

Ineffective & Unjust:

FIXING OUR NATION'S
BROKEN IMMIGRATION SYSTEM



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POLICY REPORT



Ineffective and Unjust: Fixing Our Broken Immigration System

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EXECUTIVE SUMMARY

Concerned for the security and integrity of our country, we at the Muslim Public Affairs Council (MPAC) offer this publication as a Muslim American faith-based policy contribution to the national discourse on immigration reform. Our goal is to provide a voice of moral pragmatism.

As Muslim Americans presenting a faith-based perspective to one of our nation's biggest public policy challenges, we look to the Qur'an for moral guidance. In order to best satisfy the public interest, referred to as *maslaha* in Islamic thought, we believe there are four values guiding our comprehensive immigration reform strategy. They are:

1. **Human Dignity.** One of the key objectives of immigration reform is to ensure that individuals are not to be exploited and must be treated humanely and justly – regardless of nationality or legal status.
2. **The Rule of Law.** Breaking the law – such as illegal entry or overstay – is wrong and must be appropriately compensated for. However law enforcement must also be done justly in accordance with Constitutional values and due process. Enforcement should also give first priority to maintaining public safety – such as focusing on violent offenders and rapists given the importance of human dignity and sanctity of human life.
3. **Fiscal Responsibility.** Applying this to immigration policy, it is our view that all government programs should be as effective and fiscally efficient as possible so as to not become a wasteful burden to taxpayers.
4. **Economic Growth.** Immigration reform – particularly the legalization component – must not harm the job prospects of legal immigrants and U.S. citizens. Those new to this country and using its services should also be expected to economically contribute through education and/or finding employment.

With these values in mind, MPAC approaches the immigration challenge with a comprehensive set of solutions addressing the root causes of our broken system. In particular we focus on three of the most pressing aspects of immigration reform: 1) **Reforming the legal immigration system**; 2) **Earned Legalization of undocumented individuals**; and 3) **Developing effective immigration enforcement**.

Legal Immigration

Reforming our broken legal immigration system is about balancing competing social/political and economic interests and objectives. It also includes possibly modifying the limit of legal residents and temporary workers allowed into the country each year.

Despite the steady flow of legal entry into America, it is clear the immigration system is broken. There are two main problems with the current setup of legal U.S. immigration:

- *Unrealistic caps for the number of visas granted.* The current visa system fails to adjust to domestic labor market demands. It also grants all nations the same number of visas rather than giving greater priority to nations with greater migration flows into the United States.
- *Bureaucratic inefficiencies and inconsistent policies.* Federal agencies have not devoted enough resources to speedy processing of citizenship and Legal Permanent Resident applications. Nor have they effectively prevented people from overstaying their visas.

A better legal immigration system would provide important economic benefits to America. Our nation may face a labor shortage and an increase in costs for popular entitlement programs. The conservative think-tank, The Heritage Foundation, warns that Social Security is facing a looming fiscal crisis because the “baby-boomer” workers sustaining the program are beginning to retire. In order to avoid a national labor shortage and maintain Social Security’s solvency, outside workers will be needed in order to sustain our economy.

Significant numbers of immigrants already fill critical job sectors, particularly in white-collar professions. In fact, the U.S. Census Bureau reports one-third of all Doctorate degrees earned in the U.S. are awarded to immigrants.

Legalization of Undocumented People

This issue is about allowing undocumented immigrants in the United States to become Legal Permanent Residents. Earned legalization is a concept, “describing a work-benefits program for undocumented aliens in the United States, where work is rewarded with the opportunity to receive legal status.” It differs from “amnesty” because “amnesty” automatically pardons millions of undocumented immigrants who unlawfully entered or overstayed their visas.

Those who argue against earned legalization believe it rewards undocumented individuals at the expense of those waiting to come legally, and argue it may become a magnet for future flows of unauthorized migrants. Others still, argue immigration harms native-born American workers’ wages and job prospects. The above perspective reflects legitimate concerns but fails to take into account three important points:

First, it misidentifies the root causes for unauthorized immigration. As noted earlier, the current legal immigration system is characterized by unrealistic quotas and bureaucratic inefficiencies. This creates perverse incentives for illegal immigration. Additionally, legal enforcement has been insufficient and ineffective.

Second, it ignores the existing reality of 11 million undocumented immigrants living and working in the United States. Mass deportation is extremely costly, as described later in our report. Furthermore, unskilled undocumented workers make significant short-term economic contributions. For instance, the Social Security Administration estimates about 75% of undocumented immigrants pay their payroll taxes. Studies also show they generate \$162 billion in annual local, state and federal tax revenues and pay \$1,800 more in taxes than government benefits received.

Third, the evidence for arguing immigration's negative effect on citizens' wages and job prospects is weak. In fact, earned legalization would bring significant economic benefits to the United States. A study by the Immigration Policy Center found earned legalization is likely to **generate an extra \$1.5 trillion** in revenue over 10 years, a 0.84% increase in GDP. This amounts to raising wage floors by at least 6% for **all** American workers, an increase in income which would likely create 750,000-900,000 jobs.

An August 2010 study by the Federal Reserve Bank of San Francisco also found immigration brings significant long-term economic gains. It concluded that immigration provides a \$5,100 increase in the yearly income of the average American worker.

Developing Effective Immigration Enforcement

Immigration enforcement includes border security, worksite enforcement, employment eligibility verification, and removal of criminal undocumented immigrants.

Despite the pressure placed on enforcement strategies to control undocumented immigration, such approaches have largely failed. Border security programs, like the Secure Border Initiative, suffered from massive technical failures and time/cost overruns.

Though border security and detention policies are important, they are also extremely ineffective and insufficient. The heavy emphasis on border security also ignores the large percentages (25-40%) of undocumented immigrants who overstay their visas.

Current labor law enforcement to guard against improper hiring of immigrants is also ineffective. A disproportionate amount of arrests by federal agencies have been directed at undocumented workers (98% of persons arrested in 2008) rather than the management illegally hiring them (2% of persons arrested in 2008). This is tantamount to treating the symptoms of undocumented immigration rather than tackling its economic root cause. Similar problems also occur among documented immigration routes, where there has been a systemic failure to crackdown on worker visa fraud.

The final key component to immigration control is the arrest and removal of violent fugitive criminals and drug and human traffickers. However, such programs – including 287(g), Operation Front Line, and the National Fugitive Operations Program – have been ineffective and counterproductive. The Department of Homeland Security's own data shows these programs waste money, personnel and other resources by arresting overwhelmingly non-violent people who pose no threat to communities. Furthermore, such programs have been criticized by local police for undermining community trust needed to get crime tips.

Policy Recommendations

Concerned for the safety of our country and the integrity of our civic society, we must fulfill our moral and religious obligations towards remedying this situation as quickly and effectively as possible. Given the complexity of immigration challenges in America today, we offer the following recommendations toward a comprehensive immigration reform strategy:

Border Security and Law Enforcement

- Shift the focus of enforcing labor laws on unscrupulous *employers* rather than workers.
- Emphasize apprehension of fugitive aliens with a *criminal* background.
- Overhaul the Secure Border Initiative (SBI).
- Continue research on a comprehensive and effective employment verification regime.
- Continue research into visa overstay tracking.

Legal Immigration

- Base employment visas ceilings on market demand, not arbitrary caps.
- Reform family visa allowances based on migration flows from countries.
- Enhance bureaucratic effectiveness to reduce processing times and errors in citizenship and Legal Permanent Resident applications.

Legalization of Undocumented Individuals

- Create a path to earned legalization for as many people as possible.
- Develop a simple and straightforward process to earned legalization.
- Make social integration and the possibility of a green card and citizenship the end goal of an earned legalization process.
- Partner with community stakeholders.

INTRODUCTION

There appears to be widespread consensus among Americans of various political, ethnic and religious stripes that our nation's immigration system demands serious reform. The details on how to bring about the necessary change have become a source of heated debate. Concerned for the security and integrity of our country, we at the Muslim Public Affairs Council (MPAC) offer this policy backgrounder as a Muslim American faith-based and policy contribution to the national discourse on immigration reform.

Our goal is to provide a voice of moral pragmatism. As a moral society, we have an obligation to uphold our social responsibility towards our fellow humans, who are living in and contributing to our society. Undocumented immigration is illegal and wrong and deserving of careful attention. In this paper, we set out to describe some of the very real and troubling consequences for individuals who do play by the rules. We also share the stories of people around the country who are directly impacted by the vast shortcomings of our outdated immigration system.

A FAITH-BASED PERSPECTIVE FROM MUSLIM AMERICANS

Any solution to the federal immigration system must uphold the humanity of the 11 million undocumented immigrants inside the United States. How we treat others reflects upon our national and individual character. Mistreatment of undocumented immigrants is a violation of the shared values of America and of Islam.

As Muslim Americans presenting a faith-based perspective to one of our nation's biggest public policy challenges, we look to the Qur'an for moral guidance. In order to best satisfy the public interest, referred as *maslaha* in Islamic thought, we believe there are four values guiding our comprehensive immigration reform strategy. They are:

1. **Human Dignity.** The Qur'an asserts that God has "dignified the Children of Adam [humanity]" (17:70) and that He has made humanity to be the "vicegerent on earth" (2:30). One of the key objectives of immigration reform is to ensure that individuals are not to be exploited and must be treated humanely and justly – regardless of nationality or legal status.
2. **The Rule of Law.** In a series of back-to-back verses, the Qur'an tells how Jews, Christians and Muslims were all sent Prophets with laws to establish guidelines for orderly public conduct (5:44-48). Applied to immigration, breaking the law – such as illegal entry or overstay – is wrong and must be appropriately compensated for. However law enforcement must also be done justly in accordance with Constitutional values and due process. Enforcement should also give first priority to maintaining public safety – such as focusing on violent offenders and rapists – given the importance of human dignity and sanctity of human life ("killing one person is akin to killing all of humanity", 5:32).

3. **Fiscal Responsibility.** The Qur'an tells people to "waste not by excess" (7:31) and "spend not wastefully" (17:26). Applying this to immigration policy, it is our view that all government programs should be as effective and fiscally efficient as possible so as to not become a wasteful burden to taxpayers.
4. **Economic Growth.** Economic growth is strongly encouraged in the Qur'an in order to eradicate poverty and promote the welfare of society (62:10; 28:77; 2:22; 2:29; 15:20; 15:22; 20:54; 36:71-73; 57:27). Immigration reform – particularly the legalization component – must not harm the job prospects of legal immigrants and U.S. citizens. Those new to this country and using its services should also be expected to economically contribute through education and/or finding employment.

With these values in mind, MPAC approaches the immigration challenge with a comprehensive set of solutions addressing the root causes of our broken system. In particular we focus on three of the most pressing aspects of immigration reform: 1) **Reforming the legal immigration system**; 2) **Earned Legalization of undocumented individuals**; and 3) **Developing effective immigration enforcement**.

WHAT'S AT STAKE?

There are more than 38 million foreign-born residents in the United States, according to Data the U.S. Census Bureau and American Community Survey (ACS). This represents 12.6% of the total U.S. population. About two-thirds of these individuals are legal residents or naturalized citizens (27 million) and about one-third are estimated to be undocumented residents (11 million).¹ Of the total number of undocumented immigrants, an estimated 25-40% are individuals who have overstayed their visas (2.75-4.4 million). The rest are individuals who are believed to have entered America illegally.²

Both the Census and ACS data also show a considerable amount of ethnic diversity among immigrants. The following is a rough breakdown of U.S. immigrants by regional origin:³

- 12 million originate from Mexico
- 5.3 million are from other parts of Latin America
- 10 million are from East Asia, South Asia and the Middle East
- 4 million are from the Caribbean and Africa

A 2006 Pew Hispanic Center study broke down the number of undocumented immigrants in the United States by national origin and found:⁴

- 78% are from Mexico and Latin America
- 3% from Africa
- 6% from Canada and Europe
- 13% come from Asia

REFORMING THE LEGAL IMMIGRATION SYSTEM

Reforming our broken immigration system is a complex endeavor which must balance competing interests and objectives, including: U.S. business interests of having a large supply of cheap labor, access to the best and the brightest from around world, family reunification and the desire to improve policies allowing legal immigration. It also includes possibly changing the number limit of legal residents and temporary workers allowed into the country each year.

Under current immigration laws, there are three primary ways to gain Legal Permanent Resident status:⁵

- **Family.** More specifically, it means bringing in foreign nationals who are immediate relatives (parents and children) or a spouse of U.S. citizens and other Legal Permanent Residents.
- **Employment.** Allowing workers (and their spouses and children) who are in “priority” professions, have advanced degrees, professionals (without advanced degrees), special immigrants (religious workers and non-citizen employees of the U.S. government abroad) and investors.
- **Diversity Lottery.** Foreign nationals from countries with low rates of legal immigration to the U.S. may be encouraged to enter the U.S. to add to the nation’s ethnic and cultural pluralism.

Current law allows for 675,000 people to become Legal Permanent Residents each year. Family-based Legal Permanent Residents are annually capped at 480,000, employment-based residents at 140,000 and diversity visas at 55,000. (However, there are no legal caps on the number of Legal Permanent Residents admitted into U.S. based on immediate family ties with American citizens.)⁶ Though these caps exist, for the past three years the U.S. has consistently admitted 1.1 million Legal Permanent Residents:

Legal Permanent Resident Flow: Fiscal Years 2007 to 2009

Category of admission	2009		2008		2007	
	Number	Percent	Number	Percent	Number	Percent
Total	1,130,818	100.0	1,107,126	100.0	1,052,415	100.0
New arrivals	463,042	40.9	466,558	42.1	431,368	41.0
Adjustments of status . . .	667,776	59.1	640,568	57.9	621,047	59.0

Source: Department of Homeland Security – Office of Immigration Statistics⁷

Despite the steady flow of legal entry into America, it is clear the immigration system has two critical shortcomings:

- **Unrealistic caps for the number of visas granted.** Labor market demands for higher and lower-skilled workers are typically much higher than what quotas allow for. For instance, only 5,000 green cards are allowed each year for lower-skilled laborers – like hotel workers, janitors, and landscapers – for the entire United States. Furthermore, all countries are assigned the same annual quota. This means Mexico and Belgium are allowed the same number of people to immigrate to America – which ignores important realities. As a result, family members may be forced to wait as long as 20 years to be permanently rejoined with other family members in the United States, as a result of an extremely long backlog.⁸
- **Bureaucratic inefficiencies and inconsistent policies.** The U.S. federal government has consistently failed to devote enough resources to ensure the speedy processing of citizenship and Legal Permanent Resident applications. Under the current system, there is very little to be gained from applying for permanent residency. This exacerbates undocumented immigration by creating more delays in an already demanding citizenship path.⁹ It has also failed to set up reliable tracking systems meant to prevent students, tourists and immigrant workers from overstaying their visas.¹⁰

AN AMERICAN DREAM, DEFERRED: **The Case of Dr. Nadeem Ahmed¹¹**

Born in Karachi, Pakistan, Dr. Nadeem Ahmed began his residency in the United States in 1997 with a J-1 student visa. A leader among his peers, Dr. Ahmed served as the representative for all residents on the Graduate Medical Education Committee for two years (1999-2001); served as the president of the Missouri Anesthesia Student Residents from 2000 to 2001; and was the Chief Resident in Anesthesia that same year. After his residency, he completed a two-year fellowship at Duke University, where he wished to continue his work. However, he was forced to relocate due to visa requirements, which mandated that he work in an under-served area. He fulfilled all the legal requirements, however was forced to stay in another community for an additional 18 months due to long background checks.

Long delays with background checks are an issue many immigrants share. What should have been a 3-year process took Dr. Ahmed almost five years total because, like many others, his case was placed in a backlog. Once Dr. Ahmed obtained his green card in March 2008, he finally became eligible to apply for citizenship in 2013. In Dr. Ahmed's own words:

“It’s extremely frustrating for the people who are highly qualified professionals, who are trying to give the best to this country and who are truly trying to realize the American dream, to have to wait at least 10-13 years to be simply eligible to vote in the country. My kids who know nothing except the United States, only consider this their home and country, are still not even considered American citizens. My 19-year-old son is denied any internship in Washington for this reason. There are hundreds of physicians from many countries, not just Pakistan, who go through this same frustrating process on a daily basis.”

All of these issues create enormous disincentives for people to enter and remain in the legal immigration system. The lack of legal status for millions of undocumented workers also provides unethical employers an opportunity to take advantage of such individuals by paying them far below the legal minimum wage and make laborers work in deplorable conditions.

This problem is compounded by worker visa holder lack of job mobility. Current guest worker visas do not allow them to legally change jobs with ease. This potentially allows unscrupulous employers to exploit foreign workers because they are not afforded the ability to leave their job and find better employment.¹²

As a result of these issues, they run the risk of lowering both the wage floors and the working conditions for *all* employees in America – legal and undocumented, native-born and immigrant.¹³

There are also important future demographic and economic reasons why legal immigration is badly in need of reform. Given the ongoing demographic shifts in the United States, our nation will need additional workers to sustain its economy. America's workforce is increasingly becoming older. As early as 2000, a study from the Department of Labor found large numbers of Americans from the "baby-boomer" generation working in critical occupations are rapidly entering retirement age.

Table 3. Occupations with the greatest percentage of workers aged 45 and older permanently leaving the occupation, 1998–2008

Occupation	Percentage of workers permanently leaving occupation
Total, all employees	53.8
Fishers, hunters, and trappers	80.5
Water transportation occupations	76.7
Operations and systems researchers and analysts	74.2
Supervisors, police and detective	70.9
Telephone installers and repairers	69.6
Insurance underwriters	68.6
Supervisors, mechanics and repairers	68.3
Laundering and dry cleaning machine operators	67.7
Teachers, secondary school	66.8
Supervisors, construction workers	65.9
Mail carriers, postal service	65.8
Rail transportation occupations	65.2
Welfare service aides	65.1
Winding and twisting machine operators	64.9
Dental laboratory and medical appliance technicians	64.7
Public relations specialists	63.7
Telephone operators	62.4
Industrial machine repairers	60.4
Rail transportation occupations	60.6
Licensed practical nurses	59.1

Source: Department of Labor¹⁵

With fewer native-born Americans entering the job market to replace retiring workers, the government must either allow greater numbers of workers into the United States, or the nation must prepare itself to experience a labor shortage.

This not only leads to employment gaps in many professions, but it also means fewer workers are supporting retirees' benefit payments. The conservative think-tank, the Heritage Foundation, finds the worker-to-retiree ratio supporting Federal entitlement programs like Social Security is shrinking: "In 1950, there were five workers for every retiree. In 2008, there were three workers to every one retiree. By 2030, there will be only two workers for every retiree."¹⁴

Keeping these programs solvent, will in part require halting and reversing these labor trends through immigration reform. Failing to do so would be detrimental to America's long-term fiscal and economic health.

American industries are recognizing this looming trend and adapting accordingly. Significant numbers of immigrants already fill critical job sectors. According to a study by the non-partisan think-tank the Fiscal Policy Institute, “In 14 of the 25 largest metropolitan areas... more immigrants are employed in white-collar occupations than in lower-wage work like construction, manufacturing or cleaning.”¹⁶ Furthermore, the U.S. Census Bureau reports that fully one-third of all Doctorate degrees earned in the U.S. are awarded to immigrants.¹⁷

EARNED LEGALIZATION OF UNDOCUMENTED PEOPLE

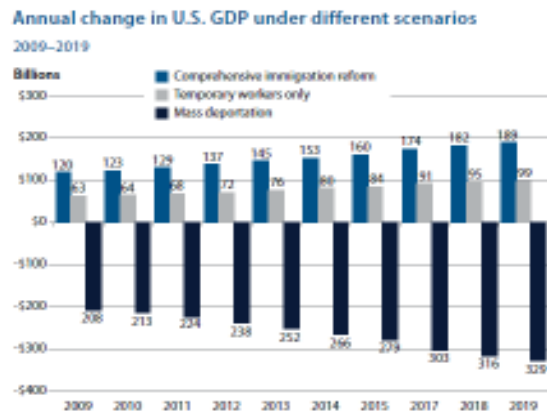
This issue is about allowing undocumented immigrants in the United States to become Legal Permanent Residents. This is commonly referred to as “earned legalization” by its supporters and labeled as “amnesty” by opponents. The two terms, however, are not the same.

Earned legalization is a concept, “describing a work-benefits program for undocumented aliens in the United States, where work is rewarded with the opportunity to receive legal status.”¹⁸ It differs from amnesty because amnesty automatically pardons millions of undocumented immigrants who unlawfully entered or overstayed their visas. The 1986 Immigration Reform and Control Act was an example of “amnesty.”¹⁹

Those arguing against earned legalization believe it rewards undocumented individuals at the expense of those waiting to reside in the U.S. legally. They also argue it may become a magnet for future flows of unauthorized migrants.²⁰ Others still, argue immigration harms native-born American workers’ wages and job prospects. While this perspective reflects legitimate concerns, it fails to consider and address three important points:

- **First, it misidentifies the root causes for unauthorized immigration.** As noted earlier, unrealistic quotas and bureaucratic inefficiencies characterize the current legal immigration system. This creates significant incentives for illegal immigration. Additionally, legal enforcement has been insufficient and ineffective.
- **Second, it ignores the existing reality of 11 million undocumented immigrants living and working in the United States.** Mass deportation is extremely costly, as described later in our report. Furthermore, unskilled undocumented workers make significant short-term economic contributions. The Social Security Administration estimates 75% of undocumented immigrants submit their payroll taxes.²¹ Undocumented immigrants also generate \$162 billion in annual local, state and federal tax revenues and pay \$1,800 more in taxes than government benefits received.²²
- **Third, the evidence for arguing immigration’s negative effect on citizens’ wages and job prospects is weak.** Princeton University economist Alan Krueger notes, “Studies that claim to find a deleterious effect of immigration on natives’ wages are typically based on theoretical predictions, not actual experience.”²³ Such research fails to factor in practical effects of immigration – greater demand for goods and services produced in the U.S. and greater numbers of entrepreneurs – that serve as a boost to the entire economy and create jobs for **all** American workers.²⁴

In fact, it appears that earned legalization would also bring significant long-term economic benefits to the United States. It would increase immigrants' economic contributions to America by providing employers with a larger legal workforce without importing additional foreign workers. It also helps low-skilled U.S.-born workers' competitiveness in the job market by providing a disincentive for businesses to exploit undocumented labor by paying them below minimum wage.



Source: Immigration Policy Center²⁵

A joint study by the Center for American Progress and the Immigration Policy Center finds **earned legalization is likely to generate an extra \$1.5 trillion** in revenue over 10 years, a 0.84% increase in GDP. This amounts to raising wage floors by at least 6% for **all** American workers, which would likely result 750,000-900,000 additional jobs.²⁶

The alternatives – a temporary work program and mass deportation – will provide less benefit or no benefit at all. A temporary work program would generate only about half the revenue of earned legalization at \$792 billion over 10 years, or a 0.44% increase in GDP. A law enforcement-centered approach is far worse. The projected cost would be \$2.6 trillion lost over 10 years – a 1.4% reduction in GDP.²⁷

An August 2010 study by the Federal Reserve Bank of San Francisco also found immigration brings significant long-term economic gains. It concluded that a steady inflow of immigrants equal to merely 1% of employment provides a 6.6% to 9.9% income boost per worker. This is equal to a \$5,100 increase in the yearly income of the average American worker.²⁸

DEVELOPING EFFECTIVE IMMIGRATION ENFORCEMENT

Immigration control policies must be reassessed to ensure more effective enforcement of laws that affect immigration flows. This includes border security, worksite enforcement, employment eligibility verification, and removal of criminal undocumented immigrants.

Despite the emphasis placed on border security and law enforcement strategies by prior administrations as the primary method to control undocumented immigration, such an approach has largely failed. Programs like the Secure Border Initiative (SBI), meant to control drug and human smuggling along the Mexican border, have suffered from massive technical failures and time and cost overruns. Despite these problems, the government has spent over \$3.7 billion on SBI so far.

The Department of Homeland Security (DHS) estimates the technological component of SBI, known as the “virtual fence,” is estimated to be seven years past deadline. The Government Accountability Office (GAO) found the surveillance equipment used is faulty and ineffective. Costs for the physical fences along the border have nearly doubled from \$3.5 million per mile to \$6.5 million.²⁹

**SBI funding, fiscal years
2005-2009**
Dollars in thousands

Fiscal year	SBI funding
2005	\$38,480
2006	325,000
2007*	1,187,565
2008	1,302,587**
2009	875,000***
Total	\$3,728,632

Source: Center for American Progress³⁰

Though border security and detention policies are important, they are sadly ineffective and insufficient in their current form. The heavy emphasis on border security also ignores the large percentages (25-40%) of undocumented immigrants who overstay their visas. Since such individuals entered the United States legally, border security – which stops illegal entry – would be ineffective at addressing large numbers of undocumented immigrants.

The two biggest factors reducing the flow of illegal entry into the United States are 1) falling demand for workers due to the U.S. economic recession, and 2) falling supply of immigrants due to drastically falling birth rates in Mexico.³¹

While immigration control efforts cannot affect the birthrates of Mexican families, they can play an important role in reducing the economic incentive for illegal entry into the U.S. by ensuring employers legally hire immigrants. This could be done through employment verification and enforcement of labor laws.

An employment verification system, such as E-Verify, is needed for effective labor law enforcement. However, it is still in its infant stages. E-Verify is currently voluntary and only 61,000 employers out of approximately 7.4 million in the U.S. have registered with the program. Of these, about half are active users.³²

In recent years, E-Verify has drastically reduced its error rates and shown that it can reliably determine whether or not a person (based on verification of their name and biographical data) is authorized to work. However, it continues to fail at authenticating whether that identity is true or not (i.e., Is the person using that name and bio really who s/he says they are?). Thus, the system remains vulnerable to identity theft and fraud.³³

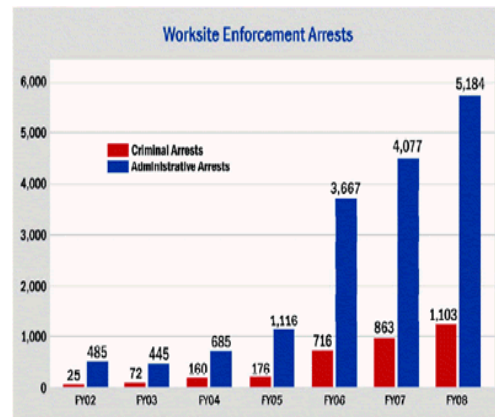
If E-Verify becomes mandatory nationwide, it would also be extremely expensive. A Congressional Budget Office analysis estimates a mandatory nationwide E-Verify program would “decrease federal revenues by \$17.3 billion over the 2009-2018 period” and “authorize an increase in discretionary spending, subject to appropriation, of... \$23.4 billion over the 2009-2018 period.”³⁴

Others have proposed alternative policies. Senators Charles Schumer (D-NY) and Lindsay Graham (R-SC) support the use of a biometric Social Security card to guard against identity fraud. However, a biometric security system, which utilizes a card, has three main limitations.

First, it is extremely expensive. Using DHS data, the Consumer Federation of America estimates a mandatory national biometric ID card will cost about \$285 billion.³⁵ Second, biometric security systems have severe security vulnerabilities. Biometric data may be extremely hard to fabricate, but it is much easier to steal. As Bruce Schneier, a security technology expert, noted, **“Passwords can be changed, but if someone copies your thumbprint, you’re out of luck: you can’t update your thumb.”**³⁶

Third, it only displaces the problem; it does not solve it. The practice of “working under the table” will only increase. A policy analysis by the CATO Institute, a fiscally conservative think-tank, found more identity theft would likely occur by individuals seeking to obtain an ID card and find a job.³⁷

Current labor law enforcement strategies to guard against improper hiring of immigrants is also ineffective. A disproportionate amount of arrests have been directed at undocumented workers rather than the management illegally hiring them. This is tantamount to treating the symptoms of undocumented immigration rather than tackling its economic root cause. According to DHS data from 2008, out of almost 6,300 arrests made related to worksite enforcement, only 135 (2%) targeted employers, while the other 6,200 (98%) targeted undocumented workers.³⁸



Source: Department of Homeland Security³⁹

Similar problems also occur among documented immigration routes. Federal agencies have been ineffective at cracking down on worker visa fraud. According to an October 2008 report by the U.S. Citizenship and Immigration Services, “13% of petitions filed for H-1B [worker] visas on behalf of employers are fraudulent.”⁴⁰

Another key aspect to immigration control is domestic law enforcement, particularly the arrest and removal of violent fugitive criminals and drug and human traffickers. However, such programs designed to reduce threats to public safety have been ineffective and counterproductive. Five programs are worth briefly highlighting.

The first program is 287(g). Since immigration status is under the domain of administrative law, such an issue is mostly handled by the federal government. 287(g) carves out an exception to that rule. It is a provision added to the Immigration and Nationality Act in 1996, allowing state and local police agencies to enforce federal immigration laws, based on a Memorandum of Agreement (MOA) signed by DHS and local and state agencies.

Under the MOA, local and state officers receive “appropriate training and function under the supervision of sworn U.S. Immigration and Customs Enforcement (ICE) officers.”⁴¹ The intent of 287(g) is to use its trained local and state partners to arrest illegal immigrants suspected of serious offenses, like drug smuggling or murder.⁴² The direct financial cost of 287(g) since 2006 is approximately \$198.5 million.⁴³

However, the program has thus far failed to fulfill the original intent of the provision, which is to remove violent and other serious threats to public safety many local and state partners implementing 287(g) have been accused of using the pretext of minor non-violent violations, such as public urination, to engage in racial profiling.⁴⁴

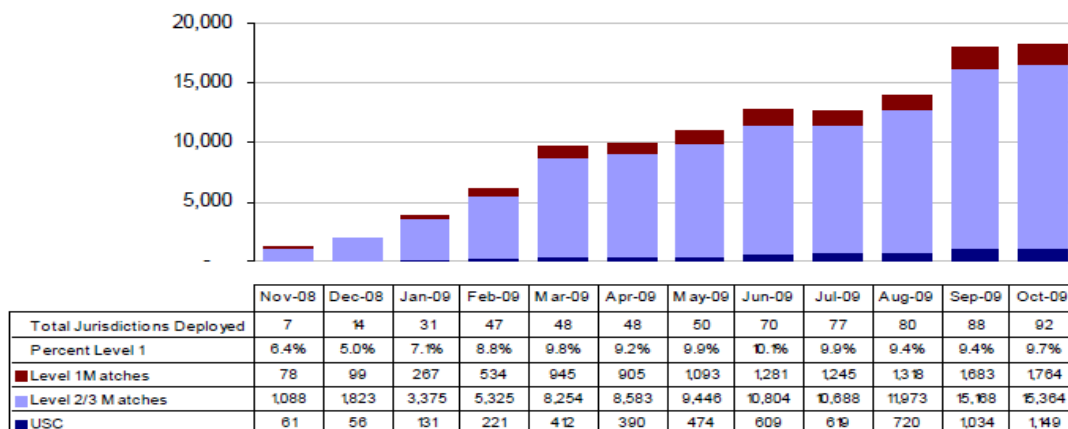
Recent DHS data seems to support these claims. According to a September 2010 Inspector General report, it found only 23% of individuals detained and identified under 287(g) were “Level 1” criminals – those accused or convicted of violent activities such as rape, murder or kidnapping. The rest were classified as “Level 2”, “Level 3” or lower – all minor, non-violent offense categories.⁴⁵

As a result, 287(g) diverts police away from normal crime-fighting duties and fails to remain focused on violent illegal aliens; instead many non-violent persons are detained. It also undermines community trust needed to get crime tips.⁴⁶ Not surprisingly local law enforcement organizations like the Police Foundation have strongly opposed 287(g).⁴⁷

The second program is Secure Communities. Secure Communities is an information-sharing initiative designed to identify immigrants in U.S. jails who are deportable. While in custody, detainees are fingerprinted and checked against both DHS immigration and FBI criminal databases. Like 287(g), the purpose of Secure Communities is to focus on identifying violent criminals. Since 2008 Congress has spent approximately \$546 million on the program,⁴⁸ while the Senate seeking to allocate another \$147 million for fiscal year 2011.⁴⁹

However like 287(g), Secure Communities has also been accused of being abused by law enforcement officials to engage in racial profiling.⁵⁰ The program currently lacks specific requirements for data collection and mechanisms to prevent racial profiling. More specifically it is argued that biased police officers will arrest individuals of particular ethnicities, mostly for minor non-violent offenses. Once in custody, officers can then check the person’s immigration status through Secure Communities.⁵¹

ICE’s own data bolsters this claim. Between October 2008 (when Secure Communities began) until the end of October 2009, 118,890 A further 5,880 individuals identified were U.S. citizens. 113,010 undocumented individuals were identified by the program. Of these, only 11,219 (9%) were identified as Level 1 offenses. The rest were identified as minor non-violent Level 2 and 3 offenders.⁵²



Source: Department of Homeland Security⁵³

A more recent analysis based on June 2010 DHS data found there were 47,000 people deported as a result of Secure Communities. However approximately only 10,000 (21%) of those deported were believed to be violent offenders; the rest were non-violent offenders or non-criminals.⁵⁴ The same analysis found, since the program began, almost 28% of individuals deported because of Secure Communities were non-criminals.⁵⁵ Not surprisingly in August 2010, ICE admitted the program, currently as is, will not catch violent and high-risk criminals; instead it will continue mostly against low-level, non-violent offenders.⁵⁶

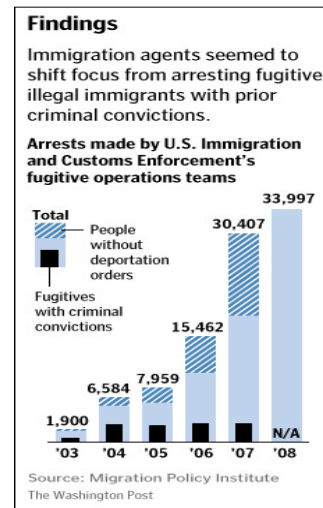
The third program is Operation Front Line, which was conducted by ICE and FBI agents. The intent of the Operation was allegedly to disrupt potential terrorist plots before, during, and immediately after the 2004 presidential elections. The operation netted over 2,500 suspects, 2,000 (80%) of whom came from Muslim-majority countries.⁵⁷ The direct financial cost of Operation Front Line was an estimated \$1.3 billion.⁵⁸

Despite the amount of money, time and personnel devoted to this project, there have been no tangible security benefits. **In a random sample of 300 cases from the 2,000 Arabs/Muslims detained, only 56 cases (18%) involved an alleged immigration violation. Not a single case involved a national security and/or terrorism charge.**⁵⁹

The fourth example is the National Security Entry-Exit Registration System (NSEERS) program. After 9/11, the program mandated that over 83,000 “suspicious” individuals had to notify the Department of Homeland Security of their whereabouts every 30 days. Like Operation Front Line, the purpose of this program was to identify any potential terrorist attempting to enter the country.

However, like Operation Front Line, NSEERS has proven to be an ineffective counterterrorism tool. Rather than focusing on catching violent criminals and terrorists, NSEERS has led to racial profiling. DHS data shows NSEERS* led to the detention and deportation of overwhelmingly non-criminals and individuals with minor immigration infractions. From this group, no terrorist convictions have emerged.⁶⁰

The fifth and final program is ICE’s National Fugitive Operations Program (NFOP). NFOP was established in 2003 with the intent of tracking and apprehending violent criminal aliens and/or individuals considered to be dangerous to communities. The total cost of the program during 2003-2008 was approximately \$625 million.⁶¹



Source: Washington Post⁶²

* It must also be noted much of the data used by Operation Front Line to find and arrest people was based on information gathering and stored by NSEERS. See: Kareem Shora and Fahed Al-Rawaf, “Letter/Complaint and Request for Investigation into Operation Frontline, to Timothy Keefer, Acting Officer, Department of Homeland Security Office for Civil Rights and Civil Liberties.” *American-Arab Anti-Discrimination Committee*, (February 26, 2009). Available at: <http://www.adc.org/PDF/frontlinecomplaint.pdf>, P. 2.

Despite the significant resources dedicated to NFOP, it strayed far from its original intent to arrest fugitive criminal aliens. From 2003-2008, 73% of those arrested under NFOP did not have a criminal conviction. Among the 27% with criminal convictions, few had a violent criminal background. For instance, in 2007, fugitive aliens posing a threat to communities or with a violent criminal background constituted only 2% of NFOP arrests.⁶³

To the current administration's credit, ICE recently issued agency-wide guidelines in December 2009⁶⁴ and June 2010⁶⁵ that gave highest priority to apprehending and detaining fugitive aliens posing a threat to national security and/or convicted of violent crimes. Time will tell whether these written policy shifts will be swiftly and fully implemented.

CONCLUSION & POLICY RECOMMENDATIONS

It is our moral and religious obligation to remedy this situation as quickly and effectively as possible. Given the complexity of immigration challenges in America today, we offer the following recommendations to create a unified and comprehensive immigration reform legislation package:

Immigration Control:

Every nation has the right to protect its sovereignty and territorial integrity. Therefore, controlling our borders is essential to our national security. Similarly, no nation claiming to be guided by the rule of law can thrive without law enforcement effectively protecting communities. Yet, we have also spent billions of dollars on programs that are ineffective at controlling our borders and counterproductive to serving and protecting communities. The new way forward must include:

- **Increasing oversight and better training and resources for immigration enforcement.** In particular, we believe Congress should support the “Comprehensive Immigration Reform for America’s Security and Prosperity Act of 2009” (CIR ASAP). CIR ASAP strikes the right kind of balance between oversight and training for immigration enforcement officers.
- **Shifting the focus of enforcing labor laws toward unscrupulous *employers* rather than workers.** This should range from workplace raids to audits guarding against visa fraud and sanctions against business engaged in labor law violations. Not doing so will continue to encourage exploitation of foreign workers and harm the wage and job prospects of native-born labor.
- **Emphasizing apprehension of fugitive aliens with a *criminal* background.** ICE must ensure it fully implements its new guidance that prioritizes tracking down and apprehending violent criminal suspects and threats to national security, particularly for the National Fugitive Operations Program. The 287(g) and NSEERS programs should be terminated. Further appropriations for Secure Communities must include specific requirements and mechanisms for data collection, data use, and the prevention of racial profiling. Secure Communities should also establish a viable and clear opt-out ability for local police forces seeking such an option.⁶⁶

- **Overhauling border security development processes.** Contracts should be better structured to include better testing of security technologies. They should also include greater auditing and base themselves on more realistic schedules not driven by political pressure. Federal agencies should also seek to incorporate greater feedback from communities where border security infrastructure is being implemented.
- **Continuing research on a comprehensive and effective employment verification program.** E-Verify can be used as a testing ground for other pilot programs seeking to strengthen an overall employment verification regime. Congress and federal agencies should consider funding research for further technologies and systems to guard against misuse, selective screening, identity-fraud and unintentional error. Meanwhile for financial, security and identification reasons, it should also reject implementing a new biometric-based verification system.
- **Developing further research into visa enforcement and overstay tracking.** Since visa overstays are believed to make up a large portion of undocumented immigrants, it is necessary for enforcement efforts to effectively tackle this issue. Greater resources must be devoted to building off successes and failures of current programs such as US-VISIT and the Western Hemisphere Travel Initiative. Greater resources also need to be devoted to identifying and removing people overstaying their visas.

Legal Immigration:

Our current legal immigration system must provide incentives for people to use the system instead of trying to circumvent it. The new way forward must include:

- **Readjusting the number of employment visas based on market demand, not arbitrary caps.** Current law already requires companies to make an effort to hire Americans first before seeking foreign labor.⁶⁷ An adjustable methodology can still protect American workers by reducing the caps when the economy is down and raising them when the economy is healthier. Such a new approach should involve an interagency collaboration between the U.S. Citizenship and Immigration Services and the Bureau of Labor Statistics. Input into this process should also include industry and labor union groups.
- **Allowing greater job mobility for work visa holders.** Job mobility is a strong protection against worker exploitation by allowing an individual to move to another place of employment that potentially offers better conditions and pay. Worker visas should have less burdensome requirements for mobility, nor necessarily force certain types of workers such as highly-skilled J-1 Visa holders, to serve only in particular geographic or demographic areas.

- **Reforming the family visa process.** Priority should be given to tackling the enormous backlog of applications. Furthermore the process should be streamlined to make future processing easier. Additionally, certain targeted adjustments for entry allowances should be given to nations with greater likely migration flows into the United States.
- **Enhancing bureaucratic effectiveness to reduce processing times and errors in citizenship and Legal Permanent Resident applications.** This includes hiring more immigration officers and making greater investments in IT infrastructure to tackle application backlogs.

Legalization of Undocumented Individuals:

The more than 11 million undocumented immigrants within our borders are a reality that cannot be ignored. Their lack of legal status makes them vulnerable to exploitation, which also ends up harming native-born workers' job and wage prospects. The other choice is earned legalization for such individuals, which would pave the way for immense economic benefits to the United States.

The latter option is the smartest path forward, and must include the following principles:⁶⁸

- **Creating a path to earned legalization for as many people as possible.** If the point of earned legalization is to reduce the number of undocumented individuals in America, then a policy seeking the widest possible coverage of people is also the wisest.
- **Developing a simple and straightforward process to earned legalization.** Basic proof of identity and a criminal background check should be enough to get people entered quickly into the system and weed out any dangerous individuals. More rigorous identity requirements and possible penalty fees for breaking laws can be gradually introduced later into the application process. This avoids the pitfalls of discouraging people from entering into the process from the get-go.
- **Making social integration and the possibility of a green card and citizenship the end goal of an earned legalization process.** In exchange for the possibility of legal status, requirements such as learning English, paying taxes, working hard, and/or going to school should be built-in requirements to measure commitment to American laws and values.
- **Partnering with community stakeholders.** Getting buy-in from organizations and individuals with leverage and credibility in communities likely to be affected by an earned legalization program is essential. They will be able to properly inform communities about eligibility and application requirements. Training and funding for effective partnership with government organizations will be needed.

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