



Mass Deportations vs. Mass Legalization: A False Choice

By William W. Chip

Summary

For more than two decades, there has been a broad consensus among policymakers that ending large-scale illegal immigration will entail a combination of more stringent border controls, a biometric entry/exit system for visa holders, and mandatory electronic verification of employment eligibility for new hires. Where consensus has never been attained is what to do with the approximately 11 million aliens who will be residing here when those reforms are implemented. Advocates of illegal aliens offer various moral, economic, and practical arguments for why some or all of them should be awarded legal status. As explained in this *Backgrounder*, those arguments should be evaluated on their merits, and not on the false premise that the only alternative to “mass legalization” is “mass deportation” of 11 million people.

To claim that the choice between legalization and deportation applies to 11 million people is to ignore recent history. Notwithstanding Barack Obama’s policy of focusing immigration enforcement on criminal aliens, over 3.1 million illegal aliens were removed during his presidency, while approximately 3.6 million others voluntarily repatriated (for any number of reasons, including inability to find steady work). If the same number of aliens were removed or chose to repatriate during a two-term Trump administration, the residual illegal population at the end of his presidency (assuming reforms to stop new illegal immigration are enacted) would be approximately 4.3 million. The real question presented is whether there are means short of deportation to bring about the departure of 45,000 illegal aliens per month over the next eight years.

This *Backgrounder* seeks to demonstrate that bringing about the voluntary departure of 45,000 illegal aliens per month is easily within the president’s power. Those aliens least likely to leave of their own accord are those who have found steady employment, and employers in a position to offer steady employment usually adhere to tax regulations even if they are indifferent to immigration law. As a result, illegal aliens who have found steady employment are generally required by their employers to enter a name and Social Security number (SSN) on a Form W-4. This information, supplied under penalty of perjury, is passed on by the employer to the Social Security Administration (SSA), which forwards the same information to the Internal Revenue Service (IRS) for purposes of tax enforcement. The SSA issued the SSNs in the first place and knows which ones are false, are not valid for work, or don’t match the employee’s name.

The SSA and the IRS each has its own interest in enforcing the integrity of this reporting system. For example, because of SSA’s failure to mandate rectification of “mismatched” names and SSNs, over \$50 billion of wages per year are not being credited to the Social Security accounts of the employees who earned those wages. Many are U.S. citizens whose names or SSNs were inadvertently misreported by themselves or by their employers, including women who failed to notify the SSA of a name change when they were married. It is a genuine tragedy that many of them will not receive the Social Security benefits that they earned because catching and correcting their reporting mistakes would disclose the employment of illegal aliens.

In the exercise of its current, lawful authority, the IRS could notify every employer that submitted a “mismatched” or otherwise suspicious SSN on the Form W-2 for 2016 (which was due to be filed by January 31, 2017) that the employee should visit his or her local Social Security office to clear up the error and that, if this is not done, the IRS will itself pay a visit and, if need be, refer perjury charges to the Justice Department. Upon the receipt of such

William W. Chip is an international attorney and a member of the Center’s Board of Directors. This Backgrounder was originally published in October 2015 and has been updated and revised.

a letter, an unlawfully employed alien and/or his employer would likely terminate their relationship. Over time, most unauthorized aliens would find it so difficult to secure and retain employment that, like temporary legal workers whose visas have expired, they would quietly return home.

Introduction

Only two decades ago, the bipartisan U.S. Commission on Immigration Reform, appointed by President Bill Clinton and chaired by African-American Congresswoman Barbara Jordan, recommended that Congress reduce legal immigration by 30 percent¹ and curtail illegal immigration by mandating electronic verification of employee SSNs.² In summarizing the Commission's work, Rep. Jordan testified to Congress: "Credibility in immigration policy can be summed up in one sentence: Those who should get in, get in; those who should be kept out, are kept out; and those who should not be here will be required to leave."³

During Donald Trump's presidential campaign, he openly supported Congresswoman Jordan's policy recommendation that "those who should not be here ... be required to leave." However, his support quickly became the victim of "sound-bite journalism," the 21st century's increasingly frenetic, internet-driven approach to the reporting of current developments. Sound-bite journalism inevitably oversimplifies complex issues, enabling partisans to manipulate "the news" by crafting "false-choice" narratives in which an agreed national problem is presented as having only two solutions — the partisan's favored solution and another that seems outlandish.

Perhaps the most consequential of the "false choices" for immigration reform is that between legalizing the entire illegal alien population, thought to be in the neighborhood of 11 million people,⁴ or physically deporting them, a process once described by conservative columnist Charles Krauthammer as "sending SWAT teams to turf families out of their houses"⁵ and by Democratic presidential candidate Hillary Clinton as "literally to pull people out of their homes and workplaces, round them up and ... put them in buses or boxcars."⁶

There is a serious and worthwhile debate about whether some part of the unlawfully present alien population should be granted some form of temporary or permanent lawful residence once reforms to stop future illegal immigration are in place. However, this paper takes no position on that debate. Instead it seeks to demonstrate that the arguments for legalization should be made and evaluated on their merits and not under the specious presumption that those who are not legalized must then be hunted down and physically deported.

In order to know the real choices we face concerning illegal aliens already residing here (if and when we take the necessary steps to prevent new waves of illegal immigration), it is useful to divide the unlawfully resident alien population into three groups: (1) those who would be deported even under a liberal Democratic administration ("enforced returnees"), (2) those who would return home of their own accord if we left them alone ("voluntary returnees"); and (3) those who would not return home without enforcement or inducement ("reluctant returnees").

Enforced Returnees

The Obama administration was praised by some, and criticized by others, for generally limiting deportations to aliens with felony convictions. Notwithstanding this circumscribed enforcement policy, the Department of Homeland Security reports that over 3.1 million illegal aliens were removed during the Obama presidency.⁷ Given that the Trump administration has announced that it will target a much wider range of criminals for deportation and will dramatically add to enforcement resources, it is reasonable to assume that at least as many illegal aliens would be deported during a two-term Trump administration.⁸

Voluntary Returnees

Left to their own devices, a large part of the illegal population will eventually return home. Learn Spanish, speak to the "undocumented," and you will discover that, with few exceptions, they miss the culture, familiar sights, and friend and family networks from which they have separated themselves. Unless we entice them to stay through a legalization program, many will voluntarily repatriate because they are homesick, cannot find a steady job, or have achieved their financial objectives, such as building a home in their village. Many, if not most, never intended to make the United States their permanent home.

The Center for Immigration Studies, based on estimates by the Center for Migration Studies and the Pew Research Center for the period 2009-2013, and on its own extrapolations for the subsequent period through May 2015, concluded that during the first 5.5 years of the Obama administration the illegal alien population would have declined by approximately 2.5 million, nearly 25 percent, had the president's truncated enforcement of our immigration laws not facilitated the arrival of an equal number.⁹ Extrapolating that departure rate through the end of President Obama's second term yields approximately 3.6 million voluntary returnees, nearly one-third of the illegal alien population when he took office.

Reluctant Returnees

Based on the Obama-era precedents, let us assume that during a two-term Trump presidency 3.1 million of the current unlawful population would be deported and that 3.6 million would return home voluntarily. That would still leave approximately 4.3 million illegal aliens determined to stay put for the foreseeable future. That is still a lot of people, but the argument that nothing short of SWAT teams and boxcars will bring about their departure is baseless.

"Soft Power" vs. "Hard Power"

According to the *2015 Yearbook of Immigration Statistics*, published by the Department of Homeland Security (DHS), approximately 181 million nonimmigrant aliens entered that year, which is about 10.5 million every three weeks.¹⁰ Overwhelmingly, these foreigners come to shop, sightsee, study, or enter lawful employment. When their visas expire, all but a tiny percentage will return home. If they are accompanied by their children, or bear children while here, both they and we expect that the children will return with them. If they leave children or other family members behind, it is they, not we, who are "separating families."

We benefit from these millions of visiting tourists, students, and laborers, but if the system depended on forcible removal to ensure their eventual repatriation, the system would collapse. In fact, we do not rely on the "hard power" of deportation to ensure their return, but instead on the "soft power" of withholding employment, non-emergency government benefits, driver's licenses, and other conditions of a normal, lawful life. Concerning government benefits, for example, the Jordan Commission stated: "The commission recommends that illegal aliens should not be eligible for any publicly funded services or assistance except those made available on an emergency basis. ... Should illegal aliens require other forms of assistance, their only recourse should be to return to their countries of origin."¹¹

Advocates of mass legalization portray the alternative as an enforced mass migration without precedent, but consider this: Our alien population is not increasing by anything close to 181 million per year, so if approximately 10.5 million aliens enter the United States every three weeks, then more than 10 million must be leaving every three weeks. If the 4.3 million "reluctant" illegal aliens were successfully incentivized to return home over a two-term presidency, that would add about 31,000 departures to the 10 million tri-weekly departures that will occur in any event, tantamount to a rounding error in the normal ebb and flow of alien arrivals and departures. Who, for example, expressed outrage or even noticed the estimated tri-weekly departures of 26,000 illegal aliens during the Obama administration?

Even so, if we rule out "SWAT teams" and "boxcars," how can the administration locate these 4.3 million "reluctant returnees"? The answer is simpler than many politicians and journalists would have us think.

Soft Power Plan A: E-Verify

The unauthorized aliens most likely to fall into the "voluntary returnees" category are those who haven't found the steady, gainful employment needed to put down roots. By the same token, those most likely to fall into the "reluctant returnees" category are those holding steady jobs, indicating that their employers have the steady business that allows for a stable workforce. Such employers overwhelmingly insist that every employee complete a Form W-4, disclosing his or her name and SSN for purposes of reporting wages to the SSA and IRS in order that their Social Security benefits and income tax liability may be calculated. While the employers have had little to fear from the agencies responsible for immigration law enforcement, especially under the Obama administration,¹² they are quite sensibly fearful of the IRS.

The employer transfers information from Form W-4, including the employee's name and SSN, to Form W-2, which reports the employee's wages for the taxable year. The employer submits the form W-2 to the SSA, which credits the reported wages

to the employee's Social Security account, on which basis the employee's Social Security benefits will someday be calculated. The SSA then shares the W-2 information with the IRS for purposes of tax administration.

Because the SSA issued the SSNs in the first place, it knows which ones are invalid, either because they were never issued, were issued under a different name, or were issued to a person now deceased. Some SSNs were validly issued, but under the condition that they could not be used for employment authorization. Still other SSNs, validly issued and eligible for employment authorization, are nevertheless suspicious because they belong to children or to the extremely elderly, are being used for multiple employers, etc.

By any standard, the amount of incorrect or fraudulent identity data pouring into our income tax and Social Security systems is astonishing. In 2005, the Government Accountability Office (GAO) reported to Congress that, for the period 1985 to 2000, there were 86.4 million wage reports where the employee's name and SSN did not match and that in 2002 alone the SSA received almost nine million "mismatched" reports, representing \$56 billion in earnings that may never be credited toward the Social Security entitlements of their users.¹³ A year later, in 2006, the GAO reported to Congress that earnings were being posted each year for over a million aliens who had been issued a SSN or a Tax Identification Number (TIN) that was not to be used for work authorization.¹⁴ Also in 2006, the SSA testified to Congress that in 2003 it had received approximately 200,000 wage reports using an SSN numbered 000-00-000.¹⁵ In 2015, the SSA's own inspector general reported that 66,920 of the mismatched SSNs reported from 2006-2011 belonged to individuals who were born before June 16, 1901, and were almost certainly dead.¹⁶

An unknown number of the mismatched names and SSNs belong to U.S. citizen employees, who may have incorrectly entered their name or SSN on Form W-4 or may have changed a last name upon marriage or divorce without notifying the SSA. Among the most outrageous consequences of U.S. immigration politics is that so little is being done to protect the earned benefits of potentially millions of American workers whose names or SSNs were inadvertently misreported by themselves or by their employers because defenders of illegal immigration have successfully defeated, stalled, or constrained any process designed to uncover and rectify SSN discrepancies.

The government is certainly capable of discovering and acting upon SSN discrepancies using:

- **E-Verify.** For some years U.S. Citizenship and Immigration Services (USCIS) has collaborated with the SSA to provide employers the opportunity to verify electronically (E-Verify) that a newly hired employee has a valid SSN and is otherwise authorized to work in the United States.¹⁷ Because use of this free system is still voluntary for most employers, fewer than 50 percent of new hires are covered.¹⁸
- **SSNVS.** The SSA has established the Social Security Number Verification Service, a version of E-Verify that enables employers, without involvement of USCIS, to verify the SSNs not only of newly hired employees, but also of their entire current payroll.¹⁹ For most employers SSNVS is also voluntary.
- **No-Match Letters.** The SSA also has a longstanding program of notifying employers of mismatches between names and SSNs and on Forms W-2 (so-called "no-match letters"), but not all employers get letters, and those that do face no meaningful consequences if they ignore them.²⁰

Reliable data concerning the effectiveness of the SSNVS and the "no-match letters" is not readily available, but it is well documented that E-Verify works. E-Verify is being used by over 600,000 employers²¹ and has one of the federal government's highest user satisfaction ratings.²² Even though it covers only about 44 percent of new hires,²³ in fiscal year 2014 employers that used the service identified over 280,000 unauthorized workers.²⁴ According to the Public Policy Institute of California, nearly 100,000 aliens left the unauthorized workforce in Arizona in the first year after the state mandated the use of E-Verify for all Arizona employers.²⁵

Since employers who rely the most on unauthorized workers are the least likely to use E-Verify, universal enrollment in the program would presumably yield a much higher discovery rate. So-called "comprehensive" immigration reform legislation endorsed by both the Bush and Obama administrations would have mandated the use of E-Verify. Although mandatory use would have applied only to new hires, illegal workers tend to change jobs frequently. As E-Verify became progressively more universal and effective, they would find it ever harder to find work. Like temporary legal workers whose visas have expired, most would eventually run out of money and return home. The process would be slow and steady and largely invisible. Who,

other than some “think tanks,” noticed the voluntary departure of over three million illegal immigrants during the Obama administration? There are arguments in favor of legalization, but calling up images of waves of humanity being dragged across the border is nothing but propaganda.

Soft Power Plan B: “G-Verify”

Congress has so far been unable to mandate E-Verify, and may be unable to do so politically without also authorizing a mass legalization program. Nevertheless, President Trump, like his predecessor, has “a pen and a phone” and could bring about a steady reduction of the unauthorized workforce by acting directly on the information in the possession of SSA through one or more Executive Branch programs that might collectively be referred to as “G-Verify” (“G” standing for government). Apart from protecting American workers from unlawful job competition, implementing an effective G-Verify program would be doing American workers, and even legal alien workers, a huge favor by ensuring that they receive the full Social Security benefits to which their earnings have entitled them.

Apart from politics, the chief impediment to cooperation among federal agencies in identifying unauthorized workers is section 6103(a) of the Internal Revenue Code, which bars the IRS from sharing taxpayer identity information for most non-tax enforcement purposes. The SSA takes the position that it is similarly barred, a position that could be questioned since it receives the Forms W-2 directly from the employers, not the IRS. Whether or not the SSA is subject to the same restrictions as the IRS, section 6103 itself contains exceptions to the section 6103(a) nondisclosure rule that may be relevant to a G-Verify program:

- Section 6103(k)(6) grants the IRS broad authority to share taxpayer information with other persons as needed to enforce the tax laws. The IRS has its own legitimate interest in fighting identify fraud in W-2 filings, as concretely demonstrated by the IRS’s payroll audit programs. An employee who knowingly enters a false name or SSN on Form W-4 has committed perjury, and both the IRS and the SSA have the authority to investigate such crimes and refer them to the Justice Department for prosecution. If an employee refuses to cooperate with the SSA after receiving a no-match letter, then under authority of section 6103(k)(6), the IRS and the SSA may arguably collaborate with each other and with USCIS to ascertain the true identity of the individual who completed the form.
- Section 6103(i)(3) authorizes the IRS to share “return information” that may constitute evidence of non-tax criminal law violations to the head of the agency that enforces that law, but it may not disclose “taxpayer return information” (which is interpreted by the IRS to include Form W-2) unless the IRS possesses other “return information” that may constitute such evidence. Section 6103(b)(2) defines “return information” very broadly to include information collected by the IRS in determining the possible existence of a tax offense. Given that less than 15 percent of employees with mismatches are found to be work authorized,²⁶ the IRS or SSA might reasonably conclude that an employee’s refusal to cooperate with a no-match letter was evidence of a criminal violation of the immigration law by the employee or the employer that may be disclosed to USCIS under the authority of section 6103(i)(3).

Whether or not the section 6103 exceptions authorize disclosures by the IRS or the SSA to USCIS, the IRS and the SSA each has its own interest in discovering and preventing identity fraud and ensuring that wage and identity information are properly matched. For example, without involving USCIS, the president could direct the SSA or IRS to send a no-match letter to every employer who had reported an invalid or mismatched number on the Form W-2 for 2016 (which was due to be filed by January 31, 2017), asking that a copy of the letter be shared with the employee. The letter could point out that invalid or mismatched numbers are often the result of honest mistakes and that the employee should report to his or her local Social Security office within the next 30 days to straighten matters out. The letter could end by advising the employer and employee that submitting a false name or number is perjury and punishable by a fine and/or imprisonment, but that the government will not initiate a perjury investigation if the local Social Security office concludes that the employee or employer made an honest mistake.

A G-Verify program that threatened perjury investigations of non-cooperating employees and employers would likely suffice to bring about the departure from the workplace of most employees whose discrepant SSNs were not a legitimate mistake. Nor would the government need to contact all employers and employees: based on a well-targeted initial effort, word would spread that the era of government indifference to identity fraud was coming to an end. Moreover, because the G-Verify process would play out over a period of years, the great majority of unauthorized workers would have time to arrange their affairs so as to make an orderly return to their homelands.

The “Safe Harbor Rule”: A G-Verify Prototype. G-Verify is not a novelty. In the final years of the George W. Bush administration, the SSA and the Department of Homeland Security (DHS) cooperated in designing a G-Verify prototype under which the SSA’s no-match letters to employers would be accompanied by a DHS letter that promised not to use the no-match letter as evidence of unlawful hiring if the employer cooperated with the SSA in accordance with a DHS rule (the “Safe Harbor Rule”).²⁷ A suit against the Rule was promptly filed, and a few weeks later a U.S. District Court issued a preliminary injunction on the grounds that the plaintiffs had raised “serious issues” with the content and rulemaking procedure.²⁸ DHS proceeded to supplement the Rule to address those issues, but before the court could render a decision on the supplemented Rule, the newly elected Obama administration revoked it.²⁹ Had the Obama administration allowed the case to proceed, prevailed at the district court or on appeal, and implemented the supplemented Rule, the illegal alien population today would very likely be only a fraction of the 11 million who were here when President Obama was first elected. The District Court’s main objection to the Rule was the involvement of DHS in the no-match process. That same objection should not apply to an SSA/IRS program aimed at deterring identity fraud without DHS involvement. Evidence of identity fraud would be referred for prosecution to the Justice Department, not to DHS.

Costs of G-Verify. Owing to USCIS’s E-Verify program and the SSA’s SSNVS service, the technological infrastructure for a G-Verify program is already in place. Nevertheless, implementation of an effective G-Verify program might entail additional staffing at the SSA, the IRS, and/or the Justice Department. Whatever the costs of staffing a G-Verify program that sought to promote the slow but sure departure of the 4.3 million “reluctants,” they would certainly be less than the fantastical costs that have been attributed to “mass deportation” programs³⁰ or the costs to state and local governments of allowing the “reluctants” to remain indefinitely.³¹

End Notes

- ¹ [“Legal Immigration: Setting Priorities”](#), U.S. Commission on Immigration Reform, September 1995, p. 11.
- ² [“Becoming an American: Immigration and Immigration and Immigrant Policy”](#), U.S. Commission on Immigration Reform, September 1997, pp. 113-121.
- ³ [Testimony](#) of Barbara Jordan, chair, U.S. Commission on Immigration Reform, before the U.S. House of Representatives Committee on the Judiciary Subcommittee on Immigration and Claims, February 24, 1995.
- ⁴ [“Unauthorized immigrant population trends for states, birth countries and regions”](#), Pew Research Center, November 3, 2016.
- ⁵ Charles Krauthammer, [“The Immigration Swamp”](#), *The Washington Post*, August 20, 2015.
- ⁶ [“Hillary Clinton: Republicans Want To Round Up Illegal Immigrants And Put Them In ‘Boxcars’”](#), Real Clear Politics video, August 28, 2015.
- ⁷ [“FY 2016 ICE Immigration Removals”](#), U.S. Immigration and Customs Enforcement, undated.
- ⁸ [“Executive Order: Border Security and Immigration Enforcement Improvements”](#), The White House, January 25, 2017.
- ⁹ Steven Camarota, [“2.5 Million Join Illegal Population under Obama”](#), Center for Immigration Studies, July 2015.
- ¹⁰ [“2013 Yearbook of Immigration Statistics”](#), Department of Homeland Security, updated October 1, 2014, Table 25.
- ¹¹ [“U.S. Immigration Policy: Restoring Credibility”](#), U.S. Commission on Immigration Reform, September 1997, p. 22.
- ¹² Jessica Vaughan, [“ICE Records Reveal Steep Drop in Worksite Enforcement Since 2013”](#), Center for Immigration Studies, June 2015.
- ¹³ [“Social Security: Better Coordination among Federal Agencies Could Reduce Unidentified Earnings Reports”](#), GAO-05-154, General Accounting Office, February 2005.
- ¹⁴ [“Benefits and Limitations to Using Earnings Data to Identify Unauthorized Work”](#), GAO-06-814R DHS, General Accounting Office, July 11, 2006.
- ¹⁵ [Statement of Martin H. Gerry](#), deputy commissioner, Office of Disability and Income Security Programs, Social Security Administration, before the House Committee on Government Reform Subcommittee on Regulatory Affairs, July 25, 2006.
- ¹⁶ [“Numberholders Age 112 or Older Who Did Not Have a Death Entry on the Numident”](#), A-06-14-34030, Office of the Inspector General, Social Security Administration, March 4, 2015.
- ¹⁷ [E-Verify website](#), USCIS.
- ¹⁸ Comparing this [chronological summary of the milestones of the E-Verify program](#) from USCIS (23.9 million E-Verify cases 2013) to this Bureau of Labor Statistics [press release](#) on job openings and labor turnover (54.2 million nonfarm hires in the same year) yields an estimate of 44 percent of new hires screened through E-Verify in 2013.
- ¹⁹ [“The Social Security Number Verification Service”](#), Social Security Administration website, undated.
- ²⁰ “Employers Guide to Timely Filing and Accurate W-2 Wage Reports”, Social Security Administration, May 2007, p. 24.

²¹ [“What Is E-Verify”](#), U.S. Citizenship and Immigration Services, updated June 25, 2015.

²² *Ibid.*

²³ See note 18.

²⁴ [“E-Verify Program Statistics”](#), U.S. Citizenship and Immigration Services, updated March 19, 2015.

²⁵ [“Arizona’s E-Verify Mandate Reduces Number of Unauthorized Immigrants: But 2007 Law Also Pushes More Workers Into Self-employment”](#), Public Policy Institute of California press release, March 14, 2011.

²⁶ [“E-Verify Program Statistics”](#), U.S. Citizenship and Immigration Services, updated March 19, 2015.

²⁷ 72 Fed. Reg. 45611-24 (August 15, 2007).

²⁸ *American Federation of Labor v. Chertoff*, 552 F. Supp. 2d 999 (2007).

²⁹ DHS Press Release, “Secretary Napolitano Strengthens Employment Verification with Administration’s Commitment to E-Verify: Announces Intention to Rescind ‘No-Match’ Rule”, July 8, 2009.

³⁰ \$100 to \$300 billion, according to the American Action Forum. See Ben Gitis, Laura Collins, [“The Budgetary and Economic Costs of Addressing Unauthorized Immigration: Alternative Strategies”](#), American Action Forum, March 6, 2015.

³¹ Steven A. Camarota, [“Welfare Use by Immigrant and Native Households: An Analysis of Medicaid, Cash, Food, and Housing Programs”](#), Center for Immigration Studies, September 2015.