



## A Tale of Two Senators

### Rob Portman, Chuck Schumer, and Three Decades of Congressional Failure in Immigration Enforcement

By Jerry Kammer

The June 26, 2013, debate on the Senate floor between Sens. Rob Portman (R-Ohio) and Chuck Schumer (D-N.Y.) received little notice as Senate Democrats rushed to pass an immigration reform bill. But it was an emblematic moment about an epic failure that has bedeviled immigration policy for decades — the inability of Congress to unite behind an effective program of worker verification that is the linchpin of efforts to check illegal immigration beyond the border.

Both Portman and Schumer began working on immigration policy near the beginning of that long arc of congressional failure. Shortly after Portman graduated from Dartmouth, he joined the staff of a federal commission on immigration policy that submitted its recommendations in 1981. Schumer, who was elected to the U.S. House of Representatives in 1980, immersed himself in the issue four years later as a member of the Judiciary Committee.

From those positions, the two men observed the assaults on worker verification proposals by an unusual right-left coalition that represented employers looking for access to low-wage workers, Hispanic leaders who wary of job discrimination, and civil libertarians who warned of Big Brother intrusiveness.

Then as now, the struggle to reform immigration policy was long and bitter. Congress finally produced legislation in 1986, the Immigration Reform and Control Act (IRCA) despite a policy environment that would be familiar today. Many members of the House and Senate spoke of an urgent need to demonstrate the capacity to deal with a pressing national issue. Others were so exhausted by years of rancorous debate that they yearned to pass an immigration bill in order to put the issue behind them.

At one point in the 1986 debate, when the debate appeared to be deadlocked and the bill was declared dead, House Judiciary Committee Chairman Peter Rodino (D-N.J.) pleaded for action in tones that have often been heard among the Gang of Eight senators who engineered the immigration bill that passed the Senate in June.

“Illegal immigration is not a problem that will simply go away,” said Rodino. “If we do not address it now, if we simply put our heads in the sand, we will allow a pressing problem to become an overwhelming program. The American public is demanding action now. I hope this Congress does not let them down.”<sup>1</sup>

This summer, as the Gang of Eight promoted its bill, an article in the *New Yorker* conveyed a similarly urgent message. It observed that passage of an immigration reform bill “would mark the rare occasion when Washington’s partisans managed, on their own initiative, to set aside their differences and solve a major national problem.”<sup>2</sup>

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In 1986 Congress finally did pass a bill — just barely — in October. A few weeks later, as President Reagan signed it into law, he hailed it as “the product of one of the longest and most difficult legislative undertakings of recent memory.”<sup>3</sup>

Reagan said IRCA’s employer sanctions program, which was built on a foundation of worker verification, was the law’s “key-stone and element”. He assured the public that the bill “will remove the incentive for illegal immigration by eliminating the job opportunities which draw illegal aliens here.”

Reagan’s confident prediction, of course, was wrong. Twenty-seven years later, Congress is once again mired in debate about controlling illegal immigration. Now the long story about the failed effort to eliminate the job magnet can be told through the experiences of Schumer and Portman.

It is a cautionary tale. It raises questions about the risks of passing legislation that, like IRCA, provides sweeping legalization to illegal immigrants, but fails to deliver the reform and control that its advocates promise.

During the June 26 floor debate, as Schumer urged his colleagues to pass the Gang of Eight bill with an overwhelming vote that would propel it into the House with a momentous sense of inevitability, he spoke of a need to solve problems and the opportunity to make history.

“America is crying out that we fix the system,” Schumer declared. “Obviously, this has been a long hard road, and we are on the edge of passing one of the most significant pieces of legislation that this body will have passed in a very long time.”<sup>4</sup>

Portman was a conscientious objector. He insisted that the bill’s provisions for worker verification — under a program called E-Verify — were fatally flawed. “They say everybody wants to go to heaven,” he responded to Schumer. “But not everybody is willing to do the hard things to get there.”<sup>5</sup>

Portman believed an amendment he and Montana Democrat Jon Tester had offered to fortify E-Verify would correct those flaws. But as we will see, the amendment was not brought up for a vote. It was not part of the bill passed by the Senate. A few days later, writing in the *Cincinnati Inquirer*, Portman issued this assessment: “The legislation is comprehensive. It is bipartisan. And without key changes, it will also fail.”

## Two Very Different Senators

Chuck Schumer and Rob Portman are a study in contrasts — of politics, personality, personal style, and legislative technique — that have shaped their political careers and their approaches to immigration reform.

Schumer is a liberal Democrat. He is brash legislator who wants to be in the thick of the action and at the center of attention. He is driven by a will to cut deals, stroke egos, forge alliances, and build consensus to get bills passed. “I love to legislate,” he said in 1998, during his first campaign for the Senate.<sup>6</sup> He described that art this way: “Taking an idea — often not original with me — shaping it, molding it. Building a coalition of people who might not completely agree with it.”

Schumer is a compulsive deal-maker. His urge to reconcile opposite sides of an issue seems to be an extension of his knack for brokering romances within his staff. The *New York Times*, describing Schumer’s inclination to “cajole, nag, and outright pester his staff . . . toward connubial bliss,” called him “the Yenta of the Senate.”<sup>7</sup>

Schumer was a key broker of the Immigration Reform and Control Act of 1986. The *Houston Chronicle* reported then that he “was so determined to forge enough compromises to pass the bill that some lobbyists dubbed him ‘The Monty Hall of Immigration.’” That was a reference to the host of the frenetic television game show “Let’s Make a Deal.”<sup>8</sup>

Schumer now aspires to succeed Harry Reid as Democratic leader,<sup>9</sup> but his raw ambition has been known for decades, even in connection with immigration policy-making. A 1986 *Los Angeles Times* article about the IRCA debate explained the improbable involvement of a congressman from Brooklyn by observing that Schumer had “recognized that taking a leading role could boost his standing among his colleagues.”<sup>10</sup>

Portman is an establishment Republican. He operates in a lower key. He is as understated as Schumer is brash, as polished as Schumer is ruffled. He has the calm physical confidence of an outdoorsman who has kayaked the length of the Rio Grande and who once worked on a Texas cattle ranch.

Despite those interests, *Congressional Quarterly* has written of Portman's "Midwestern wonk character", saying he is "most comfortable rattling off statistics about the deficit."<sup>11</sup> His credentials as former head of the Office of Management and Budget and chief U.S. trade representative are part of a packed resume that made him a finalist to be Mitt Romney's vice presidential running mate.

Portman immersed himself in immigration policy in the late 1970s as a staffer on the Select Commission on Immigration and Refugee Policy. Chaired by the Rev. Theodore Hesburgh, president of Notre Dame, SCIRP comprised 16 members — four from the Senate, four from the House, four cabinet members, and four members of the public. Its final report, issued in 1981, laid the policy foundations on which IRCA was passed five years later.

If Schumer can be seen as the id of immigration policymaking — eager and insistent — Portman is the superego, assessing risks and warning of consequences. If Schumer is its broker, Portman is its quality control engineer. If what Schumer fears most is failure to produce a bill, Portman warns about the futility of passing a defective bill that is bound to fail.

Schumer has been the driving force within the bipartisan Gang of Eight, a group whose efforts Portman viewed with a mixture of admiration and skepticism.

Portman supported the Gang of Eight bill's provisions to address the concerns of important groups, especially the advocates of illegal immigrants who would be put on a path to citizenship and the employers who would be given access to hundreds of thousands of additional immigrant workers.

But he believed that the bill, far from solving the problem of worker verification, would compound it, extending the past failures far into the future. Rather than showing Congress's ability to solve problems, he believed, it would demonstrate its capacity to perpetuate them. He was convinced that the promised reform would prove to be a damaging policy failure.

## IRCA'S Shadow

Portman was haunted by IRCA's failure. He saw it as corrosive not only of immigration control but also of public trust in government. "The 1986 bill casts a long shadow on this place," Portman said in his June 26 exchange with Schumer, "and we've got to be sure we don't repeat those mistakes."<sup>12</sup>

During the long debate that preceded its passage, IRCA was presented as a compromise that would combine the compassion of amnesty with firm measures to ensure that there would not be a future wave of illegal immigration. Its principal Senate sponsor, Alan Simpson (R-Wyo.), said the bill would correct a bizarre contradiction of the law at that time.

The contradiction was intentional, an obvious effort to protect politically well-connected employers. "It's legal to hire an illegal, but it's illegal for the illegal to work", Simpson said. "Isn't that absurd?"<sup>13</sup>

But the worksite enforcement that survived congressional debate to be included in IRCA was so weakened — for reasons we will see later — that it collapsed under an avalanche of counterfeit documents. Workers could pretend to be legal and employers could pretend to believe them.

Moreover, illegal immigrants who had never lived or worked in the United States were able to buy phony affidavits and rent receipts to appear to qualify for amnesty based on equities they had established in the country. Federal officials, swamped by the paperwork and constrained by the law, would later acknowledge the massive fraud.

And so, the problem that Peter Rodino feared would grow if IRCA was not passed exploded anyway, in part *because* of the new law. IRCA produced a cascading torrent of unintended consequences and hastened the expansion of illegal immigration

across the country. Those who were granted legal status attracted relatives and friends who came illegally, many with hopes of receiving legal status in the future.

“Perhaps the most important effect of [the 1986 act] was to spread unauthorized workers from the Southwest to the rest of the country,” wrote University of California at Davis economist Philip Martin in his 2003 book *Promise Unfulfilled*.<sup>14</sup>

By producing results exactly opposite from what it promised, IRCA sowed the seeds of the public distrust and cynicism that today weaken the credibility and undermine the work of would-be immigration reformers.

In 2009 Schumer said public skepticism led to the failure of a bipartisan 2006 comprehensive reform bill sponsored by Sens. Edward Kennedy (D-Mass.) and John McCain (R-Ariz.). “The reason the bill failed is the American people didn’t have faith that there wouldn’t be a future wave of illegal immigrants if we passed that bill”, he said.<sup>15</sup>

There is broad recognition today that in the immigration policy debate the credibility of Congress and the federal government is at stake. Sen. Marco Rubio (R-Fla.), one of the Gang of Eight, said the group’s effort was aimed at “ensuring that the federal government, once and for all, does what it’s supposed to do in a way that’s effective and ensures that we never have this problem again.”<sup>16</sup>

As the Senate moved toward its vote on the Gang of Eight bill in late June, Portman joined Montana Democrat Jon Tester in offering an amendment that aimed to strengthen E-Verify’s ability to empower employers to check whether a new hire is authorized to work. They believed that the version of E-Verify included in the Senate bill was vulnerable to fraud. Their warning echoed a concern stated 32 years earlier in a *New York Times* editorial when the House of Representatives began struggling with the issue:

*Without effective verification, there can be no effective enforcement of the borders. Without effective enforcement, there can be no immigration reform worthy of the name. The choice for the House is clear: legislate or pretend.*<sup>17</sup>

Portman believed that the Senate bill was a form of pretending. He thought that worker verification had been compromised to placate powerful political interests, just as it had been in 1986.

“Look, it is, frankly, not a very popular part of the legislation, and over the years it hasn’t been,” Portman said on June 26. “In 1986 it wasn’t. That is why it was never implemented, because there is sort of an unholy alliance among employers, among those representing labor union members, among those representing certain constituent groups who feel there might be some discrimination or other issues.”<sup>18</sup>

Portman insisted that the Senate must take a firm and public stand: “We believe, and I am passionate about this, as you can tell — that if we don’t fix the workplace, we cannot have an immigration system that works.”

Portman and Tester wanted Senate Majority Leader Harry Reid (D-Nev.) to allow a brief floor discussion of their amendment and a separate vote. Portman explained his frustration with Reid’s refusal:

*And to not have a separate debate and a separate vote on this amendment, on this issue, does not give us the possibility of sending this over to the House with a strong message and maximizing the chance the House of Representatives will see that strong bipartisan vote on this important issue of workplace enforcement. . . . It is that simple.*<sup>19</sup>

Schumer, ironically, said he supported the upgraded E-Verify of the Portman-Tester amendment. But he was trying to guide the bill past a quarrel between Reid and the Judiciary Committee’s chief Republican, Charles Grassley (R-Iowa), over how many amendments would be brought to the floor before the final vote. For Schumer, the Portman amendment had become a nuisance, an obstacle in the way of an historic bill that would bring legalization for millions and provide employers access to hundreds of thousands of additional foreign workers every year.

Schumer shifted from cajoling Portman to deprecating his amendment. “Now, I have heard my good friend from Ohio — and I like his amendment. In fact, my staff worked on it with him. But let’s make no mistake about it. This is a vast bill, and

E-Verify — permanent E-Verify — is in the bill. Maybe it can be improved a little bit, but it is zero-point-zero-one percent of the bill.”

Harry Reid, meanwhile, turned his irritation with Grassley toward Portman. He mocked Portman’s refusal to have the amendment subsumed into the several hundred pages of an amendment that Schumer had just brokered with Sens. Bob Corker (R-Tenn.) and John Hoeven (R-N.D.). That amendment sought to win Republican votes by doubling the Border Patrol and spending another \$42 billion on border security.

Reid, not hiding his irritation, said of Portman: “He wants a big show out here to have a separate vote.”<sup>20</sup>

Portman conceded Reid’s point. Normally untheatrical, Portman believed that the debate would help build a record of firm congressional intent, making a statement that this time Congress was serious.

Reid did not allow the debate. The Portman amendment got no vote. But as we will see, it has not disappeared.

## Lessons of the Select Commission

Portman’s persistence on E-verify is rooted in his experiences as a member of the staff of the Select Commission on Immigration and Refugee Policy.

SCIRP had been created by Congress in 1978 as the nation became increasingly alarmed about illegal immigration. A year earlier a *U.S. News and World Report* cover story warned: “Border Crisis: Illegal Aliens Out of Control!”<sup>21</sup>

Some members of Congress had long been concerned about the issue. In 1972 the House of Representatives passed a bill forbidding the employment of illegal immigrants. The House bill went nowhere in the Senate, where the principal obstacle was James Eastland (D-Miss.), chairman of the Senate Judiciary Committee, who kept it bottled up there. Eastland was protecting the interests of farmers who had become habituated to cheap illegal immigrant labor.

But the sense of public urgency continued to build, Eastland eventually retired, and one of the SCIRP commissioners, Sen. Alan Simpson (R-Wyo.), believed that the slate of illegal immigration should be wiped clean with a general amnesty, a measure he believed “the American people may buy if that see we have an appropriate enforcement mechanism in place so that it isn’t going to happen again.”<sup>22</sup>

Simpson’s partner in the House of Representatives was Romano Mazzoli, a Democrat from Kentucky who said “a worksite program to screen out illegal immigrants will terminate the lure — money and jobs — which attracts undocumented aliens from across the border.”<sup>23</sup>

## For Want of a Nail

The chairman of the commission, the Rev. Theodore Hesburgh, led the move to check future illegal immigration by imposing sanctions on employers of people who lacked authorization to work in the United States.

Hesburgh insisted that the compassion of amnesty must be matched with a firm hand against illegal immigration:

*As important as immigration has been and remains to our country, it is no longer possible to say as George Washington did that we welcome all of the oppressed of the world, or as did the poet, Emma Lazarus, that we would take all of the huddled masses yearning to be free.... if U.S. immigration policy is to serve this nation’s interests, it must be enforced effectively. This nation has a responsibility to its people — citizens and resident aliens — and failure to enforce immigration law means not living up to that responsibility.*<sup>24</sup>

But what mechanism should Congress adopt to provide for enforcement at the worksite? The commissioners agreed that there needed to be some sort of system to screen out unauthorized workers. The idea received broad public support, includ-

ing an editorial in the *New York Times* that compared such a system to the fabled horseshoe nail whose absence led ultimately to the loss of a war.

Wrote the *Times*, “it’s the nail without which the country will keep losing the illegal immigration war.” Meanwhile, “The more the system spins out of control, the more Americans lose patience with Government — and perhaps with any immigration at all.”<sup>25</sup>

As SCIRP announced in a 1981 press release, the commissioners voted 8-7, with one abstention, “to recommend adoption of a “some more secure form of identification than now exists.”<sup>26</sup> The release was written by two communications officers for the commission. One of them was the young Rob Portman.

The commission grappled with the issue of what form the identifier should take.

With several commissioners, most prominently Sen. Edward Kennedy and Secretary of Health and Human Services Patricia Roberts Harris, objecting to Hesburgh’s proposal that workers be required to present a forgery resistant Social Security card, the commission could not agree on what form the identification should take.

Said Harris, “I am against identity cards absolutely and unalterably. It is a historic reversal of a quality of independence and of lack of central government control of individual activities.”<sup>27</sup>

Meanwhile, Mexican American leaders attacked from another direction. Antonia Martinez of the Mexican American Legal Defense and Education Fund (MALDEF) said the identification card system would make Mexican Americans “a suspect class” and give employers an “incentive to stop hiring Hispanics altogether in order to avoid paperwork, disruption of operations, and penalties.”<sup>28</sup>

Alan Simpson battled back with flashes of anger and wit. To civil libertarians he said the card would not be a national ID to be carried at all times but only a tool to be used when applying for a job. To those who feared racial discrimination, he said everyone would have to show eligibility to work, “including bald Anglo skinny guys like me.”<sup>29</sup> To business people who said they didn’t want to have to enforce federal immigration law, he said the requirement would be as routine as withholding taxes from a paycheck.

In its final report, titled “U.S. Immigration Policy and the National Interest”, the commission warned of the stakes of the identification controversy that it had been unable to resolve: “Without the initiation of strong, new efforts to curtail illegal immigration . . . any attempt to regularize the status of millions of undocumented/illegal aliens already living in the United States could serve as an inducement for further illegal immigration.”<sup>30</sup>

## Schumer’s Diplomacy

A few years after Portman learned about immigration from the policy side, Schumer approached it as a legislative challenge. He knew little of the complex substance of the issue, but a breakdown in a 1984 House-Senate conference committee on an early version of IRCA triggered his match-making instincts, his legislative ambitions, and his inclination toward the dramatic.

Schumer began what he called “shuttle diplomacy”<sup>31</sup> between the two sides in an effort to work out a deal. That effort failed, but two years later he was back, determined to break a stalemate between two major stakeholders: the California growers of perishable fruits and vegetables and the farmworkers who were concerned about the growers increasing dependence on illegal-immigrant labor.

As the *New York Times* later described the situation, the legislation was “pinned between growers determined not to run short of farmhands to pick their crops and union leaders who fear that poor foreign workers will undercut wages.”<sup>32</sup>

In a speech on the House floor, Schumer explained how he had become involved in an effort to rescue the bill. “I became convinced that immigration reform was a test of governance. In a way it is a metaphor for governance, if you will. . . . It struck

me as strange that it should fail over the issue of agriculture. After all, agriculture only accounted for 8 to 15 percent of our immigration into America.”<sup>33</sup>

Schumer remained determined even as Sen. Simpson walked away from the discussions in frustration at what he saw as the insatiable demands of the growers for cheap labor.

Simpson talked about mighty agricultural lobby in a 2011 interview.

“There were some very responsible ones, but I grouped them all together as the greedy growers,” Simpson said. “They were tough. Boy, I tell you, they said [that unless they got the foreign workers they wanted] you’ll never see another raisin, or walnuts will disappear from the earth and things will rot in the field.”<sup>34</sup>

Schumer broke the stalemate by offering both sides what they most wanted.

To the growers, he offered a large, legalized workforce, including legal status for anyone who had worked the fields for 90 days in the previous year. Moreover, if the newly legalized workers left the fields to seek work elsewhere, more foreign workers would be brought in as replacements, and they would also be offered a path to citizenship.

To the field workers, Schumer offered the Holy Grail of immigration reform — a path to citizenship that would take them out of the shadows and make it easy for them to leave the grueling, low-paid, seasonal work in the fields. Their union representatives also hoped that the deal would relieve the downward pressure on wages and force the farmers to provide better pay and working conditions.

Schumer and his allies touted the plan as an historic compromise. But critics were aghast at how far the legislation had moved from its original intent to provide legal status only to those who had established equities in American society through years of residence.

“It looks like a cave-in to us,” said a *Washington Post* editorial. “By giving agricultural lobbyists all they could possibly have dreamed of and by offering incredibly generous benefits to illegal agricultural workers, the congressmen have won the support of these groups.”<sup>35</sup>

Peter Rodino, chairman of the House Judiciary Committee, stood by Schumer. He said the plan, while “somewhat unpalatable, was the only political reality I could see” for the bill to survive the Judiciary Committee and make it to the House floor.<sup>36</sup> A supportive *New York Times* editorial that began with the observation that only 15 percent of illegal immigrants worked in agriculture, concluded that “the Schumer provision is arguably a tolerable price for controlling the other 85 percent.”<sup>37</sup>

Simpson reluctantly endorsed Schumer’s deal. “I would never have suggested or recommended” it, he said. “But it became quite clear [it] was necessary for final passage.” Sizing up the entire bill, Simpson said, “It’s a monstrous s.o.b. . . . but it will be as sure as hell a lot better than anything we’ve got now.”<sup>38</sup>

Dan Lungren, a California Republican who nearly killed the bill in late September, described the sense of public frustration and urgency that revived it in early October. “We are under a pressure cooker now,” he said. “People understand we need immigration reform.”<sup>39</sup> Said Bill Richardson (D-N.M.), “The time has come to bite the bullet on immigration reform.”<sup>40</sup>

With this hopeful mix of determination and resignation, Congress broke the five-year legislative logjam and IRCA was passed. In addition to the benefits it provided to growers and workers, the bill promised what the public wanted: reform and control. A majority in Congress were ready to join hands and take a leap of faith that the bill would control illegal immigration.

Those hopes were a major factor in the passage of IRCA. Another factor was the simple desire to end the long fight, to declare victory and go home. Lungren observed that “some people were just exhausted.”<sup>41</sup> Said Mazzoli: “I think everyone wants to get something done.”<sup>42</sup> The bill passed just before midnight, by a vote of 230-166. The tally showed 168 Democrats and 62 Republicans in favor, with 61 Democrats and 105 Republicans opposed.

The bill drew criticism across a broad spectrum, including some Hispanic leaders who said the discrimination they expected from employer sanctions outweighed the benefits of amnesty. Some also warned of bad effects in the agricultural labor market.

Rep. Ed Roybal (D-Calif.) was vociferous on both fronts and outraged at the power of the growers. “We are in favor of immigration reform, but we know for a fact that this bill is not immigration reform,” he said. “This bill is designed to provide a steady flow of cheap labor to the farmers and growers of the United States.”<sup>43</sup>

Republican Sen. Pete Domenici of New Mexico saw nothing good in the worker verification and employment sanctions provisions. He condemned the bill not just as “administrative nightmare for employers,” but also as is “an invitation to fraud and abuse, an invitation to disaster.” Then he added: “It just won’t work.”<sup>44</sup>

Rep. Daub of Nebraska (R) didn’t buy the assurances that amnesty was a one-time only program: “It tells people in other countries that if the United States grants amnesty once, it will do it again.”<sup>45</sup>

## IRCA’s Legacy: Collapsed Enforcement

Schumer had worked relentlessly to close the deal on IRCA. Only after it had been passed did he acknowledge the frailty of its prospects. “The bill is a gamble, a riverboat gamble,” he told the *New York Times*. “There is no guarantee that employer sanctions will work or that amnesty will work. We are headed into uncharted waters.” Reporter Robert Pear added this: “However, Mr. Schumer and others said the current situation was unacceptable.”<sup>46</sup>

The greatest danger in those uncharted waters was the result of IRCA’s inability to set a clear course toward worker identification. Unable to establish consensus, Congress kicked that issue down the road. The act directed the president to devise some “universal employment authorization” system within three years.

That task would be doomed by delay, indecision, incompetence, and wariness about government involvement in an employer’s hiring decisions.

Following the lead of Father Hesburgh, Simpson and Mazzoli had originally sought to establish a straightforward and simplified process of worker identification based on a single document — a more secure Social Security card. But the system written into law allowed job seekers to present a bewildering variety of 27 different documents to establish their identity and authorization to work.

They could use Social Security cards, birth certificates, Native American tribal ID, school ID, military ID, state or local ID, temporary resident card, refugee travel document — and many more. The possibilities for counterfeiting and fraud were endless. The list was a recipe for chaos. One scholar, sizing up its length and variety, called it “a Chinese menu.”<sup>47</sup>

The result was predictable. The system was overwhelmed by a surge of fraudulent documents. Despite warnings that it was vulnerable to fraud, IRCA’s promise of control held up long enough to get the bill to the White House signing ceremony.

## Facing Up to IRCA’s Failure

In 2006 Steward Baker, an assistant secretary in the Department of Homeland Security, acknowledged the flimsiness of the legislation’s prescription for worker identification.

“We thought that just making it illegal to hire illegal immigrants and requiring ID would solve the problem,” Baker said at a Senate hearing. “Instead, employees who wanted jobs or who were here illegally, just got fake IDs. They made up fake Social Security numbers, and that was the end of the enforcement mechanisms.”<sup>48</sup>

Richard Stana, for many years the leading expert on border and immigration issues at the Government Accountability Office (GAO), provided this account of what happened in the real world — the world of aspiring illegal immigrants, counterfeit document entrepreneurs, and employers looking for cheap labor — after passage of IRCA:

*The word got out, at least initially, that the government was serious about this. And in fact, there wasn't a whole lot of pressure on the border for the first two or three years that the act was in force, until it became apparent that the I-9 (worker verification) process could be defeated by false documents and there really wasn't much of an enforcement mechanism internally.<sup>49</sup>*

That absence of worksite enforcement is part of a longstanding and massive inconsistency in congressional policy. On the one hand, Congress has been willing to spend billions of additional dollars to boost the Border Patrol in a highly visible, politically attractive effort to show determination to stop illegal immigration. The Corker-Hoeven amendment to the Gang of Eight bill, for which Schumer served as legislative midwife, is only the most recent example.

But on the other hand, Congress — along with the executive branch — has consistently slighted the worksite enforcement that is intended to turn off the jobs magnet that draws illegal immigrants across the border. Action at the point of hiring is also the most reliable mechanism for denying employment to the estimated 40 percent of illegal immigrants who entered the country legally and then overstayed their visas.

## Barbara Jordan's Call to Action

In 1993, seven years after the passage of IRCA, yet another federal immigration commission, this one headed by former congresswoman and civil rights leader Barbara Jordan, offered another assessment of the situation at the worksite:

*The Commission recommends development and implementation of a simpler, more fraud-resistant system for verifying work authorization. The current system is doubly flawed: it is too susceptible to fraud, particularly through the counterfeiting of documents; and it can lead to increased discrimination against foreign-looking or foreign-sounding authorized workers.<sup>50</sup>*

The commission recommended that President Clinton “immediately initiate and evaluate pilot programs” that would allow employers to use a toll-free telephone number to access computerized data to establish whether a prospective employee was authorized to work in the United States.

The idea encountered resistance from the familiar left-right coalition. Cecilia Munoz of the National Council of La Raza, who had long criticized worksite verification as inevitably biased against anyone who looked or sounded foreign, blasted the Jordan proposal for the same reason.

“This is a classic case of the cure being worse than the disease,” said Munoz, who is now director of the White House Domestic Policy Council and President Obama’s liaison to Hispanics.<sup>51</sup> The thunder from the right was typified by Ohio Republican Steve Chabot’s denunciation of the system as “1-800-Big Brother.”<sup>52</sup>

In the absence of action from the Clinton administration, Rep. Lamar Smith (R-Texas), chairman of the House immigration subcommittee, proposed legislation that would have mandated a nationwide, telephone-based pilot project for worker identification.

But in the full Judiciary Committee it was reduced to a voluntary program that would be limited to California and four other high-immigration states.

As the *Los Angeles Times* reported, Smith had come “under pressure from business interests,” and agreed to make the program voluntary for employers nationwide. That infuriated California Republican Elton Gallegly, who saw enforcement vanishing once again. “The bottom line is I want a bill that does something,” Gallegly said.<sup>53</sup>

The absence of “something,” the void of substance, remains a source of frustration for Susan Martin, the immigration scholar who directed the staff of the Jordan Commission and who lamented the emergence of the “Chinese menu” of documents for worker verification. Said Martin, “I see the period of 1996 and beyond a big failure because by then it was clear where we had to go. But Congress didn’t do much to get there.”<sup>54</sup>

What Congress has done has been to pour billions of dollars into border enforcement, to the dismay of experts like GAO’s Stana.

At a hearing last July in the House of Representatives, Stana framed the issue in the form of a question: “To what extent could additional resources applied to worksite enforcement address illegal immigration as opposed to additional resources applied to the Border Patrol? Achieving an appropriate balance between border and interior enforcement resources could help create a credible framework for deterring those considering illegal entry and overstay.”<sup>55</sup>

## A Question of Credibility

And so, 32 years after Portman issued press releases on SCIRP’s recommendations to Congress, he is still seeking to persuade lawmakers that they must establish a robust system of worker identification.

“I always thought that was the toughest part of immigration reform,” Portman said in an interview. “There are a lot of challenging parts. But how do you come up with a system that protects people’s privacy rights and civil liberties and yet does have an effective workplace enforcement mechanism?”<sup>56</sup>

As detailed in his amendment, Portman wants to expedite the rollout of E-Verify, putting it on a more rapid timetable for large employers than called for in the Senate bill. To improve the accuracy of E-Verify and reduce identity fraud, he wants to strengthen the photo-matching process known as Photo Tool, which enables employers to match an photo ID provided by the employee with a digital photo stored in an E-Verify database. Portman wants to double the federal grant money to states that make their driver’s license photos available to E-Verify. And he would address privacy concerns by prohibiting the use of those shared photos for anything other than E-Verify.

In order to block fraudulent use of Social Security numbers by job seekers, Portman is proposing that the Social Security Administration be required to include information about E-Verify queries in the annual statement sent out to each person. In addition, he wants the Department of Homeland Security to notify individuals when it suspects their Social Security numbers have been misused. Finally, in order to encourage employer confidence and cooperation with the system, he would provide “safe harbor” for those who comply in good faith with the verification system.

Portman’s efforts have been criticized not just by Sen. Schumer, but also by the Service Employees International Union (SEIU), which shares Schumer’s enthusiasm for the Senate bill. “The bill as it stands now provides an E-Verify system that has been road-tested and stamped with enough approval from Labor and Business,” said the SIEU’s Eliseo Medina just before the June 26 debate and vote. “There’s no need for more hocus-pocus on this issue or more concessions.”<sup>57</sup>

America’s Voice, the illegal-immigration advocacy group whose smear campaigns against critics of comprehensive reform have been funded by millions of dollars from the Carnegie Corporation,<sup>58</sup> criticized Portman’s decision to vote against the Senate bill because it did not include his amendment. It dubbed Portman and the 26 other Republicans who opposed the bill the “No Reform Ever Caucus”. Spokeswoman Lynn Tramonte, arguing that the version of E-Verify in the Senate bill was sufficient, said Portman’s position “smacks of political gamesmanship, not leadership.”<sup>59</sup>

Portman is persisting. He says he’s determined to do all he can to ensure that the system works. “It is not about us. It’s not about politics,” he said in the June 26 debate with Schumer. “It is about the substance of the legislation.” He said he and Tester were asking for a 10-minute debate on the Senate floor to demonstrate “what kind of support there is for not just dealing with the border but also dealing with the workplace, which, in my view, is the critical element.”

They didn’t get their debate or their vote. But Portman, Tester, and their allies are still working for what they insist would be a critical fortification of E-Verify. They are driven by IRCA’s history of failure, so persistent and defiant of correction. They want to reverse that history. If they can, they would make some history of their own.

## End Notes

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- <sup>4</sup> *Congressional Record*, June 26, 2013, p. S5247.
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- <sup>8</sup> Judy Wiessler, “Immigration Bill: déjà vu, yet different”, *Houston Chronicle*, October 12, 1986.
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- <sup>19</sup> *Ibid.*
- <sup>20</sup> *Congressional Record*, June 26, 2013, p. S5249.
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