Enforcement Without Reform:
How Current U.S. Immigration Policies
Undermine National Security and the Economy

by Walter A. Ewing, Ph.D.
Immigration Policy Center, Washington, D.C.

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Enforcement Without Reform:

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It is sometimes said that the hallmark of insanity is doing the same thing over and over again and expecting different results. This maxim succinctly describes the U.S. government’s long-standing approach to the problem of undocumented immigration. Since the mid-1980s, the federal government has tried repeatedly, without success, to stem the flow of undocumented immigrants to the United States with all sorts of immigration-enforcement initiatives: deploying more and more agents, fences, flood lights, aircraft, cameras, and sensors along the southwest border with Mexico — increasing the number of worksite raids and arrests conducted throughout the country — expanding detention facilities to accommodate the hundreds of thousands of undocumented immigrants apprehended each year — and creating new bureaucratic procedures to expedite the return of detained immigrants to their home countries. Despite the enormous fiscal, economic, and human costs of these measures, they have yet to make a demonstrable dent in the number of undocumented immigrants entering the country.

The federal government’s stubborn devotion to these failed policies stems in large part from a classic case of denial. The economic integration of North America, the western hemisphere, and the world as a whole has been accelerating for decades, facilitating the rapid movement of goods, services, capital, information, and people across international borders. The U.S. economy has long demanded more workers at both the high-skilled and less-skilled ends of the occupational spectrum than the rapidly aging native-born population provides. Yet U.S. policymakers persist in a quixotic attempt to impose restrictions on immigration that date from the mid-1960s.

Although the events of 9/11 have unquestionably heightened the national-security implications of immigration enforcement as never before, the pursuit of an enforcement strategy which lumps together foreign terrorists and jobseekers from abroad as groups to be kept out does nothing to protect the United States from attack. If anything, such a strategy actually decreases the chances that a foreign terrorist will be caught as the resources and attention of federal authorities are diverted to the pursuit of undocumented immigrants who are not a threat to anyone, and who are drawn here by the labor needs of our own economy. Moreover, the pursuit of this strategy has fueled the growth of increasingly sophisticated businesses in human smuggling and the production of fraudulent identity documents — both of which make it easier, not harder, for a potential terrorist from abroad to enter the country undetected. In short, the enforcement-without-reform approach of the past two decades has needlessly created an unsustainable contradiction between U.S. immigration policy and the U.S. economy. So far, the economy is winning.

The Politics of Contradiction: Immigration Enforcement vs. Economic Integration

The obsession of policymakers with enforcement as the solution to undocumented immigration began in earnest in 1986 with passage of the Immigration Reform and Control Act (IRCA). Although IRCA granted legal status to about 3 million undocumented immigrants already living in the United States (roughly 2.3 million of whom were from Mexico), it sought to cut off future undocumented immigration primarily through “employer sanctions” directed at businesses that “knowingly” hire undocumented workers — and, secondarily, by devoting more resources and personnel to immigration enforcement along the U.S.-Mexico border. But IRCA failed to expand legal avenues of immigration to match the growing labor demand that was driving undocumented immigration in the first place. Rather than reducing undocumented immigration, IRCA created enormous demand for fraudulent identity documents which undocumented immigrants could present to potential employers as “proof” of their legal status. As a result, IRCA did nothing to reduce undocumented immigration in the long run.
The failure of IRCA to reign in undocumented immigration, particularly from Mexico, should not have come as a surprise considering that, the very same year the law was passed, Mexico entered into the General Agreement on Tariffs and Trade (GATT) — the predecessor of the World Trade Organization (WTO) — with strong support from the U.S. government. This marked the culmination of efforts undertaken by the Mexican government beginning in 1982 to "liberalize" the Mexican economy by privatizing government-controlled enterprises, lowering barriers to foreign trade and investment, and reorienting industry and agriculture towards production for export. Moreover, Mexico’s entry into GATT rapidly accelerated the ongoing integration of the U.S. and Mexican economies.

By the early 1990s, U.S. policymakers had to face the fact that IRCA had not dissuaded undocumented immigrants from coming to the United States to fill available jobs. But, since most policymakers were unwilling to undertake the politically risky task of revamping the legal immigration system, or to conduct mass deportations and decimate those sectors of the economy heavily reliant upon undocumented workers, they looked to border enforcement to fix the problem. The new approach, dubbed "prevention through deterrence," called for the steady buildup of U.S. Border Patrol resources along those stretches of the southwest border where undocumented immigrants traditionally crossed into the country.

In theory, “prevention through deterrence” would succeed by “elevating the risk of apprehension to a level so high that prospective illegal entrants consider it futile to attempt to enter the U.S. illegally.” The strategy was implemented gradually, starting in El Paso in 1993 and, over the years, moving on to San Diego and El Centro, California; Nogales, Douglas, and Tucson, Arizona; and McAllen and Laredo, Texas. However, as the U.S. Government Accountability Office (GAO) concluded in 2001, these heightened border-enforcement efforts have not succeeded in reducing undocumented immigration, but have shifted it from place to place. An average of 1.2 million undocumented immigrants have been apprehended along the southwest border each year since the early 1990s (Fig. 1), but there has been a wide range of variation in how many immigrants are apprehended in particular Border Patrol sectors. For instance, as apprehensions spiked in Arizona, especially Tucson, they declined in California and Texas. Apprehensions in Arizona have now begun to decline, but are creeping back up in San Diego (Fig. 2). Moreover, the GAO has noted that, as crossing the U.S.-Mexico border has become more difficult, more prospective migrants are hiring human smugglers to serve as guides, and more migrants are dying while trying to make their way through inhospitable terrain.

Once again, this newest attempt to enforce an end to undocumented immigration coincided with the deepening of U.S.-Mexican economic integration. The North American Free Trade Agreement (NAFTA) was implemented in 1994 with the goal of promoting transnational trade and investment throughout the North American continent under a uniform set of rules. The impact of NAFTA (and the trade agreements that preceded it) on U.S.-Mexican economic integration has been dramatic. According to the U.S. Department of Commerce, the total value of U.S.-Mexico bilateral trade increased from $52 billion in 1989 to $332 billion in 2006 — an increase of 537% (Fig. 3). Although some proponents of NAFTA predicted that the agreement would reduce undocumented immigration by creating more jobs in Mexico, this proved to be a fanciful notion. In general, the various technological, economic, political, social, and cultural forces collectively referred to as “globalization” tend to facilitate more migration and travel across international borders, not less.

Given the power of the economic forces which continued to drive undocumented immigration in the face of increased border enforcement, the undocumented population grew from roughly 3.5 million in 1990 to 12 million in 2006 (Fig. 4). Undocumented immigrants now account for about one-third of the 37.5 million foreign-born individuals living in the United States. The Pew
Figure 1: Total Apprehensions Along the Southwest Border, FY 1992-2007


Figure 2: Apprehensions Along the Southwest Border, by Border Patrol Sector, FY 1997-2006

Figure 3: Total Value of U.S.-Mexico Trade, 1989-2006


Figure 4: Undocumented Immigrants in the United States: 1990, 2000 & 2006

Hispanic Center estimates that roughly one-third of undocumented immigrants have lived here for 10 years or more, 1.8 million are children, and another 3.1 million U.S.-citizen children have at least one undocumented parent. Undocumented immigrants account for 5% of all workers in the United States, and a far higher share in particular occupations. According to Pew, more than one in four insulation workers, agricultural workers, roofers, drywall installers, meat-processing workers, textile and garment workers, construction laborers, and brick and stone masons are undocumented (Fig. 5). Moreover, Pew estimates that between 25% and 40% of all undocumented immigrants did not sneak across the border, but came to the United States on valid visas and then stayed after their visas expired — which, in and of itself, casts serious doubt on the ability of any amount of border enforcement to stop undocumented immigration.

Although the numbers of both legally present and undocumented immigrants are unprecedented in absolute terms, the foreign-born share of the U.S. population (which stood at 12.5% in 2006) is in fact lower than the historic highs of 1860-1920, when immigrants comprised more than 13% of the population (Fig. 6). What has changed dramatically, however, is the composition of the foreign-born population. Whereas the overwhelming majority of immigrants came from Europe up until 1960, over half now come from Latin America and roughly one-quarter from Asia (Fig. 7). It is the changing complexion of the foreign-born population, rather than the number of immigrants per se, that seems to be of greatest concern to many of the more virulent anti-immigration activists.
Figure 6: Foreign-Born Share of the U.S. Population, 1850-2006


Figure 7: Share of Foreign-Born Population From Europe, Latin America & Asia, 1850-2006


* Data unavailable.
Old Wine in a New Bottle: Post-9/11 Immigration Enforcement

Despite the failure of border enforcement alone to deter undocumented immigrants, U.S. policymakers have continued to embrace the enforcement-without-reform response to undocumented immigration, particularly after the terrorist attacks of 9/11. The annual budget of the U.S. Border Patrol stood at $1.6 billion in Fiscal Year (FY) 2006 — an increase of 332% since 1993 (Fig. 8). Meanwhile, the number of Border Patrol agents grew to 14,923 in FY 2007 — an increase of 276% since FY 1993 (Fig. 9). Under the Bush Administration’s proposed budget for FY 2009, that number would increase to 20,000. U.S. Customs and Border Protection (CBP), the parent agency of the Border Patrol within the Department of Homeland Security (DHS), has seen its budget grow from $6 billion to $9.3 billion between FY 2004 and FY 2008, with the Bush administration proposing to ramp up funding to $10.9 billion in FY 2009. The budget of U.S. Immigration and Customs Enforcement (ICE), the DHS interior-enforcement counterpart to CBP, has grown from $3.7 billion in FY 2004 to $5.1 billion in FY 2008, with a further increase to $5.7 billion in FY 2009 proposed by the Bush administration (Fig. 10).

The “Secure Border Initiative”

Over the past decade, the “prevention through deterrence” strategy has been repackaged into various initiatives, programs, and policies with different names. On Nov. 2, 2005, for instance, Homeland Security Secretary Michael Chertoff announced the Secure Border Initiative (SBI), which was billed as “a comprehensive multi-year plan to secure America’s borders and reduce illegal migration...” According to Chertoff, SBI would “address all aspects of the border security problem across the board — deterrence, detection, response, apprehension, detention, and removal.” The key to SBI’s success would be an “integrated mix of
**Figure 9: U.S. Border Patrol Agents, FY 1993-2007**

Fiscal Year


**Figure 10: CBP & ICE Budgets, FY 2004-2009**

Fiscal Year

increased staffing, new technology, and enhanced infrastructure investment, as well as a new regime of regulations and legislative proposals.” SBI consists of five main elements which were intended “to achieve operational control of both the northern and southern border within five years”:

- More immigration-enforcement agents deployed along U.S. borders and throughout the interior of the country;
- Expansion of immigration-detention capacity and the “expedited removal” process in order to end the much-criticized “catch and release” of undocumented immigrants from countries other than Mexico;
- New, “smarter” technology to detect the unauthorized entry of immigrants into the United States, such as thermal imaging, ground radar, and Unmanned Aerial Vehicles;
- Increased investment in “tactical infrastructure” along the border, such as fences and vehicle barriers; and
- Ramped up interior immigration enforcement, including worksite raids.

**Ending “Catch and Release”**

SBI was, in part, a response to outrage on the part of many policymakers over the so-called “catch and release” of some undocumented immigrants. When an immigrant is apprehended by the Border Patrol, his or her fingerprints are checked against the combined databases of the Department of Homeland Security’s Automated Biometric Fingerprint Identification System (IDENT) and the Federal Bureau of Investigation’s Integrated Automated Fingerprint Identification System (IAFIS). The IDENT/IAFIS check is intended to reveal if the immigrant is subject to any outstanding criminal warrants or has a criminal record, and to determine his or her country of origin. If the immigrant is from Mexico (or Canada) and does not have any outstanding warrants, is not a convicted felon, and has not previously been formally “removed” or deported from the United States, he or she can be “voluntarily returned” home.

However, if an immigrant with a clean record is what the Border Patrol terms an Other Than Mexican (OTM), he or she is placed in removal proceedings (unless the OTM in question is from one of the primarily Arab, Muslim, or South Asian countries designated by the federal government as being of “special interest” to U.S. national security, in which case the Border Patrol must first conduct several other security checks). The Border Patrol then contacts the Office of Deportation and Removal at ICE to determine if detention space is available for the immigrant to be held during the removal process. If there is no available space, as was usually the case until recently, then the immigrant is issued a “Notice to Appear” before an immigration judge on a specified date and released on his or her own recognizance.

Not surprisingly, most immigrants who are issued a Notice to Appear do not do so. In FY 2004, roughly two-thirds failed to appear before an immigration judge. As a result, critics have dubbed the practice “catch and release.” On July 14, 2006, DHS officially announced the end of “catch and release” for any and all OTMs, citing not only their tendency to disappear after release, but also a spike in apprehensions of undocumented immigrants from Brazil and Honduras who may have been motivated to come to the United States in greater numbers in part because word of the catch-and-release policy had spread (Fig. 11). However, the vast majority of undocumented immigrants apprehended along the southwest border are still from Mexico (Fig. 12).

Nevertheless, some lawmakers and anti-immigrant activists have made much of murky reports that prayer rugs and copies of the Koran have been found in the deserts of the southwest — implying that this is evidence that al Qaeda-affiliated terrorists have already entered the United States by way of Mexico. Aside from the obvious racism inherent in suggesting that being a foreign-born Muslim makes one a terrorist, the fact is that apprehensions of so-called “special interest aliens” at the southwest border accounted for only 0.02% of all apprehensions, and 0.7% of OTM apprehensions, during the six-year period from FY 1999 through FY 2004 (the last year for which figures are publicly available). In addition, the number of such apprehensions **declined** after 2001.
Figure 11: OTM Apprehensions Along the Southwest Border, by Top 5 Countries of Origin, FY 1992-2007

Source: Statistics provided to the author by the Office of Immigration Statistics (February 9, 2006) & U.S. Border Patrol (October 5, 2007).

Figure 12: Mexican & OTM Share of Apprehensions Along the Southwest Border, FY 1992-2007

Expansion of “Expedited Removal” Authority

Putting an end to the policy of catch-and-release has involved not only an increase in the detention capacity of ICE, but also an expansion of the “expedited removal” process by which arriving immigrants are removed from the United States without the opportunity for a hearing before an immigration judge. Immigrants who come here without proper documentation can be summarily excluded from the United States by an immigration officer unless they express a fear of persecution if returned home, in which case they are supposed to be referred to an asylum officer who determines if that fear is “credible.” Immigrants who are placed into expedited removal are subject to mandatory detention. The expedited removal process, which was created by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), initially applied only to immigrants arriving at ports of entry. But it was expanded on Sept. 14, 2005, to include immigrants apprehended by the Border Patrol between ports of entry along the southwest border — and, on January 30, 2006, to immigrants apprehended along the northern border as well. The number of immigrants, undocumented or otherwise, who were formally “removed” from the United States for any reason increased from about 187,000 in FY 2001 to more than 300,000 in FY 2007 (Fig. 13). In addition, roughly one million immigrants each year “voluntarily return” to their home countries (mainly Mexico) after being detained (Fig. 14).

Fencing the Border

Under SBI, the pace of fence building along the southern border has picked up considerably. CBP announced on September 30, 2007, that it had exceeded by six miles its FY 2007 goal of building 70 miles in new “primary” fencing. On Feb. 22, 2008, Homeland Security Secretary Chertoff announced that there were a total of 302.4 miles in pedestrian and vehicle fencing completed along the U.S.-Mexico border, and that DHS would reach the 670-mile mark by the end of the year. The fencing boom was facilitated in part by the REAL ID Act of 2005, which authorized DHS to waive any and all “legal requirements,” such as environmental laws, that might stand in the way of fence construction. In addition, the Secure Fence Act of 2006 directed DHS to build 850 miles in additional fencing along the southern border — although the bill did not appropriate any funds expressly for this purpose.

Although the construction of a fence along the border with Mexico might provide a reassuring sense of security, it is a monumentally expensive endeavor of dubious effectiveness in stopping undocumented immigration. According to a 2006 report from the Congressional Research Service (CRS), the U.S. Army Corps of Engineers has estimated the cost of construction — not counting the cost of buying the land upon which to build it — at between $1.2 million and $1.3 million per mile (although the first 9.5 miles of San Diego fence cost about $3 million per mile). Moreover, maintaining the fence for a period of 25 years would cost anywhere from $16.4 million to $70 million per mile, depending on how much damage the fence sustains. In other words, a fence along all 2,000 miles of the southwest border would cost at least $2.5 billion to build, plus anywhere from $32.8 billion to $140 billion to maintain over the following two-and-a-half decades. Even then, to be effective, Border Patrol agents would have to guard the fence to prevent it from being breached by smugglers or circumvented by tunnels dug beneath it, as is occurring in San Diego. In addition, that would still leave the 4,000-mile border with Canada and the 5,000 miles of Pacific, Atlantic, and Gulf coastline where unauthorized entry into the country could also take place.

“Smart” Technology

In addition to physical barriers such as fences, SBI relies heavily upon so-called “smart” technology to detect unauthorized border crossings. The first stage in the development of SBI’s high-tech surveillance system is Project 28: a $20 million CBP contract with the Boeing Corporation to secure 28 miles of border in Sasabe, Arizona, using nine prototypes of mobile surveillance systems that contain thermal imaging, ground radar, and motion detectors. However, the GAO reported in October 2007 that persistent technical problems were causing Project 28 to fall behind schedule.
Figure 13: "Removals" from the United States, FY 2001-2007


Figure 14: "Returns" from the United States, FY 2001-2007

DHS has also turned to the military to fill the Border Patrol’s staffing needs, at least temporarily. On June 15, 2006, the Border Patrol and the Department of Defense began a joint program, Operation Jump Start, that deploys National Guard troops to the southwest border to “perform non-law enforcement surveillance and support operations” while the Border Patrol pursues its goal of hiring an additional 6,000 agents by the end of 2008. The National Guard troops serve as members of Entry Identification Teams, “vehicle dismantlers” at Border Patrol traffic checkpoints, and surveillance-camera operators. It is well worth remembering that during a previous military foray into the U.S.-Mexico borderlands on May 20, 1997, a Marine surveillance team shot and killed an 18-year-old Mexican American, Esequiel Hernandez, Jr., while he was herding his family’s goats. The Marines were part of Joint Task Force Six, which provides military support to civilian law-enforcement agencies in counter-drug operations — in this case, the Border Patrol.

Worksite Enforcement

In response to long-standing criticism from many policymakers that interior immigration enforcement has withered as border enforcement has grown exponentially, ICE has sought to rejuvenate worksite enforcement in which unauthorized workers are detained and removed from the United States. There has been an increase in highly visible worksite raids, such as those conducted simultaneously on Dec. 12, 2006, at Swift & Company meat-processing plants in Colorado, Nebraska, Texas, Utah, Iowa, and Minnesota. The number of workers “administratively arrested” for unlawful presence in the United States jumped from 1,116 in FY 2005 to 4,077 in FY 2007, while the number of “criminal arrests” for harboring or knowingly hiring an undocumented immigrant grew from 176 to 863 during the same period (Fig. 15).

Figure 15: ICE Worksite Arrests, FY 2002-2007

However, worksite raids are unlikely to be any more successful than the employer-sanctions provisions of IRCA in deterring undocumented immigration. The labor demand that draws immigrants to the United States in excess of current legal limits persists, and will only increase as more and more Americans reach retirement age and the number of native-born, working-age adults declines. Moreover, regardless of how many fields and factories ICE chooses to raid, employers do not have any reliable means of determining whether or not prospective employees are authorized to work in the United States given the widespread availability of fraudulent identity documents.

The scale of the mismatch between economic reality and existing limits on legal immigration also makes it unlikely that the federal government will fare any better at deterring undocumented immigration through its E-Verify program — a web-based, electronic employment-verification system formerly known as the Basic Pilot program. E-Verify, which is administered by U.S. Citizenship and Immigration Services within DHS and supported by the Social Security Administration (SSA), is a voluntary program in which about 54,000 of the nation’s 5.9 million employers actively participated as of February 2008. Expanding the program to include all employers would take an enormous investment of money and personnel far beyond what policymakers have proposed so far. But, more importantly, the efficiency of the E-Verify program depends upon the accuracy of Social Security records that were never intended to provide information on immigration status. According to a 2007 GAO report, about 7% of queries submitted by employers through E-Verify result in “tentative non-confirmations” by SSA; in most cases “because employees’ citizenship status or other information, such as name changes, is not up to date in the SSA database.”

A comprehensive 2007 report by Westat, which DHS contracted to review E-Verify, also raised serious doubts about the program in terms of its capacity to uncover document fraud and its tendency to encourage employer discrimination against foreign-born workers. The report concluded that the program “generally does not detect identity fraud that occurs when an employee presents borrowed or stolen documents or counterfeit documents with information about work-authorized persons.” In addition, the program “increased discrimination against work-authorized foreign-born employees after hiring because foreign-born employees, especially foreign-born citizens, are more likely than U.S.-born employees to receive tentative non-confirmation findings.”

Similar problems loom for the DHS proposal to use SSA “no-match” letters as an immigration-enforcement tool. A “no-match” letter is sent to an employer by the SSA when a worker’s name or Social Security number — as listed on the Wage and Tax Statement (Form W-2) submitted to the SSA and the Internal Revenue Service by an employer — does not match SSA records. DHS wants to interpret discrepancies in these records as “proof” that a worker is undocumented, and then use the failure of an employer to quickly rectify such discrepancies in response to a no-match letter as grounds for levying sanctions against the employer for “knowingly” hiring an undocumented worker. However, many of the discrepancies in the SSA database do not pertain to immigration status. For instance, according to a 2006 report by the SSA Inspector General, 17.8 million SSA records contain discrepancies related to name, date of birth, or citizenship status that could result in a “tentative non-confirmation,” with 12.7 million of those records pertaining to individuals who are, in fact, U.S. citizens.

Turning Police into Immigration Agents

The post-9/11 obsession with immigration enforcement has also extended to state and local police departments. Since the passage of IIRIRA in 1996, section 287(g) of the Immigration and Nationality Act has permitted police departments to enter into a Memorandum of Agreement (MOA) with federal immigration authorities that allow a limited number of police officers to receive training in and perform immigration-enforcement functions. ICE reports that in FY 2007 it trained 426 local and state police officers under 287(g). Prior to 9/11, police departments generally resisted becoming
involved in immigration-enforcement efforts that would alienate immigrant communities and make crime victims and witnesses afraid to come forward. But after 9/11, more and more police departments jumped on the enforcement-only bandwagon, starting with Florida in 2002 and Alabama in 2003. Unfortunately, turning police into immigration agents diverts scarce resources away from crime-fighting and community-policing efforts, which depend on community trust to be effective. Moreover, blurring the lines between local law enforcement and federal immigration enforcement encourages racial profiling by police officers on the lookout for anyone who might “look illegal.”

Moving Backwards:
The Continued Pursuit of Failure

After more than two decades of failure, one would hope that policymakers have come to realize that enforcement alone is not enough to “solve” the problem of undocumented immigration. Unfortunately, the pursuit of failure continues. Attempts to pass comprehensive immigration reform legislation stalled in 2006 and again in 2007. Although not perfect solutions to the chronic dysfunction of the U.S. immigration system, these legislative proposals represented an acknowledgment of the fact that reducing undocumented immigration involves more than border fences and worksite raids; it also requires an expansion of the available channels for legal immigration, and the creation of a pathway to legal status for the 12 million undocumented immigrants who already live and work in the United States. But this sort of common-sense immigration reform was derailed in Congress by lawmakers afraid of being perceived as “soft” on undocumented immigrants.

Meanwhile, many lawmakers, Republicans and Democrats alike, are forging ahead with a host of deeply flawed enforcement-only initiatives. For instance, the Secure America Through Verification and Enforcement (SAVE) Act — introduced during November 2007 in the House of Representatives by Heath Shuler (D-11th/NC) and Brian Bilbray (R-50th/CA), and in the Senate by Mark Pryor (D-AR) and Mary Landrieu (D-LA) — calls for the mandatory, nationwide expansion of both E-Verify and the DHS proposal to use SSA no-match letters as an immigration-enforcement tool; mandatory expansion of the 287(g) program empowering local police to enforce federal immigration laws; increasing the number of detention beds and ICE agents; and pouring more resources and manpower into the Border Patrol in pursuit of the same “prevention through deterrence” tactics that have not worked since the early 1990s. The SAVE Act represents yet another attempt by lawmakers to “secure the border” without reforming the immigration system — as if immigration reform were not part and parcel of achieving true border security.

Similarly, at the state and local level, an unprecedented number of bills and ordinances are being introduced or proposed that would crack down on undocumented immigrants, the employers who hire them, and the landlords who rent housing to them. According the National Conference of State Legislatures, for instance, 1,562 immigration-related bills, most of them punitive, had been introduced in all 50 state legislatures as of Dec. 31, 2007 — of which 240 had become law in 46 states and 12 had been vetoed by governors. While it is certainly understandable that local policymakers would want to step into the void left by the federal government’s inaction on immigration, a patchwork of policies that differ from state to state or city to city is not a workable solution.

A Rational Response:
Comprehensive Immigration Reform

No amount of enforcement can compensate for the fact that the U.S. immigration system is broken. In fact, as the U.S. government struggles to stem the immigration that is facilitated by globalization, promoted by U.S. economic policies, and attracted by U.S. labor demand, a large share of immigration to the United States is being driven underground and contributing to the steady growth of the undocumented population. As a result, U.S. immigration-enforcement efforts, particularly those implemented along the border, are accomplishing the exact opposite of what they were supposed to achieve. Immigrants who in the past might have returned home to build a house or start a business
after a few years of work in the United States are settling permanently and bringing their families with them. Human smuggling is a booming business that now rivals drug trafficking in profitability and has attracted the interest of large-scale criminal networks that are a far greater risk to national security than undocumented immigrants or the lone coyotes of old. The expansion of the underground labor market undermines wages and working conditions for all workers in industries with large numbers of foreign-born workers.50

Yet, existing limits on both temporary and permanent immigration through either employment-based or family-based channels remain woefully out of sync with current economic and social realities. There are only two kinds of temporary visas available to workers in less-skilled occupations (who comprise most of the undocumented population): H-2As, which are restricted to agricultural workers, and H-2Bs, which are capped at 66,000 per year and limited to “seasonal” or otherwise “temporary” work narrowly defined to exclude many industries. Likewise, only one of the five visa “preference categories” for permanent employment-based immigration is reserved for workers in less-skilled jobs and is capped at only 5,000 per year.51 Arbitrary and inflexible numerical ceilings such as these are incapable of responding to changes in U.S. labor demand and serve only to divert much labor migration to the United States through undocumented channels.

The family-based immigration system, in turn, is hobbled by complicated rules and numerical caps that impose long delays on family reunification. U.S. citizens can obtain “visa numbers” immediately when they petition for their spouses and children under the age of 21 to immigrate to the United States. But the allotment of visa numbers for all other relatives of U.S. citizens, and for all the relatives of lawful permanent residents (LPRs), is subject to a “family preference” system characterized by lengthy waiting times. In the case of Mexican nationals, wait times as of March 2008 were about six years for the spouse of an LPR and sixteen years for the unmarried adult child of a U.S. citizen.52 Delays such as these are powerful motivators for undocumented immigration.

Beyond the inadequacies of the current immigration system in meeting U.S. economic needs and facilitating family reunification in a timely fashion, it is also important to keep in mind that immigration control is not an effective or efficient means of preventing a terrorist attack. The London train bombings of 2005, for instance, were carried out by men who were born and bred in England; not by immigrants. The 9/11 hijackers entered the United States on valid visas; not by sneaking across the Mexican border. Prior to 9/11, the worst act of domestic terrorism in U.S. history was the 1995 Oklahoma City bombing, which was committed by a native-born U.S. citizen with no connections to hostile governments or al Qaeda. In other words, preventing a terrorist attack depends on the gathering of specific intelligence about actual terrorists—not on blindly closing the door to people on the basis of where they were born.53

The most practical and effective way to remedy this situation is to bring U.S. immigration policy in line with U.S. economic reality. Lawmakers should devise immigration policies that are as responsive to market forces as the economic policies they have chosen to support, while implementing and enforcing labor laws that guarantee fair wages and good working conditions for all workers, both native and foreign-born. They should also allow undocumented immigrants already living in the United States to apply for legal status. By taking these steps, the U.S. government would be better able to control, regulate, and monitor immigration to the benefit of the U.S. economy and immigrants themselves, rather than merely consigning a large portion of it to a shadowy and insecure black market. In the process, fewer immigrants would try to enter the United States without authorization, the market for human smugglers and false identity documents would be severely undercut, and foreign terrorists would be deprived of the large undocumented flows and smuggling infrastructure that might aid their entry into the United States. Moreover, federal law-enforcement agents could focus more on finding terrorists and dangerous criminals, and less on apprehending jobseekers.54 Unfortunately, most lawmakers continue to regard immigration as a third rail in U.S. politics that cannot be touched despite near-universal recognition of the fact that the entire immigration system is broken and in desperate need of repair.
Endnotes


5 Prior to July 7, 2004, the Government Accountability Office was known as the General Accounting Office.


23 Ibid.
24 Ibid.
34 Ibid., p. 23.


51 The cap is set at 10,000 visas per year, but 5,000 are reserved for beneficiaries of the Nicaraguan Adjustment and Central American Relief Act of 1997 (NACARA).

