

Attrition Through Enforcement A Cost-Effective Strategy to Shrink the Illegal Population

By Jessica M. Vaughan

Proponents of mass legalization of the illegal alien population, whether through amnesty or expanded guestworker programs, often justify this radical step by suggesting that the only alternative – a broad campaign to remove illegal aliens by force – is unworkable. One study put the cost of such a deportation strategy at \$206 billion over the next five years. But mass forced removal is not the only alternative to mass legalization. This analysis shows that a strategy of attrition through enforcement, in combination with a stronger border security effort such as the administration's Secure Border Initiative (SBI), will significantly reduce the size of the illegal alien population at a reasonable cost. Reducing the size of the illegal population in turn will reduce the fiscal and social burdens that illegal immigration imposes on communities. In contrast, a policy of mass legalization is likely to increase these costs and prompt more illegal immigration.

Studies of the size and growth of the illegal population show that a borders-oriented strategy like SBI, which aims to improve border security and focuses mainly on removing criminal aliens, will achieve only limited results. If supplemented by attrition through enforcement, which encourages voluntary compliance with immigration laws rather than relying on forced removal, the illegal population could be nearly halved in five years. **According to the government's own cost estimates, such a strategy requires an additional investment of less than \$2 billion, or \$400 million per year – an increase of less than 1 percent of the President's 2007 budget request for the Department of Homeland Security (\$42.7 billion).**

Elements of the attrition through enforcement strategy include: mandatory workplace verification of immigration status; measures to curb misuse of Social Security and IRS identification numbers; partnerships with state and local law enforcement officials; expanded entry-exit recording under US-VISIT; increased non-criminal removals; and state and local laws to discourage illegal settlement.

The purpose of this analysis is to identify both the likely cost to the federal government and the expected effect in terms reducing the size of the illegal alien population, of re-orienting the nation's immigration law enforcement strategy from one that relies primarily on border control and removing criminal aliens to one that also aims to increase the probability that illegal aliens will return home of their own accord. Among the findings:

- A strategy of attrition through enforcement could reduce the illegal population by as many as 1.5 million illegal aliens each year. Currently, only about 183,000 illegal aliens per year depart without the intervention of immigration officials, according to DHS statistics.
- Voluntary compliance works faster and is cheaper than a borders-only approach to immigration law enforcement. For example, under the controversial NSEERS program launched after 9/11, DHS removed roughly 1,500 illegally-resident Pakistanis; over the same time period, in response to the registration requirements, about 15,000 illegal Pakistani immigrants left the country on their own.
- Requiring employers to verify the status of workers could deny jobs to about three million illegal workers in three years, affecting at least one-third of the illegal population. This measure is a central feature of H.R. 4437, the enforcement measure passed by the House of Representatives in December, and is estimated to cost just over \$400 million over five years.



- The Internal Revenue Service (IRS) knows the name, address, and place of employment of millions of illegal aliens, and issues hundreds of millions of dollars in tax refunds and tax credits to illegal aliens. Changing the laws to provide for information-sharing would help boost immigration law enforcement at minimal cost.
- US-VISIT is a critical tool in curbing illegal immigration. Screening must be expanded to include Mexicans and Canadians, and DHS must move forward to deploy an exit-recording system. These steps should be a pre-requisite to adding or expanding any visa program.
- Less than 10 percent of ICE investigative resources are devoted to fraud, workplace violations, and overstayers. DHS could double non-criminal removals at a cost of roughly \$120 million per year, balancing a “broken windows” approach with its current triage approach to interior enforcement.
- Laws enacted by the state governments of Florida and New York to prevent illegal immigrants from obtaining driver’s licenses have induced more illegal aliens to leave than have federal enforcement efforts against certain illegal populations in those states, and have come at virtually no cost to the federal government.

False Choice

In November 2005 Homeland Security Secretary Michael Chertoff presented the Bush Administration plan to address the nation’s immigration crisis. Known as the Secure Border Initiative (SBI), the plan is billed as a comprehensive solution that will “secure America’s borders and reduce illegal migration” within five years.¹ The cost of SBI was projected to be \$2.5 billion.²

While SBI addresses a number of grave border security weaknesses, such as Border Patrol staffing levels, detention capacity, and physical infrastructure, and is certain to reduce the number of new illegal arrivals, it will have no noticeable effect for communities across the country that already are hosting illegal populations. The SBI makes almost no effort to reduce the size of the existing illegal alien population; nor does it address the problem of visa overstayers, who make up perhaps as much as 40 percent of the illegal immigrant flow.

Ongoing research by leading immigration scholars strongly suggests that when border control is the sole focus of immigration enforcement policy,

illegal immigrants tend to stay put, rather than risk re-entry. According to Princeton researcher Douglas S. Massey, “Enforcement has driven up the cost of crossing the border illegally, but that has had the unintended consequence of encouraging illegal immigrants to stay longer in the United States to recoup the cost of entry. The result is that illegal immigrants are less likely to return to their home country, causing an increase in the number of illegal immigrants remaining in the United States.”³ If the goal of immigration policy is to relieve the fiscal and social burden of illegal immigration and enhance homeland security without spurring more illegal immigration, then some effort must be made to reduce the existing population of illegal immigrants as well as to slow the flow of new illegal arrivals.

Homeland Security Secretary Michael Chertoff has said it is simply “not practical” to try to forcibly remove the illegal population: “The cost of identifying all of those people and sending them back would be stupendous. It would be billions and billions of dollars.”⁴ The administration, along with some supporters in Congress, maintains that the only alternative is to legalize the resident illegal alien population through a massive new guestworker plan.

Cost would certainly be a factor in any new guestworker or amnesty program, as well. According to a 2004 report by Center for Immigration Studies Director of Research Steven Camarota, the illegally-resident population produces a net fiscal drain of about \$10 billion (fiscal costs minus taxes paid). After an amnesty, that cost rises to nearly \$29 billion, as the amnesty beneficiaries become eligible for more services.⁵ In addition, based on past experience, any new amnesty is likely to result in large numbers of ineligible individuals receiving status, including terrorists, and will spawn new illegal immigration.⁶

Policies for Attrition

The purpose of attrition through enforcement is to increase the probability that illegal aliens will return home without the intervention of immigration enforcement agencies. In other words, it encourages voluntary compliance with immigration laws through more robust interior law enforcement. When combined with a strategy to improve border security, this approach will bring about a significant reduction in the size of the illegal alien population and help deter future illegal immigration. This strategy requires a modest investment in additional resources for certain federal enforcement programs totaling less than \$2 billion over five years above and beyond what has already been appropriated

by Congress or requested by the White House for immigration law enforcement. The key elements of this strategy are:

- 1) eliminating access to jobs through mandatory employer verification of Social Security numbers and immigration status;
- 2) ending misuse of Social Security and IRS identification numbers, which illegal immigrants use to secure jobs, bank accounts, drivers licenses, and other privileges, and improved information-sharing among key federal agencies;
- 3) increasing apprehensions and detention of illegal immigrants through partnerships between federal immigration authorities and state and local law enforcement agencies;
- 4) reducing visa overstays;
- 5) doubling the number of non-criminal, non-expedited removals;
- 6) passing state and local laws to discourage the settlement of illegal aliens and to make it more difficult for illegal aliens to conceal their status.

Some of these measures are included in H.R. 4437, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005, passed by the House of Representatives in December 2005. Additional legislative action is still needed to end Social Security and tax identification number misuse and additional funds need to be appropriated for expanded removal programs, support of state and local partnerships, and the enhancement of the US-VISIT program.

Enforcement: Faster and Cheaper

Table 1 illustrates the significantly better results that can be achieved by pursuing attrition in addition to a border control strategy such as SBI. With an attrition strategy, the United States could reduce the illegal population from its current 11.5 million to 5.6 million over a period of five years, a 51 percent reduction. SBI alone will produce only modest results – reducing the illegal population to only 10.3 million illegal aliens after five years, a 10 percent reduction.

A note of caution – this exercise is meant simply to illustrate the relative importance of various areas of focus for immigration law enforcement and how that

plays out over time. While Table 1 relies on the most up-to-date and specific statistics available from government sources and independent research, because the illegal population is by definition difficult to count, these figures should be considered no more than educated guesses. Some of the data is several years old. In the absence of evidence to the contrary, it is assumed that previous trends of illegal migration and return migration persist today. It is possible that forthcoming statistics from the Department of Homeland Security based on more recent data will show a slightly different outcome.

This analysis relies on DHS estimates reporting the past levels of the annual out-flow of illegal aliens, which were broken down according to the reason for departure. In addition, it uses data from a new report by Jeffrey Passell, of the Pew Hispanic Center, which extracts information on the illegal alien population from Census data.⁷ In addition the findings of Princeton University's Mexican Migration Project (MMP) were considered, a major ongoing study of migration patterns to and from Mexico based on annual surveys of Mexican migrants and villagers.⁸

The Passell study reports that a large portion of illegal aliens are recent arrivals. According to Passell, two-thirds of the illegal population (7.3 million people) have been here 10 years or less (see Figure 1). These individuals presumably would be the most responsive to increased immigration enforcement within the United States. Only 16 percent of the population has been here more than 15 years.

The MMP has documented a significant churn in the flow of illegal Mexican migrants; in other words, a large percentage of illegal migrants enter with the intent to work illegally for a temporary period before returning to Mexico. However, the probability of return has become less in recent years, dropping from about 45 percent in the mid-1980s to about 25 to 33 percent today.⁹

MMP researchers posit that this decline in the probability of return is due to the increasing difficulty of successful re-entry as border control efforts have intensified in recent years. It could also be due to the substantial decline in interior enforcement and increasing accommodation of illegal Mexicans in the United States. Whatever the reason, the study suggests strongly that illegal migrants do change behavior in response to changes in U.S. policies.

Another recent study confirms the responsiveness of illegal Mexican migration to U.S. enforcement trends. Using MMP data, University of Pennsylvania researcher Aldo Colussi created a model of illegal Mexican migrant behavior in response to two kinds of policies: more

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Table 1. Estimated Five-Year Change in the Illegal Alien Population Under SBI and SBI plus Attrition through Enforcement (thousands)

Year 1	Beginning Illegal Pop.	New Arrivals			Departures						Year- End Illegal Pop.
		Total	EWI ¹	Overstay	Total	Emigrated	Died	Removed ²	Adjusted	Left/ Return as LPR	
SBI	11,500	626	381	245	713	183	27	182	290	31	11,413
SBI + Attrition	11,500	581	381	200	1,523	920	27	255 ⁴	290	31	10,558
Year 2	Beginning Illegal Pop.	New Arrivals			Departures						Year- End Illegal Pop.
		Total	EWI ¹	Overstay	Total	Emigrated	Died	Removed ²	Adjusted	Left/ Return as LPR	
SBI	11,413	552	307	245	712	183	26	182	290	31	11,253
SBI + Attrition	10,558	462	307	155 ³	1,522	920	26	255 ⁴	290	31	9,498
Year 3	Beginning Illegal Pop.	New Arrivals			Departures						Year- End Illegal Pop.
		Total	EWI ¹	Overstay	Total	Emigrated	Died	Removed ²	Adjusted	Left/ Return as LPR	
SBI	11,253	478	233	245	712	183	26	182	290	31	11,019
SBI + Attrition	9,498	343	233	110 ³	1,522	920	26	255 ⁴	290	31	8,319
Year 4	Beginning Illegal Pop.	New Arrivals			Departures						Year- End Illegal Pop.
		Total	EWI ¹	Overstay	Total	Emigrated	Died	Removed ²	Adjusted	Left/ Return as LPR	
SBI	11,019	404	159	245	711	183	25	182	290	31	10,712
SBI + Attrition	8,319	224	159	65 ³	1,521	920	25	255 ⁴	290	31	7,022
Year 5	Beginning Illegal Pop.	New Arrivals			Departures						Year- End Illegal Pop.
		Total	EWI ¹	Overstay	Total	Emigrated	Died	Removed ²	Adjusted	Left/ Return as LPR	
SBI	10,712	330	85	245	711	183	25	182	290	31	10,331
SBI + Attrition	7,022	105	85	20 ³	1,521	920	25	255 ⁴	290	31	5,606

Source: DHS Office of Immigration Statistics, Pew Hispanic Center.

¹ Gradual reduction of new EWI to "operational control", i.e. 80 % are stopped (now only 25% are stopped).

² The number for non-expedited removals is used as a proxy for interior removals.

³ Assumes that overstays are reduced 20% due to exit recording and compliance enforcement.

⁴ Assumes a doubling of non-criminal removals.

intense border-targeted enforcement and an increase in penalties imposed on employers. Colussi found that, over five years, a policy such as tighter controls on employers could cause a 40 percent drop in the existing population, while a policy of stricter border enforcement caused no perceptible drop in the existing illegal population.¹⁰

Table 2 is a comparison of the cost of a borders-only enforcement approach (the President's SBI) with the cost of a strategy of enforcement through attrition. These estimates are based on the 2006 appropriations for the Department of Homeland Security, estimates produced by the Congressional Budget Office for bills encompassing these measures, GAO reports, internal audits, and other public information.

Contrary to studies published by groups favoring amnesty, a significant reduction in the size of the illegal population can be accomplished at a cost far less than the "billions and billions of dollars" mentioned by Mr. Chertoff. At a cost of less than \$2 billion, a strategy of attrition through enforcement is as affordable as the SBI, and will deliver greater reductions in the illegal alien population.

Policies Details and Costs

I. Preventing Employment:

The Basic Pilot Program

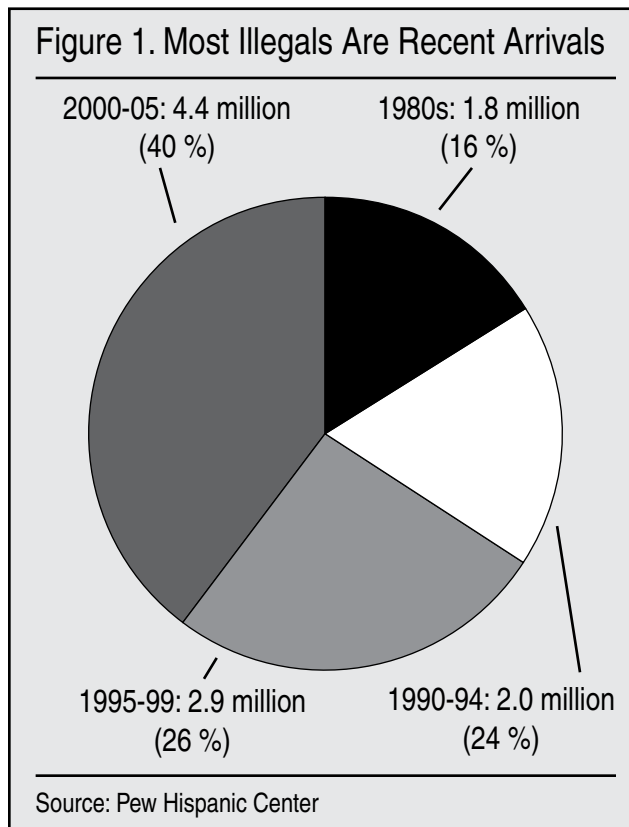
Rationale. It is widely recognized that employment is the most common incentive for illegal immigration to the United States. With the passage of the 1986 Immigration Reform and Control Act (IRCA), it became illegal for employers to knowingly hire illegal aliens. The law required employers to demand documents establishing an alien's eligibility for work, but provided no easy way for most employers to ascertain if the documents were legitimate, spawning a huge counterfeit document industry, enabling employers to look the other way at bogus papers, and holding out the specter of discrimination lawsuits against those employers who inspect documents too closely.

The bipartisan Commission on Immigration Reform, or Jordan Commission, in 1994 concluded: "Reducing the employment magnet is the linchpin of a comprehensive strategy to deter unlawful migration.... Strategies to deter unlawful entries and visa overstays require both a reliable process for verifying authorization to work and an enforcement capacity to ensure that employers adhere to all immigration-related labor standards. The Commission supports implementation of pilot programs to test what we believe is the most promising option for verifying work authorization:

a computerized registry based on the Social Security number."¹¹

Three pilot programs were introduced in 1997 and the most successful, known as the Basic Pilot program, was reauthorized and expanded by Congress in 2004. An independent evaluation carried out by Temple University's Institute for Survey Research and the private research firm Westat found that the Basic Pilot program did reduce unauthorized employment among participating employers (the program is currently voluntary).¹² The study said that the program did this in

	Cost (in millions)
Workplace Status Verification	\$414.0
Tax ID Reform and Data Sharing	1.2
Law Enforcement Partnerships	600.0
Expanded Entry-Exit Recording	350.0
Increase Non-Criminal Removals	595.0
State and Local Laws	0
TOTAL	\$1,960.2
Secure Border Initiative	\$2,500.0



two ways: It identified illegal aliens who had submitted false Social Security numbers or immigration documents and it deterred illegal aliens from seeking jobs with participating employers who participated in the program. The evaluation team found that about 10 percent of the employees screened in the program were illegal aliens. A majority of the participating employers surveyed (64 percent) said that the number of illegal workers applying for work had been reduced under the Basic Pilot program and nearly all (95 percent) felt that the program had reduced the likelihood that they would hire illegal aliens. The most important program weaknesses identified by the evaluators involved the accurate and timely entry of information into government databases, which they found had been addressed and improved by the agencies involved by the time of Basic Pilot's reauthorization in 2004.

H.R. 4437, the immigration enforcement bill passed by the House of Representatives in December 2005, also known as the Sensenbrenner bill, would build on the Basic Pilot program to make it mandatory for all employers to verify the work eligibility of all new hires upon enactment. Verification of all employees would be mandatory for government and certain private employers by 2009, and apply to all employees at all employers by 2012.

Cost. The Congressional Budget Office estimated the cost of this mandatory employment eligibility verification system to be \$414 million over the first five-year period, from 2006 to 2010.¹³

Benefit. The implementation of a mandatory version of the Basic Pilot program has the potential to affect a large share of the illegal alien population within just a few years.

The ISR/Westat study found that 10 percent of the workers screened by the Basic Pilot program lacked work authorization.¹⁴ However, because the program is voluntary, the employers represented are self-selected and unevenly distributed across the country, and thus not necessarily reflective of the general population of national employers who would be required to screen workers under a mandatory program.

Other research suggests that between 50 and 60 percent of employed illegal aliens are working "on the books."¹⁵ Many of these workers are employed in sectors such as construction, restaurant, hospitality, and farming, where the turnover rates are high. Assuming an illegal working population of roughly 7.2 million workers,¹⁶ perhaps as many as four million unauthorized workers would be identified by the program within the

first two to three years, and presumably denied jobs with employers who are complying with the law.

A different calculation produces a similar result. It is estimated that illegal aliens make up about 4.9 percent of the civilian labor force.¹⁷ According to the CBO (quoting the Bureau of Labor Statistics), roughly 50-60 million new employees will be hired annually between 2006 and 2010. If 55 percent of those 2.45 million illegal alien new hires are working on the books, then Basic Pilot could identify more than one million (roughly 1.3 million) illegal aliens each year. If just half of the identified illegal aliens choose to return home every year, the size of the illegal population would be reduced by at least 2.5 million over five years, and probably by much more, as other illegally-resident family members could be expected to return with them.¹⁸ This represents a large share of the 4.6 million likely voluntary emigrants shown in Table 1.

A number of scenarios are likely to result. Some illegal aliens will seek employment "off the books," to avoid the screening, and undoubtedly there will be employers willing to hire in this way. Others will resort to identity fraud instead of counterfeit documents; that is, seeking employment using the name and Social Security number of a U.S. citizen or permanent resident, though this is a more costly and more risky, and therefore less likely, option.¹⁹

The attrition through enforcement strategy also includes additional attention to routine immigration law enforcement and compliance, as well as steps to address misuse of U.S. identity numbers, all of which would increase the likelihood that remaining illegal aliens will have a more difficult time finding employment and functioning easily in society.

II. Curb Use of ITINs by Restricting Issuance and Sharing Data

Rationale. In 1996 the Internal Revenue Service created the Individual Tax Identification Number (ITIN) to enable it to collect taxes from non-resident foreign investors who earned taxable income in the United States, but who were not legal permanent residents or citizens, and thus did not qualify for a Social Security number. In an apparent attempt to increase tax revenue through increased tax compliance, the agency decided also to allow illegal immigrants to obtain ITINs, and has actively promoted their use in cooperation with immigrant advocacy groups. Although the agency maintains the numbers are to be used only for the purpose of filing an income tax return, other entities, including some state motor vehicle agencies, banks,

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and mortgage lenders, began accepting the ITIN in lieu of customary forms of identification, for the explicit purpose of providing services to illegal aliens, who often lack conventional identification.

Since 1996 the IRS has issued more than 7.3 million ITINs, of which only two to three million have ever been used on a tax return.²⁰ A number of experts, including the Treasury Department's internal auditors, have raised concerns over the years about the ITIN, suggesting that the liberal ITIN issuance policy may be increasing the potential for fraud, enabling illegal immigrants to receive benefits to which they are not entitled, and creating law enforcement problems.²¹

The IRS has resisted pressure to cease issuing ITINs to illegal aliens, arguing that its top priority is to encourage tax compliance. This may be a result, but the practice apparently has not increased tax revenue, and so is of questionable value – in fact the IRS has issued more in tax refunds and credits than it has collected in taxes from illegal aliens.

The Treasury Department's auditors studied the use of ITINs in the tax year 2001.²² About 530,000 Form 1040s were filed that year by aliens not authorized to work and using ITINs. The total tax liability of these returns was \$184 million, after deductions and credits on total taxes due of \$495 million. More than half of the returns reported no tax liability, and \$522 million in tax refunds were claimed on these returns. Typically, most of the tax collection from illegal aliens (and all taxpayers) occurs as a result of withholding by employers, not in voluntary tax filings. As one Arizona tax preparer put it, when ITIN-bearing tax filers learn that their bottom line will not be a refund, "they walk."²³

More than half of the ITIN returns included W-2 forms listing someone else's Social Security number, and one in four of the individuals failed to report other wages and compensation for which they should have paid taxes.²⁴

Under mounting pressure, in December 2003 the IRS made a perfunctory effort to address these concerns. It sent a letter to all state governments stating that the agency did not verify the identity of ITIN applicants before issuing a number. This carefully crafted "use at your own risk" position simultaneously validated the policies of the stricter state agencies already balking at accepting the document as identification, while freeing up other entities to continue accepting the document for non-tax purposes, such as licensing and banking. Despite the caveat from the IRS, six states still accept the document from applicants for driver's licenses.²⁵

In addition, the IRS changed the application process, so that now all those requesting an ITIN

must include a completed tax return along with the application.

If the IRS is allowed to continue this controversial policy which undermines immigration enforcement efforts, then it would make sense to require it to share information on ITIN holders with immigration enforcement authorities. Yet the agency insists that the privacy of tax records is sacred and vital to tax compliance. In March 2004 testimony before the House Ways and Means Committee, IRS Commissioner Mark Everson warned of the "chilling effect" on tax compliance that would result from any effort to use information from tax returns to enforce immigration law: "We are fully sensitive to the possible dangers that can arise from the misuse of ITINs for the purpose of creating an identity, including the possible threat to national security. Regardless of undesirable behaviors actually or potentially associated with ITINs, the Service remains legally responsible for enforcement of the nation's federal tax laws . . . irrespective of the circumstances of their employment or the possibility that ITIN applicants may be solely or collaterally seeking the procurement of an ITIN to establish an identity for non-tax purposes."²⁶

However, a strong precedent exists for sharing information from tax returns with other agencies. Section 6103 of the tax code permits such arrangements with several agencies and could be amended to include DHS. For example, the IRS currently has successful electronic data-sharing arrangements with the Department of Education (to collect debt from student loan defaulters), the Social Security Administration (to confirm eligibility for benefits) and the Centers for Medicare and Medicaid Services (also to confirm eligibility for benefits).²⁷

The unwillingness of the IRS to help with immigration law enforcement is no doubt reinforced by the disinclination of DHS to seek its assistance, despite the obvious enforcement value of information from an individual's tax return. In its study of the ITIN problem, the Government Accountability Office found that while many DHS investigative agents it interviewed thought the information from illegal aliens' tax return would be helpful in tracking them down, higher-ranking DHS officials said that, due to limited enforcement resources, the agency was unlikely to pursue any leads generated by the IRS.²⁸ Clearly, any attempt to access taxpayer information for the purposes of immigration law enforcement would need to be accompanied by additional resources for immigration agents who would be expected to use it.

Policy Options. While the IRS's devotion to the principle of maintaining the privacy of financial information to

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encourage compliance is not entirely inappropriate, it is also clear that this stance may be undermining two other important federal objectives – protecting national security and enforcing immigration laws. A number of options exist that respect the IRS prerogative to determine the best tax policies while also supporting immigration law enforcement. These options require the IRS to share certain identifying information from tax returns with other agencies.

Financial services expert Marti Dinerstein, who has studied identification issues as they relate to immigration policy,²⁹ notes, “No one is asking the IRS to disclose private financial information that should remain private, but only such information that is important for the enforcement of other federal laws, such as the name and last known address of individuals who have submitted tax returns accompanied by a Social Security number that appears to belong to someone else, which suggests that a law may have been broken.”

Ample precedent exists for information-sharing between the IRS and other agencies, as noted above, and it is very cost-effective. According to one GAO report, federal agencies estimated that they saved at least \$900 million annually through such initiatives.³⁰ The IRS-Department of Education initiative is known as the Taxpayer Address Request program. The Department of Education transmits the name and SSN of individuals who have defaulted on student loans to the IRS, and IRS then matches the information to its records and provides the Department of Education with the most recent address it has on file. The Social Security Administration has a similar data-sharing system in place to prevent duplicate payments from being made to Medicare beneficiaries.

The first step should be for Congress to adjust Section 6103 of the tax code to include DHS on the list of agencies that can receive information from the IRS.

In the context of analyzing a different IRS-DHS data-sharing proposal, the GAO recommended that the IRS develop a taxpayer consent notice as part of the ITIN application, whereby applicants would consent to potential disclosure of some information to immigration authorities.³¹ Alternatively, the IRS could put a Privacy Act notification on the ITIN application, as was recommended by the Treasury Department auditors, informing the applicant that information may be provided to DHS. Either version of disclosure consent is apparently possible under existing Internal Revenue Code authority. Either step would likely diminish the popularity of the ITIN among illegal aliens, and extricate the IRS from its current untenable position

of shielding illegal aliens from federal enforcement authorities. The data on tax payments by and refunds to illegal aliens suggest that any possible loss in tax revenue resulting from diminished compliance could be made up by fewer credits and refunds being paid out to these individuals. In 1999, the IRS management agreed with the idea of a Privacy Act notice, but has never made the change.³²

In addition, the IRS should be required to notify DHS and the Attorney General of all cases where illegal aliens file tax returns using ITINs and wage reports using SSNs belonging to other people. According to the Treasury Department’s audit, there were 265,000 such cases in 2001.³³ Under the Identity Theft and Assumption Deterrence Act of 1998, it is a crime to knowingly transfer or use, “without lawful authority, a means of identification of another person with the intent to commit, or to aid or abet, any unlawful activity... .”³⁴ Prosecution of selected cases would help address this problem. It would also help compensate for the Basic Pilot Program’s inability to detect fraudulent use of genuine Social Security numbers.

Finally, the IRS should end preferential tax treatment for illegal aliens. In its audit report on ITINs, the Treasury Department noted a significant inconsistency in IRS policy – while illegal aliens are treated as “non-resident” aliens for the purposes of qualifying for an ITIN, they are taxed by the same rules as resident U.S. citizens and legally-resident aliens. They qualify for the standard deduction and the Additional Child Tax Credit, which non-resident aliens with taxable income may not take. According to the audit, in tax year 2001, “\$160.5 million was given to approximately 203,000 unauthorized resident aliens, with about 190,000 of these filers having no tax liability and receiving \$151 million.”³⁵ And, “unauthorized resident aliens claimed the standard deduction on 92.3 percent of the returns filed, reducing their AGI [adjusted gross income] by \$3.2 billion.”³⁶ Although IRS management agreed with these recommendations, no changes have been made in the policy.

Cost. The recommendations above can be implemented without major outlays of government resources, and may well result in cost savings over time. The cost of applicant-initiated information-sharing authorization would be mainly for printing new forms. Any resulting decline in illegal alien taxpayer compliance would not necessarily result in declining tax revenue, as fewer refunds and credits would be claimed. Tax withholding would still occur.

If IRS were to reverse its policy and issue ITINs only to aliens who are legally present, the cost of verifying applicants' status would be between \$0.12 and \$0.24 per record checked. According to the latest numbers, the IRS is issuing about one million ITINs per year,³⁷ bringing the annual cost of verifying immigration status to just over \$240,000.³⁸

The cost of sharing information from ITIN files with non-matching SSNs would be similar to existing data-sharing arrangements, or about \$1 million per year. The Department of Education requests the records of 4.6 million student loan deadbeats a year, at an annual cost to the agency of \$819,000, or approximately \$0.18 per record. The Social Security Administration program costs \$0.21 per record.³⁹ In addition, there may be some cost to upgrading the ICE technological infrastructure so it can handle these tasks.

III. Law Enforcement Partnerships: Many Hands Make Lighter Work

Rationale. Despite the recent growth in funding for the Department of Homeland Security and Immigration and Customs Enforcement (ICE), its enforcement arm, the agency remains hopelessly out-manned, with fewer than 10,000 immigration enforcement agents and investigators dedicated to locating and apprehending some of the more than 11 million illegal aliens residing throughout the country. A large share of these agents perform support tasks such as processing and transporting detainees, and so are not actively involved in the identification and capture of illegal aliens. It would take a huge infusion of funding and personnel for ICE to single-handedly manage this workload effectively so as to bring about a noticeable reduction in the size of the illegal alien population.

The law does not anticipate or require that the job be done single-handedly by ICE. Hundreds of thousands of police officers, sheriffs, and state troopers across the country regularly encounter illegal aliens in the course of their daily routine, and these officers also have the authority to arrest illegal aliens. After taking illegal aliens into custody, police officers are to inform federal immigration authorities and turn over the alien for further processing, if appropriate.⁴⁰ In some cases, DHS will respond and take custody of aliens. Yet many police departments complain that DHS often refuses, citing higher priorities. Typical is this reaction: "We're not driving hours inland to pick up illegal aliens when we're trying to stop terrorists and weapons of mass destruction," said Rich Nemitz, the agent in charge of the Port Huron (Mich.) Border Patrol Station, which was

asked to take custody of several illegal aliens identified by the Saginaw police force.⁴¹

Further complicating matters, some jurisdictions have so-called "sanctuary" policies in place, which forbid police officers from questioning individuals about their immigration status. Other jurisdictions cite concerns that any police involvement with federal immigration authorities will sow fear of authorities in immigrant communities.

At the national level, ICE has merely tolerated rather than encouraged involvement from state and local law enforcement, and the enforcement statistics reflect this ambivalence, with only a very small fraction of the resident illegal population apprehended and removed each year (fewer than 100,000 removals of longer-term illegal residents, or about 1 percent of the total illegal population in 2004).⁴²

ICE could become far more productive in terms of apprehensions and removals if it more actively cultivated partnerships with those state and local law enforcement departments that wish to participate in immigration law enforcement. These partnerships have proved to be mutually beneficial; in addition to helping ICE, they also give local police another law enforcement tool to use in addressing local criminal problems, such as gangs and drugs.

One approach is for state or local law enforcement jurisdictions to enter what is known as a 287(g) agreement, after the relevant section of the Immigration and Nationality Act, with ICE. Under this agreement, officers receive special immigration law enforcement training and are then in effect deputized to enforce immigration law beyond the initial arrest authority. Mark Dubina, supervisor of the Florida program, told Congress: "this program acts as a force multiplier by allowing authorized local and state agents to screen incoming complaints and identify persons and leads worthy of follow-up investigation, without initially contacting the regional ICE office with every lead or complaint."⁴³ At the same hearing, the chief of Alabama's Department of Public Safety declared that "the 287(g) program is a valuable tool that helps Alabama's troopers do a better job protecting and serving our state and nation."⁴⁴

Three states (Florida, Alabama, and Arizona) and three localities (Los Angeles and San Bernadino counties and the city of Costa Mesa in California) have signed agreements so far. The Florida program resulted in more than 165 immigration arrests by 35 ICE-trained Florida police officers in the first year.⁴⁵ Originally focused exclusively on counter-terrorism, it has since

been renewed and expanded in scope, to cover domestic security in general. The Alabama program, which was not limited to national security cases, resulted in nearly 200 immigration arrests over a two-year period.

Beyond arresting illegal aliens they happen to encounter in the regular course of business, some jurisdictions are adding their state law enforcement resources to support federal border patrol efforts. In response to increasing numbers of illegal immigrants and increasing violence in the border region, law enforcement officers in Texas formed the Texas Border Sheriffs Coalition and convinced Governor Rick Perry to fund Operation Linebacker. This program deploys scores of new sheriffs' deputies to the border region to assist in patrolling and to serve as a second line of defense to the border patrol efforts. The project received \$6 million in state funding, which likely will be supplemented with federal funding in the future. While no arrest figures are yet available, Operation Linebacker in Texas is expected to result in a significantly reduced general crime rate; one town covered by the pilot experienced a 40 percent drop in the crime rate.⁴⁶ The Texas sheriffs coalition is now discussing an expansion of the operation with sheriff's from all 24 southwest border counties, from California to Texas.

Such partnerships need not be limited to federal-state or federal-local relationships. In October, 2005 U.S. army soldiers were sent on a training mission to support border patrol operations in New Mexico, known as Joint Task Force North. Part of their assignment was to station soldiers' military vehicles along a major highway and notify the border patrol upon spotting illegal aliens. Nearly 2,000 illegal crossers were apprehended in one month. The soldiers, who were deployed from a regiment in Fort Lewis, Washington, received useful desert and mountain training, while the border patrol was able to achieve a 60 percent increase in apprehensions in that sector.⁴⁷

Cost. The DHS appropriation for FY 2006 already includes \$5 million for training of state and local officers to enforce immigration laws. In its conference report accompanying the bill, the House Appropriations Committee expressed strong support for the program and directed DHS to be "more proactive in encouraging state and local governments to participate."⁴⁸

H.R. 4437 authorizes payments of up to \$100 million annually to counties within 25 miles of the southern U.S. border for the costs of detaining and transporting illegal aliens. Presumably some of the cost of programs such as Operation Linebacker, which is budgeted at \$35 million, could be covered under this

legislation, or under other existing state and local law enforcement terrorism prevention grant programs already approved. The bill also directs DHS to expand the National Crime Information Center database.

According to CBO cost estimates, the total annual cost of an expanded state and local law enforcement role in reducing the size of the resident illegal alien population would be \$120 million: \$100 million for grants to states for transporting and detaining illegal aliens, and \$20 million for training and the NCIC database expansion.⁴⁹

Benefit. Supporting the efforts of state and local law enforcement to participate in immigration law enforcement is a powerful way to augment the immigration enforcement presence nationwide without having to open new ICE offices and hire new ICE agents. Together with the planned expansion of prosecutorial resources and detention space under the Secure Border Initiative, the expansion of the 287(g) program and other local initiatives is virtually certain to increase the number of illegal alien removals.

The Sensenbrenner bill would advance this strategy by clarifying state and local officers' authority to help enforce immigration laws, requiring DHS to provide training and funding opportunities to state and local agencies, and directing DHS to place the names of immigration offenders in the National Crime Information Center database, so that officers on the beat can more easily and accurately identify illegal aliens.

This component of the attrition through enforcement approach is the most expensive of those presented in this analysis (see Table 2). The potential number of removals that would be directly attributable to state and local authorities is likely to be small compared with other programs such as Basic Pilot. However, this activity will contribute to the apprehension of many criminal aliens, who might not otherwise be found by federal immigration authorities. Having help in dealing with criminal aliens would make it easier for ICE to better balance its enforcement priorities and devote more attention to non-criminal interior enforcement against other immigration law violators, including alien smugglers, illegal workers, overstayers, and perpetrators of immigration fraud.

IV. Knowing Who's Coming and Going: Exit Recording with US-VISIT

Rationale. Workplace enforcement, document control, and state and local law enforcement participation are all reactive methods of immigration law enforcement;

they serve as check-points to identify or deal with illegal immigrants who have been here for some time. A more anticipatory method of enforcement, where, instead of waiting for illegal immigrants to apply for a job, file a tax return, or be stopped for speeding, DHS will have the ability to identify illegal immigrant overstayers as soon as they fall out of status, is now under development. This system is encompassed under US-VISIT, the new biometric screening system for foreign visitors, which DHS began implementing in 2004. Mandated by a Congress frustrated with the inability of INS to keep track of the number of visa overstayers, it also includes SEVIS, another new system set up to electronically track students and exchange visitors.

The exit recording capability is one component of US-VISIT, a multi-layered border security system based on biometrics that now records the entry of foreign visitors, authenticates their identity, and screens them against security databases. It has been fully implemented at air and sea ports, but in only a very limited way at land ports. If the program is allowed to proceed as planned, the exit recording system will eventually require visitors to “check out” as they leave. By matching the recorded entries against the exits, DHS would be able to determine which visitors have overstayed their visas and become illegal aliens. In addition to providing ICE with enforcement leads as soon as an alien overstays, it is expected that the act of recording entries and exits, together with increased enforcement activity and the imposition of penalties for visa violations, will help dampen the temptation to overstay.

US-VISIT is still a work in progress, with fewer than one-fourth of foreign visitors now screened and enrolled upon entry, and far fewer on exit (DHS is currently relying on a passenger manifest-based system and pilot exit programs in a few airports to record exits).⁵⁰ Mexicans and Canadians are exempt from enrollment, leaving a significant gap in the screening activity. This policy is partly due to infrastructure limitations and partly due to the Bush administration’s deference to constituencies who benefit from minimal screening policies, such as the travel industry, the immigration bar, and businesses dependent on cross-border trade. Funding for more port inspectors and infrastructure improvements, such as port re-design, would make it much easier to expand the number of visitors who are covered under US-VISIT, enhancing security, deterring illegal immigration, and facilitating legitimate travel and commerce.

Beyond its enforcement value, a fully-functioning exit recording system must be a prerequisite for adding new visa programs or expanding existing

ones. Currently the United States is operating its massive temporary visitor programs almost blindly, with little understanding of which visitors overstay, from which countries, or in which visa categories. The information generated by US-VISIT and SEVIS will be critical to future policy decisions on the Visa Waiver Program, guestworker programs, and student and exchange visitor programs.

Cost. Congress appropriated a total of \$340 million for US-VISIT in FY 2006, and the President has asked for \$400 million in 2007. It is impossible to determine how much of this funding will be devoted to developing the exit recording component of US-VISIT, as DHS has not yet announced how and when it will implement this requirement.

Beyond the base cost of US-VISIT, which is already covered under the DHS budget, over the five years another \$160 million would be needed to add 200 more new Customs and Border Protection port-of-entry inspectors per year, and another \$190 million for infrastructure improvements at the largest ports of entry, for a total of \$350 million over five years.⁵¹

Benefit. The establishment of a more reliable and complete entry-exit recording system will bring a variety of benefits for immigration law enforcement and policy management. First, the system already generates actionable leads for ICE agents that result in apprehensions and removals. In June 2003, ICE created the Compliance Enforcement Unit (CEU) to track down overstayers and other aliens who violate the terms of their admission. CEU analysts cull through hundreds of thousands of leads, many of which are generated automatically from tracking databases, and refer confirmed and actionable cases to field agents to pursue. Over the time period January 2004 to January 2005, the CEU processed more than 300,000 leads from four different sources,⁵² resulting in a total of 671 apprehensions. These compliance enforcement investigations were the second largest category of ICE immigration investigations completed that year, topped only by criminal alien investigations.⁵³

The CEU is critical to any effort to reduce the population of resident illegal aliens, and an increase in staffing this unit and improving the data sources, particularly through mandatory exit recording, would likely produce a significant increase in overall apprehensions. Despite the fact that it is brand-new, the unit appears to be significantly more productive than other ICE Investigations units. The aforementioned 671 apprehensions attributable to CEU in calendar year 2004

were accomplished by 51 full-time equivalent (FTE) employees. Their work was hampered by several factors, including an only partially-operational US-VISIT and incomplete data entry.⁵⁴ By way of contrast, in FY 2004, the 64 FTE special agents of the ICE Worksite Enforcement Unit completed only 3,064 cases resulting in only 445 arrests, or about half the arrest per employee rate of the CEU.

In addition to producing actionable leads for ICE agents, US-VISIT will also generate reliable quantitative and descriptive information on the overstay population. This data will guide the State Department and DHS in the adjudication of visas and supplement the array of assumptions, profiling, validation studies, and guesswork now used by consular officers and inspectors at the point of entry to determine who qualifies for a visa.

The information will also enable DHS and the State Department to implement a more objective and transparent process to determine which countries are eligible for the Visa Waiver Program. This program allows citizens of certain countries to enter the United States for short stays without a visa, and a low overstay rate is one of the criteria for participation. Lacking good data on overstays, the State Department and DHS have used visa refusal rates as a proxy. Because they reflect the consular officer's predictions of future behavior, rather than actual behavior, and can be subject to manipulation or political pressure, refusal rates are a much more subjective and less dependable measure of eligibility. Participation in the program is a coveted privilege and a number of important allies, including Poland and Korea, have expressed great disgruntlement with the current process, further complicating bilateral relations. At the same time, the program is risky; for instance, a number of terrorists have entered using passports from Visa Waiver-approved countries. More reliable data will make it easier for the State Department and DHS to defend its policies both here and abroad.

V. Broken Windows:

Doubling Non-Criminal Removals

Rationale. Faced with an overwhelming workload and a perceptible ambivalence in its leadership about the problem of illegal immigration, DHS has adopted a triage strategy of immigration law enforcement, with priority given to locating and removing criminal aliens, such as sexual predators and people who have participated in genocide, along with those caught working illegally in sensitive locations such as airports and tall buildings. Meanwhile, resources for other types of interior enforcement have dried up. A recent GAO report

found that only a very small share of ICE investigative hours are devoted to cases not involving criminal aliens, alien smuggling, or absconders. While 26 percent of the investigative time in 2004 went to drug cases and 17 percent to financial cases, only five percent of the investigative hours were devoted to identity and benefit fraud, which is acknowledged to be a pervasive problem. Workplace enforcement did not even make the chart, representing less than two percent of the investigative hours.⁵⁵

To bring about a noticeable reduction in the size of the illegal population and deter future illegal immigration, DHS will have to move beyond the triage approach and embrace a parallel strategy of routine immigration law enforcement that gives more attention to enforcement at the workplace, visa overstays, and especially fraud in the benefits application process. The strategy of attrition though enforcement envisions a doubling of non-criminal removals, both to decrease the size of the illegal alien population directly and to create a climate of enforcement that encourages voluntary compliance as the likelihood of detection increases.

A "broken windows"-style approach is consistent with, even essential to, the DHS primary mission of keeping the nation safe from terrorists. We now know that most terrorists have relied on immigration fraud and weak interior enforcement to remain in this country to carry out attacks.⁵⁶ Consistent, everyday enforcement of routine immigration law infractions will nab criminals and terrorists, in addition to helping shrink the population of illegal aliens.

To this end, DHS has taken steps to improve fraud detection, and equally important, ensure that applicants who resort to fraud are removed, rather than merely denied legal status only to slip back into the illegal population. In a remarkable instance of inter-bureau cooperation, in 2004 the Office of Fraud Detection and National Security was created within USCIS, the immigration benefits arm of DHS, in partnership with ICE, the enforcement arm. This office uses technology-enhanced methods to identify fraud and national security risks in the immigration benefits application stream before the applications are adjudicated. What makes this new approach truly innovative is that while some of the confirmed fraud cases are referred to ICE for criminal prosecution, now even more cases are handled administratively – that is, the applicant is denied the benefit and placed directly in removal proceedings – which is a much less cumbersome and less costly process than prosecution. Detailed statistics on the performance of this unit are not yet available, but DHS reported to Congress that over the time period spanning October

1, 2004 to approximately August of 2005, the FDNS units, staffed with 154 employees, generated more than 1,500 cases, most of which were ultimately pursued administratively. The agency has been authorized to double the size of the staff in the next year.⁵⁷

Benefit. Boosting resources to bring about a doubling of non-criminal removals would bring about a 40 percent increase in total interior apprehensions, for an additional 73,000 removals per year.

Cost. A doubling of non-criminal removals would cost approximately \$595 million in additional interior enforcement spending over five years, based on the following calculation: The DHS budget provides ICE with an additional \$37.5 million over the next two years for 52 teams tasked with hunting down immigrant absconders (those who have ignored removal orders). These teams are expected to arrest between 40,000 to 50,000 illegal aliens annually. At 865 apprehensions per team, that works out to a per/apprehension cost of \$834. At that rate, the total cost for staff to complete an additional 73,000 non-criminal apprehensions would be just under \$61 million per year. Congress has already provided for additional detention funds (\$1 billion in the 2006), but an additional \$58 million is needed for administrative and criminal proceedings and related costs.

VI. Zero Tolerance: State and Local Laws Discouraging Illegal Settlement

Rationale. Frustrated with the federal government's failure to make progress in reducing illegal immigration, and under pressure from impatient voters, many state and local jurisdictions are taking matters into their own hands by enacting laws and ordinances to discourage illegal settlement and by taking advantage of federal services, such as the database used for Basic Pilot, to verify immigration status. According to the National Conference of State Legislatures, lawmakers in 42 states are considering 380 bills related to immigration; 70 of these bills deal with employment.⁵⁸ Many of these measures, such as laws to restrict access to driver's licenses, are intended primarily to enhance security and minimize identity fraud; nevertheless they have provided a powerful incentive for illegal immigrants to voluntarily return home. In other cases, legislatures have considered more direct approaches, such as mandatory work authorization verification. Because these laws can have such a positive effect on compliance, and require little in the way of federal resources, they must be more actively supported by federal immigration authorities.

Cost. The cost of encouraging state and local immigration initiatives is minimal, and limited to outreach efforts to encourage states and localities to use existing programs such as SAVE (used primarily by state benefits offices to verify eligibility) and Basic Pilot. States and employers pay transaction fees for these services. The number of users could be increased by undertaking a campaign to explain the advantages.

Benefits. Evidence of the impact of such policies can be found in New York City, where the noticeable decline in the size of the illegal Irish population is attributed in part to a recent effort to deny driver's licenses to illegal aliens. The Irish government estimates that about 14,000 Irish out of an estimated population of at least 20,000 have returned home from the United States since 2001, of whom a large percentage are presumed to have been living here illegally. By way of contrast, in 2005 DHS deported only 43 Irish nationals.⁵⁹ While the strong Irish economy and the US-VISIT screening at airports are also playing a role in this exodus, the inability to obtain a license, which limits job opportunities and other aspects of a normal daily life, is clearly an effective deterrent.

The state of Florida has experienced a net outflow of illegally-resident Argentines, according to a recent report in the *Miami Herald*. Former illegal aliens cited their inability to get a driver's license and travel, in addition to the strong economy in Argentina, as factors in their decision to return home. Records from the international airport in Buenos Aires show that in the last three years, 35,000 more Argentines arrived from Miami than returned, and the Argentine consulate noted that the number of citizens seeking a certificate of residence to return home had quadrupled over the same time period.⁶⁰ In comparison, DHS has apprehended only 300-600 Argentine illegal aliens per year in the entire United States in each of the last three years.

Different states have tried different tactics, depending on local issues and conditions. The governors of Texas and Arizona have focused on the border, and authorized initiatives to support the federal border patrol with National Guard troops, soldiers-in-training, and local sheriffs.⁶¹ Police Chief Garrett Chamberlain of New Ipswich, New Hampshire claims to have created an illegal-free zone in his small town by invoking the state law against trespassing. His approach ultimately was rebuked by a state judge, but nevertheless, the publicity about his approach may be accomplishing the same deterrent effect.⁶²

The Selectboard in the town of Milford, Mass., a town of about 27,000 residents located in the suburbs

of Boston, which has experienced an influx of illegal Brazilian immigrants in the last several years, has passed a series of ordinances openly aimed at making life more difficult for this population. Measures include an anti-scavenger law (forbidding foraging through trash left on the street for pick-up), a prohibition against certain types of check-cashing establishments, rental property licensing, occupancy regulations, permits for use of local parks, and a requirement that restaurants and bars comply with federal hiring regulations and maintain up-to-date health reports on all employees (in response to a local tuberculosis outbreak attributed to illegal aliens). Some of the quality of life disturbances attributed to illegal aliens perhaps could be addressed more appropriately through community outreach efforts. However, in general, state and local officials should be encouraged to use their lawmaking authority to promote legal hiring practices, protect all members of the community from all forms of criminal activity, and promote a climate of respect for federal and local laws.

In addition, state governments should refrain from pursuing policies and providing benefits that impede or contradict federal immigration laws, such as sanctuary laws that prevent police officers from inquiring about an alien's legal status, in-state tuition at colleges and universities, subsidized day labor sites, public housing, and preferential-rate mortgages.

Conclusion

This analysis demonstrates that it is not only possible, but would be quite practical to undertake a strategy of attrition through enforcement in order to shrink the size of the illegal alien population and relieve the burden illegal immigration imposes on American communities. This strategy, when combined with conventional immigration law enforcement and tighter security at the borders, could reduce the number of illegal aliens by half over a period of five years. Contrary to some reports, and according to the government's own cost estimates, this strategy is a bargain, costing less than \$2 billion over five years. It is less expensive and less radical than either a massive amnesty/guestworker program, or a massive apprehension and removal operation.

The strategy of attrition through enforcement relies on tried and true immigration law enforcement techniques that discourage illegal settlement and increase the probability that illegal aliens will return of their own accord. Lawmakers must not be intimidated by the sheer size of the illegal population. Both academic research and recent experience demonstrate that migrants respond to incentives and deterrents, and that a subtle increase in the "heat" on illegal aliens can be enough to dramatically reduce the scale of the problem within just a few years. The federal government already has within its grasp the ability and the tools to control the level of illegal immigration, and its success in doing so is a direct result of the effort it has made. A modest investment of resources to step up this effort will pay large dividends for the future.

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Background

Attrition Through Enforcement A Cost-Effective Strategy to Shrink the Illegal Population

By Jessica M. Vaughan

Proponents of mass legalization of the illegal alien population, whether through amnesty or expanded guestworker programs, often justify this radical step by suggesting that the only alternative – a broad campaign to remove illegal aliens by force – is unworkable. One study put the cost of such a deportation strategy at \$206 billion over the next five years. But mass forced removal is not the only alternative to mass legalization. This analysis shows that a strategy of attrition through enforcement, in combination with a stronger border security effort such as the administration's Secure Border Initiative (SBI), will significantly reduce the size of the illegal alien population at a reasonable cost (less than \$2 billion over five years). Reducing the size of the illegal population in turn will reduce the fiscal and social burdens that illegal immigration imposes on communities. In contrast, a policy of mass legalization is likely to increase these costs and prompt more illegal immigration.

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