as AgJobs and the DREAM Act, are popular legislative proposals that can address the needs of special communities.

II. EMPLOYMENT VERIFICATION

Turning off the job magnet for unauthorized workers is a key part of comprehensive immigration reform, and the creation of a system to verify the work authorization of all workers is likely to be an element of any comprehensive immigration reform bill. The current I-9 system, which was created as part of the Immigration Reform and Control Act (IRCA) of 1986, requires all workers to provide their employer with documents that prove identity and work authorization. Already, that system is becoming less paper-based as it evolves into an electronic employment-verification system (EEVS). The U.S. government's current EEVS program, known as "E-Verify," is mostly voluntary and relatively small.

Over the past several years, immigrant advocates, privacy experts, and government agencies have identified potential problems associated with E-Verify that impact foreign-born workers as well as U.S. citizens. Since EEVS affects every single person working in the United States—immigrants and citizens alike—and because an error in the system can cost a worker his job and his paycheck, it is important to make the system workable and effective. Employment verification, when accompanied by comprehensive immigration reform, can be a useful immigration-enforcement tool. Taking care to get employment verification right is essential. Before expanding the EEVS program, policymakers must acknowledge the shortfalls of the current system and ensure a better-designed program that will protect both foreign-born and native-born workers.

About E-Verify

E-Verify is a federal, web-based program through which U.S. businesses can attempt to verify the work authorization of new hires. As of February 2009, E-Verify is a voluntary system, except where state laws require businesses to register to use E-Verify, as well as a few other exceptions in which the federal government has made E-Verify mandatory.

Employers transmit identity information through E-Verify, where it is electronically checked against both Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. The system then either confirms to the employer that the worker is employment-authorized or it issues a "tentative nonconfirmation" (TNC) notice indicating that the databases cannot immediately confirm that the worker is employment-authorized. If the employer receives a TNC, the worker then has eight federal working days from the issuance of the TNC to contest the finding with SSA or DHS. If the worker does not contest the finding, the TNC becomes final and the employer must terminate the worker or risk being found in violation of immigration laws.

Any new or expanded electronic employment-verification system (EEVS) must address the following broad issues:

- ➢ **The data in government databases must be accurate and regularly updated.** The current DHS and SSA databases upon which the E-Verify system is based are error-ridden. Database errors can mean that U.S. workers will lose their jobs and their paychecks. Data accuracy is the key to a well-functioning verification system.

- ➢ **There must be adequate protections for all workers.** There will always be some level of error in the system because of mistakes that people make when entering data, or because of deliberate misuse of the system. However, we need to ensure that there is a process in place for anyone who is mistakenly told he is not work authorized.

- ➢ **The government must have adequate resources to run the system.** Making electronic employment verification mandatory will mean tens of millions of workers and employers will use the system every year. The government agencies responsible for implementing the system must have enough funding and personnel to handle the huge increase in use.

The following are principles for employment verification:

- ➢ **Comprehensive immigration reform:** While there will be pressure on Congress to expand E-Verify outside of comprehensive immigration reform, a mandatory EEVS must not be implemented unless it is part of comprehensive immigration reform that also includes a legalization program for current unauthorized immigrants, creates flexible channels through which future immigrants may enter the United States legally, and reduces the incentives to hire unauthorized workers. Employment verification alone does not address the structural problems with our current immigration system, as outlined in IPC's *Breaking Down the Problems, What's Wrong with Our Immigration System?*

- ➢ **Apply to New Hires Only:** Currently, approximately 160,000 employers are registered with E-Verify—a tiny percentage of the 7.4 million employers in the United States. Approximately 8.5 million queries were run through E-Verify in Fiscal Year 2009. A mandatory system would mean that roughly 60 million new hires per year would have to be run through the system—a huge increase. Re-verification of the <u>entire</u> workforce would place an even greater burden on workers, businesses, and the government agencies responsible for implementing the system.

- ➢ **Data Accuracy**: Every effort must be made to ensure that the data accessed by employers is accurate, continuously updated, and subject to review. The SSA database alone has a 4.1% error rate—amounting to 17.8 million discrepancies, of which 12.7 million pertain to native-born U.S. citizens. The DHS databases also have high error rates. No U.S. citizens or legal immigrant workers should be denied employment because of errors in the database.

➢ **Documentation:** The documents that workers are required to present must be documents that all U.S. citizens and legal workers will reasonably be able to obtain. Currently, more than 13 million American adults cannot easily produce documentation proving their citizenship. Some past proposals would have required workers to produce a REAL ID-compliant driver's license. However, no state has fully implemented the REAL ID Act, and many states have refused to implement the law. As a result, no Americans currently have REAL IDs.

➢ **Worker Protections:** There must be rigorous oversight of the program and significant penalties for employer misuse of the program. Through experience with the I-9 system and E-Verify, we know that some employers discriminate against workers who sound or appear "foreign."   Other employers pre-screen workers, and some retaliate and take adverse employment actions (such as restricting assignments or training) before the system provides a final response. Some employers also fail to inform workers of their rights under EEVS.

➢ **Complaint and Redress Procedures:** If a worker is adversely affected by an employer's misuse of the program, or because of a database error, a clear complaint process must be available so the worker can report the incident and receive redress.

➢ **Due-process Protections:** Individuals must be allowed to view their own records and contact the appropriate agency to correct any errors that exist. Administrative and judicial review must be available so that workers are able to seek compensation from the government if an error in a government database results in denial or termination of employment.

➢ **Privacy Protections:** The amount of data to be collected and stored must be minimized, and penalties must be created for collecting or maintaining data not authorized in the statute. Furthermore, there must be serious penalties for use of EEVS data to commit identity fraud, unlawfully obtain employment, or for any other unauthorized purpose.

➢ **Resources:** Sufficient resources will be necessary to implement and maintain a new or expanded EEVS, including additional personnel to handle the enormous increase in queries associated with a mandatory system. Without resources to upgrade and maintain the databases, and to hire and train personnel, a well-functioning, mandatory, employment-verification system will be impossible. The cost of the program cannot fall disproportionately on immigrants, employers, or U.S. citizens.

➢ **Outreach:** Significant community outreach and education must precede any expansion of EEVS in order to inform both employers and workers about how the system works, their rights and responsibilities under the new system, and avenues for redress in cases of error or unfair employment practices.

III. ENFORCING IMMIGRATION LAWS

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

Comprehensively reforming our broken immigration system will necessarily transform the role of immigration enforcement. Legalization of unauthorized immigrants already in the United States will result in a significantly smaller unauthorized population, and the creation of flexible legal channels for those immigrants we want and need will ensure that future flows of illegal immigration are minimal. However, there will continue to be a need to enforce our nation's immigration laws. The challenge is designing appropriate, effective enforcement mechanisms for a new, well-functioning legal immigration system.

Border enforcement will always be necessary for immigration enforcement and national security. However, the borders must be recognized as gateways through which legitimate transnational commerce and travel are encouraged. The U.S. government should focus its enforcement efforts on combating genuine security risks along our borders. Comprehensive immigration reform also means enforcing current laws in a manner that ensures fair and humane treatment for all. Due process and humane policies must be restored at every stage of the process, including during worksite and home raids. Finally, enforcement must include employment law enforcement. Comprehensive reform must recognize that strong employment protections for all workers reduces the incentive for unscrupulous employers to hire and mistreat unauthorized workers, thereby improving wages and working conditions for all workers.

A comprehensive immigration-enforcement strategy would provide the following benefits to the United States:

➢ Allow law-enforcement agencies along the border and in the interior of the country to focus on genuine security risks, as well as smuggling, trafficking, and other serious criminal activity.

➢ Ensure that all persons are treated humanely and fairly, and that human and civil rights are respected throughout the enforcement process.

- Reduce the incentive for unscrupulous employers to hire and exploit unauthorized workers.

- Ensure that people who are arrested have access to due process for determining their right to remain in the United States and to not be detained.

The following are principles for immigration enforcement within the context of comprehensive immigration reform:

Border Enforcement

- **Make border-enforcement policies, projects, and agencies accountable to the communities in which they operate.** This includes the creation of a U.S.-Mexico Border Review Commission, a mandatory Congressional Report on Border Deaths, significant increases in training for the Border Patrol, and regular consultations with local communities.

- **Differentiate between border security and enforcing immigration laws.** Although border enforcement necessarily involves preventing illegal border crossings, it also encompasses a host of other issues that do not necessarily involve immigration. We must provide resources that address cross-border drug trafficking, gun running, and border violence to the appropriate law-enforcement agencies.

Interior Enforcement

- **Improve detention policies and conditions.** Detention standards—including guidelines relating to transfers, language access, medical care, access to counsel, telephone access, and religious practice and visitation—must be codified and applied to all locales in which ICE detainees are held. There must be additional oversight of detention facilities to ensure compliance with detention standards.

- **Legislation should expand judicial discretion to consider individual circumstances so that each immigration case can be evaluated on its own merits.** Judges and Department of Homeland Security (DHS) officials should be able to consider the individual circumstances of each case when making a determination about a person's liberty. Mandatory detention categories should not be expanded, nor should removal grounds be added or expanded. The detention statute should be modified to enhance release and parole options for individuals who pose no flight risk or danger to public safety. Detention should only be a last resort and, in every case, the burden should be on the government to demonstrate that detention is necessary.

- **Ensure access to counsel and legal information.** Legislation should provide for national expansion of the legal orientation presentation program, and other programs to secure legal counsel for all detained individuals and for vulnerable populations, including children and mentally ill individuals who are unable to meaningfully participate in their

removal proceedings. Pilot programs for exploring government-funded positions for "Guardians ad Litem" and legal counsel for vulnerable populations should be included.

➢ **All individuals should have their fair day in court.** Legislation should ensure meaningful judicial and administrative review and provide essential resources and personnel necessary to prevent delays in resolving cases in immigration court.

➢ **The federal government should be in charge of immigration enforcement.** The established doctrine of federal pre-emption of immigration enforcement must be followed. Before entering into any partnerships with state and local police agencies, DHS and Congress must assess the impact of that partnership on the local community, the impact on the immigrant population, the potential for racial profiling and civil-rights violations, and the impact on DHS's ability to fulfill its enforcement priorities. Further, meaningful oversight and adequate supervision of local law-enforcement agencies by DHS is necessary.

➢ **Enforce civil-rights laws and protections for noncitizens during all enforcement actions.**   Provide civil-rights training for all immigration officials and local law-enforcement officers enforcing immigration law.   Create independent oversight mechanisms to monitor and enforce the protection of civil rights, including prohibitions against racial and ethnic profiling.

Enhanced Enforcement of Laws Protecting Workers

➢ **Make enforcement of labor laws a priority.** The Department of Labor must be provided with additional resources to investigate and prosecute wage and hour violations, ensure worksite safety, and enforce other protections designed to prevent employers from taking advantage of workers. Increasing this kind of enforcement would directly affect unscrupulous employers who frequently rely on unauthorized workers.

➢ **Establish clear rules that give precedence to labor investigations where there are potential conflicts between labor and immigration-enforcement issues.** Immigration enforcement must not interfere with ongoing labor disputes or with investigations into labor law violations. DHS must have a policy which requires that if ICE discovers employment or labor law violations in the course of its worksite enforcement actions, those violations are reported to the appropriate government labor or employment-rights agency.

➢ **Hold employers accountable for employment- and labor-law violations.**   Ensure confidentiality for those who cooperate with employment and labor-law investigations, and grant visas and an opportunity for immigrant workers to petition for them and for work authorization, so that they can cooperate with investigations into workplace law violations.

IV. FAMILY IMMIGRATION

Family unification has always been a pillar of the U.S. legal immigration system. Since the first European settlers landed in the U.S., immigrants have come with their families to build better lives in America. Each year the U.S. grants visas to a limited number of people who have close family ties to U.S. citizens and legal permanent residents (LPRs or green card holders). Family-based immigration is capped at 480,000 visas per year. The immigration system grants green cards to an unlimited number of parents, spouses, and minor children of U.S. citizens. The only other family members who qualify are spouses and minor children of LPRs and siblings of U.S. citizens. These families must go through the family preference system, which limits the number of visas available for each "preference." Because there are more people who qualify than visas available through the preference system each year, many close family members of U.S. citizens and legal permanent residents are waiting in long backlogs. For example, spouses and minor children of legal permanent residents must wait 7 to 10 years to unite their families. Yet each year some of these visas are lost rather than going to qualified applicants.

Fixing the family-based immigration system is important because:

➢ A well-functioning family-based immigration system is a critical component of ending illegal immigration because it removes a key motivation for entering illegally.

➢ Family-based immigrants work, become entrepreneurs, and contribute to our economy. Research has shown that family-based immigrants possess important skills and are adaptable to the labor market.

➢ Research has shown that family-based immigration enhances an individual's ability to integrate and thrive in the U.S. Immigrant families are vital emotional, psychological, and cultural resources that shelter and sustain family members, as well as entire immigrant communities. Stripping away this support would foster social isolation and disconnection among immigrants rather than acculturation.

The family-based immigration system interacts with the legalization component of comprehensive immigration reform:

➢ Clearing the backlogs of law-abiding families who have been waiting to come legally to the U.S. ensures that immigrants who came illegally are not given preferential treatment.

➢ Failure to address this problem leads to numerous complications in other immigration categories. For instance, the failure to allow family unification under the Immigration Reform and Control Act of 1986 (IRCA) legalization program led many desperate family members to enter the United States illegally, helping create the seeds of our current immigration crisis.

Principles for reform of the family immigration system:

➢ **Family unification must remain a fundamental pillar of U.S. immigration policy.** Proposals that sacrifice family immigration for the sake of employment-based immigration create an unfair and erroneous dichotomy. Family immigrants work and contribute to the U.S. in many ways. Both the family-based and employment-based immigration systems can be fixed without sacrificing one for the other.

➢ **The current backlog of family-based immigrants must be cleared, and law-abiding families must be reunited in a humane and reasonable timeline.** There are several possible options to clear the backlogs and promote family unification, including moving spouses and minor children of LPRs into the "immediate relatives" category, not counting immediate relatives against the family cap, and increasing the per-country caps. Any combination of these or other solutions must be part of comprehensive immigration reform if it is truly going to fix the broken immigration system.

➢ **The spouses and minor children of legalized immigrants must be issued visas at the time of the primary applicant's legalization.** The IRCA legalization program did not allow for spouses and minor children of legalization applicants to legalize as derivates. As a result, special provisions had to be put into place later to protect them from deportation. Also, when legalized immigrants became LPRs and petitioned for their spouses and minor children, the backlogs in those categories skyrocketed. Including spouses and children in the legalization provisions will help to prevent future backlogs.

➢ **Unused and unclaimed family-based visas must be recaptured, and a mechanism to ensure that future unused visas are not wasted must be created.** Congress authorizes a set number of visas to be made available annually. When these visas go unused, the problems with backlogs only worsen. Recapturing visas would not overstep the numerical limits set by Congress, but it would alleviate some of the consequences of visa oversubscription.

➢ **The numerical caps on family-based immigration must be revisited and brought in line with current realities.** The last adjustments to the numerical caps were made in 1990. These numbers must be reconsidered and brought up to 21st century requirements.

➢ **USCIS must receive the resources necessary to resolve backlogged family immigration cases and ensure that processing backlogs do not reoccur.** True reform means eliminating the circumstances that led to the problems in the first place. U.S. Citizenship and Immigration Services (USCIS) must have the resources it needs to unite families and avoid future problems.

V. FUTURE IMMIGRATION FLOW

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

Improving the visa system would provide the following benefits to the United States:

➢ Create a more reliable system for determining the number of employment-based visas needed to supplement the U.S. workforce.

➢ Allow Congress to make decisions about visa numbers based on additional research and data about U.S. labor market conditions.

➢ Better position the U.S. in the global economy and the global labor recruitment arena.

➢ Remove the incentive for immigrants to come to the U.S. illegally as well as the incentive for employers to hire unauthorized workers.

➢ Remove the incentive for U.S. employers to work around, or to abuse, the visa system.

➢ Reduce exploitation, discrimination, and other abuse of U.S. and foreign workers.

The following are principles for visa reform within the context of comprehensive immigration reform, and apply equally to high-skilled and lower skilled labor flows.

➢ **Create a more flexible visa system that more accurately adjusts to the economy and labor market conditions.** The current number of permanent employment-based visas available each year was set by Congress in 1990 and has not been adjusted since. The number of temporary visas has been adjusted infrequently. This current system does not have the flexibility to nimbly adjust the number of visas available to align with changing economic conditions. A reformed visa system would enable the U.S. to better

manage our legal immigration system by allowing immigration flows to rise and fall during periods of prosperity or job scarcity in order to maximize the economic benefits of immigration. Some have proposed a standing commission to examine labor market conditions and make recommendations to Congress on a more regular basis. Others suggest that employers should play a larger role in determining the legitimate demand for foreign labor. Whether by a commission or some other mechanism, comprehensive immigration reform must include a more flexible decision-making process.

➢ **Conduct research and gather and analyze data about worker shortages, labor market trends, and other critical factors in order to aid decision making.** Under the current system, Congress sets visa numbers with little regard for actual labor market conditions and needs. A system should be created so that experts have access to reliable data about future projections of labor needs. Congress should identify and require government agencies to track and produce accurate data on key factors including national and regional needs, industry-specific trends and needs, unemployment rates, and wages, working conditions, and recruitment of U.S. workers.

➢ **Protect worker and employer interests by streamlining the transition from temporary to permanent immigration status.** While many workers enter the United States on long-term but temporary visas, such as high skilled H-1B visas, it is often difficult to become a permanent resident because of backlogs, bureaucracy, and lack of protections (such as work authorization) in the interim. Similarly, only 5,000 permanent visas are available each year for lower skilled workers, making it virtually impossible for someone who comes on a temporary visa to transition to a more permanent status. This lack of flexibility ensures that good workers who want to stay and contribute often have no choice but to return home or go elsewhere, making American companies less competitive.

➢ **Be smart about the allocation of permanent visas.** Similar to the family-based system, there are backlogs for employment-based green cards, especially for temporary workers transitioning to permanent status. While the key problem is a lack of available visas, it is exacerbated by the government's failure to use the full number of available visas each year as well as the disjointed way visas are allocated under the statute. For instance, the family members of employment-based immigrants count against the visa cap, effectively reducing the number of visas that are available for workers. Students educated in U.S. universities, particularly in the science and technology fields, often return home rather than stay in the U.S. because the wait for a visa is so long. Fixing these problems can improve American competitiveness and increase productivity by ensuring that we maximize our use of available visas.

➢ **Re-examine current temporary worker programs.** Temporary worker programs should be used to fill real temporary needs in the labor force. Current caps on the number of visas available should be reconsidered in light of 21st century realities. Measures to protect both foreign and U.S. workers and level the playing field should be taken, such as enhancing temporary workers' ability to change employers and adjust to permanent

residency, improving recruitment requirements for U.S. workers, and enhancing labor protections. Fraud and abuse of these programs should be targeted for enforcement.

➢ **Ensure that any changes in our workforce immigration programs are matched with strong economic development programs for native-born workers**. Importing foreign workers should not be the primary solution to filling gaps in the labor market, achieving growth, and improving competitiveness. Legislation should provide provisions to educate, train, recruit, relocate, and hire U.S. workers to fill positions in the labor force whenever possible.

VI. NATURALIZATION AND INTEGRATION

Most Americans want immigrants to fully integrate in the U.S., and most immigrants want to be Americans and fully participate in social and civic life. We can expect naturalization and integration programs to be an important part of comprehensive immigration reform. Immigrant integration benefits everyone because it enables immigrants to realize their full potential, contribute more to the U.S. economy, and develop deeper community ties. While the United States encourages legal permanent residents to become citizens, there is no national strategy for facilitating integration and insufficient infrastructure to facilitate a smooth transition from immigrant to citizen. Failure to address this problem in the context of comprehensive immigration reform could lead to endless delays for the millions who currently seek services from USCIS and the millions more who will become part of the applicant pool following legalization.

Questions of naturalization and integration are unique within the comprehensive immigration reform debate because the issues involved are less about reforming existing law and more about generating support for sufficient planning and resources to create a more robust integration program. Efforts to prioritize integration and naturalization, to streamline current application processes and to revise existing policies and procedures can be accomplished through administrative action. The most urgent changes needed relate primarily to increasing the appropriations given to DHS to promote integration, improve services, and reduce the high fees applicants currently pay for immigration benefits.

A comprehensive integration strategy would provide the following benefits to the U.S.:

> ➤ Create a reliable way to welcome lawful immigrants to the U.S. and offer them information to help them navigate their way in their first years.

> ➤ Provide the government with the tools and funds necessary to ensure that people currently applying for naturalization are not harmed by a legalization program and that those who apply for naturalization following legalization do not face needless delays.

> ➤ Ensure that immigrants who want to be U.S. citizens can do so in a timely and efficient manner, thus paving the way for their full participation in U.S. political and civic life.

> ➤ Provide USCIS with a steady, reliable funding source which allows them to better allocate funding and respond to special resource needs that arise.

The following are principles for naturalization and integration within the context of comprehensive immigration reform:

> ➤ **Develop a national integration plan.** Before comprehensive immigration legislation is enacted, the federal government should announce a coordinated strategy for

encouraging integration and naturalization.   Ideally, a national integration plan would be run out of the White House, and draw upon executive branch agencies such as the Office of Citizenship in USCIS, the Office of Refugee Resettlement in HHS, and the Department of Education to prioritize integration. Resources need to be invested in language acquisition, literacy, and civics education.

➢ **Engage in long-range planning within DHS to coordinate the flow of applications arising from comprehensive immigration reform.** Because comprehensive immigration reform envisions not only legalization of the undocumented, but reductions in existing family and employment backlogs, petitions and applications for visas and other benefits will rise dramatically. The government must be prepared to serve a variety of populations at once and must ensure that those who will be applying for naturalization in the next few years are not adversely affected by demands in other parts of the system. The government should move now to implement improvements in benefit application processing to prevent future application backlogs and to enhance customer service.

➢ **Ensure that the various provisions of CIR legislation complement rather than compete with each other.** Congress can ensure that legalization and naturalization functions complement rather than compete for funding by carefully thinking through the requirements for each.   For example, while legalization programs have generally required applicants to prove some level of English proficiency, the measure of proficiency cannot be greater than what available services can reasonably provide. Any legalization requirements must be pegged to sufficient funding for English and civics classes. A portion of any fees or fines should be allocated to pay for such programs.

➢ **Create a mechanism for funding USCIS that does not rely solely on application fees.** In the context of comprehensive immigration reform, Congress must recognize the tremendous costs associated with processing millions of applicants. While applicants should be required to pay their fair share, a serious discussion about what that really means needs to take place. Ideally, USCIS should be able to rely on a combination of fees and appropriated monies to maintain high-quality services. In tough economic times it may seem counter-intuitive to ask for additional appropriations, and yet many of the costs currently borne by individual applicants are really costs that should be viewed as investments in our immigration infrastructure. At a minimum, Congress should allocate sufficient funds to help the agency cover the costs associated with building up the staff necessary for legalization, but it should also ensure that it puts into place mechanisms that will keep the agency running.

➢ **Engage state and local stakeholders.** State and local governments play an essential role in the integration of immigrants. A proactive immigrant integration strategy must bring together state and local stakeholders to address the needs of immigrant communities and develop strategies to integrate this population. In addition to impact aid for communities experiencing a growth in their immigrant population, the federal government must direct resources for integration efforts and programs that welcome newcomers.