NPG Forum

Ending Illegal Immigration: Make It Unprofitable

By David Simcox

Illegal immigration, increasingly profitable for powerful interests, has added as many as 12.5 million to the U.S. population since 1960. Ending the flow will demand a national consensus to fully fund enforcement, insulate it from pressures, and mandate electronic verification of work eligibility. The public social costs of illegal settlement must be shifted to its promoters and beneficiaries. Magnets to illegal entries in our immigration laws must be ended by restricting family reunification, and curbing abuse of political asylum, temporary protection, and temporary worker programs.

Wetback in 1953 and 1954 was the United States' last, and only truly successful, effort to root out illegal immigration. Using extensive sweeps across the southwest, the U.S. Immigration and Naturalization Service (INS) achieved the Eisenhower administration's goals. Some 2.1 million, mostly Mexican, illegal aliens were removed between 1953 and 1955. While abuses marred the effort, illegal immigration stayed under control for more than a decade.

Notwithstanding its excesses, *Operation Wet-back* left one clear lesson: with political will illegal immigration can be controlled. It showed how a display of firmness could persuade illegals to go home voluntarily and deter others abroad from coming. The lesson is still valid.

Illegal Immigration's Population Effects

But too much has changed for the strategy of episodic mass roundups to work in the nation's current immigration crisis. Such a strategy would be inefficient as well as politically questionable. Thirty years of government neglect of our borders and ports of entry has created a radically new situation. Illegal alien workers are no longer concentrated in agriculture in a few southwestern states, but are in most nooks of the economy. The permanent pool of illegal aliens is now between 5.0 million and 6.0 million and was growing

by 300,000 yearly or more, according to a 1994 INS estimate¹.

Since 1960, illegal immigration has added more than 10 to 12.5 million to the U.S. population, including an estimated 3.5 million U.S.-born minor children of present and former illegals² in 1996. The illegal settlers are no longer overwhelmingly Mexican, most don't work on farms, and, according to INS³, more than half don't enter by sneaking across the border, but come in as "nonimmigrants" (temporary visitors) and then overstay.

Vested interests in illegal immigration have also become more rooted in the last thirty years. Important constituencies must now be reckoned with: low-wage employers; providers of public services and education; landlords and realtors; churches; ethnic lobbies and politicians; human rights and immigrant advocates; and kinship networks.

Without Action, Illegal Immigration to Swell

The collective pursuit of these lobbies of their particular interests adds up to a tenacious social structure committed to encouraging and legitimizing illegal settlement. This structure finds fertile ground in the larger American culture, which regards all growth as good and sees population growth as both validation and sustenance of the

U.S. market economy. For many businessmen and their political spokesmen, the U.S. economic boom and tight labor market of the 1990s have made illegal immigration a virtue that knows no excess.

Conditions portend steady growth of illegal immigration in the coming decades. The world's pool of candidates for illegal entry swells as a function of the 40 million annual increase of the third world's largely underemployed labor force. In the United States, many employers are showing a preference for young foreign workers, whatever their status, over an aging American labor force with its rising health insurance costs and higher wage expectations.

Overcoming these pressures and curbing illegal immigration effectively will require firm political will and a range of responses that are more finely tuned than the broad axe methods of *Operation Wetback*. While variants of some of the proposals discussed here have been enacted by Congress, many of the remaining proposals have poor prospects in the present climate. They are offered for consideration if the political will for action should emerge.

This study is <u>not</u> about eliminating the "root causes" of illegal immigration. Before proceeding, we discard the cherished but spurious "remedies" to illegal settlement that are often put forth by those really favoring delayed action or no action at all.

Overcoming these pressures and curbing illegal immigration effectively will require firm political will.

Spurious Remedy No. 1: Curing the "Push" Factors – Economic stagnation, rapid population growth, and random disasters in the third world are a given. Trade and aid schemes to help immigrant-sending countries may be worth doing for sound economic and humanitarian reasons, but they have only a remote effect on migration – indeed they may stimulate more of it.

More often, quixotic trade and aid schemes are advanced to avoid the tough choices facing this country. Their implicit logic is that the United States must literally rebuild the third world before managing its own borders. But the reality of mass

immigration, fed by world population growth, is right now. Continued delay in acting is setting the United States on an inalterable demographic spiral downward toward lower living standards and environmental degradation.

Spurious Remedy No.2: Defining Illegal Immigration Away – Since immigration's population effects are a prime concern, this analysis also rejects proposals that would simply redefine illegal immigrants as legal. Amnesties, temporary worker and humanitarian arrangements such as temporary protected status or "deferred enforced departure" are seductive redefinitions. They customarily lead to permanent settlement, produce more chain migration and further raise immigration expectations abroad.

Fighting Illegal Immigration on Three Fronts

Determination and Focus in Washington – Washington must strengthen and expand external and, particularly, internal enforcement with increased authority and resources, more and tougher penalties, new deterrents, and overall better management. It must face up to the fact that successful enforcement will offend powerful political clusters and resolve to resist the backlash. While removing the political hobbles from enforcement agencies, our leaders must rid a confused immigration system of its built-in incentives to illegal entry.

All levels of government must look more carefully at the market incentives for illegal immigration: the implicit subsidies to privileged groups, the profit opportunities for business with the socialization of the costs, and the inviting prospect to the would-be illegals of low risks and high returns. These market incentives can be dampened by shifting the costs of immigration to the immigrants themselves and to their employers and sponsors, and away from the taxpayers.

The specific action proposals we summarize here comprise three interrelated lines of action:

- 1. More efficient enforcement and deterrence;
- 2. Shifting the costs of immigration management to its beneficiaries, and
- 3. Turning off the magnets in the legal immigration system.

Each strategy is examined in more detail.

Tightening Internal and External Enforcement

The U.S. government defines two main sources of illegal immigrants:

A) Entry Without Inspection (EWI), meaning those who bypass legal border entry points and sneak into America; and

B) visa abuse, referring to those who come in properly documented for temporary visits and then don't leave. These two modes of entry are not exhaustive. Many ostensibly legal entries involve fraud, imposture and misrepresentation, such as false claims of U.S. citizenship, a common option given the poor security of U.S. vital records. INS estimated in 1994 that 53 percent of the 300,000 illegal aliens they estimate have settled yearly since 1988 are visa abusers.

External Enforcement - Build up at the **Border** – The Clinton Administration since 1992 has increased the Border Patrol from about 4,300 to an expected 9,000 by mid-1999, thanks in large part to the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). The country clearly needs the full 10,000 border patrol officers envisaged in the 1996 law to turn back the estimated four million to five millions trying to slip in each year. Concentration of border patrol forces at main crossing areas around El Paso, Texas and San Ysidro, California, along with triple fencing, new barriers, better lighting and high-tech detective devices at high traffic border areas have shown promise. But even the enlarged border patrol is still stretched thin and now faces new spillover pressures at more isolated Mexican border sectors, at the Canadian border and on the maritime frontiers.

Even as it enlarges the Border Patrol, Washington must use military and state national guard units and their equipment in critical areas during high-traffic periods. The rise of sea-borne alien smuggling argues for more funding for the Coast Guard and U.S. Customs Service. It is not necessary here to prescribe specific border control strategies. The problem has never been that the Departments of Justice, Treasury and Transportation do not know what needs to be done. The positive enforcement lessons of *Operation Hold the Line* in El Paso and subsequently *Operation Gatekeeper* in the San Diego border sector must

be applied at all crossing points. Interdiction at sea must be increased, adding U.S. Navy support and state maritime police forces to the efforts of INS, U.S. Customs and the Coast Guard.

Internal Enforcement: Derailed by Political Ambivalence – Congress has tended to stress border enforcement in recent years because it has been politically unassailable. Since the late 1980s, Washington has enthusiastically appropriated funds for round up and removal of criminal aliens. With funds for deportation more than doubling between 1995 and 1998, deportations have risen from 50,400 to 171,000 in the same period. Although removal of criminal aliens has been the political cover, now about 70 percent of removals are non-criminal illegal aliens.

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The effort has made voluntary departures of illegals rise as well. A bottleneck to even larger deportations is the availability of detention spaces, now limited to about 14,000. INS officials estimated that it could remove every criminal alien if it had 21,000 more detention spaces and 1,500 more employees. The required increase of \$652 million in the detention and deportation budget would be easily amortized by savings on the costs of crime and incarceration and other public services to illegal aliens.⁴

When it comes to enforcement at the workplace, lawmakers are far more ambivalent about making the employer sanctions they themselves have legislated really work. This attitude has been the single greatest obstacle to internal enforcement in the 1990s. Congress' loyalty to employers of illegals and underlying resistance to more regulation of business continues to saps the integrity of enforcement and restricts funding for employer sanctions investigators to just 300 nationwide, despite rapid growth of other INS enforcement personnel.

Washington's tepid support for workplace enforcement appeared to be weakening more in 1998 and 1999. The Labor Department put limits

on the information it will give INS on suspected illegals gained from its own workplace inspections. INS workplace raids continued to decline and INS planners, beset by enforcement funding shortages and employer ill-will, were considering a new enforcement strategy that would eliminate them altogether.⁵ Without determined alternate enforcement measures, INS withdrawal will signal "anything goes" to illegal aliens and their prospective employers. Jobs remain the major magnet for illegal immigrants. Until Washington rigorously bars ineligible aliens from working here, there can be no victory over illegal immigration.

The 1986 employer sanctions law recognized that a better worker identification system might be needed rather than reliance on fraud-prone civil documents. The Commission on Immigration Reform in 1995 called for a phone-in system for employers to match job applicants against a national database of social security and INS information. President Clinton began a pilot program on verification of workers in 1995, a delay of nine years since the project was authorized by Congress. In 1996 Congress considered, but rejected, a national electronic verification program. Such a system is essential to making employer sanctions a true deterrent.

Fraud-resistant identification is vital to good internal enforcement. The technological options for better controls now exceed the political will to use them. Ineligible aliens, rarely challenged by complacent employers, have effectively nullified employer sanctions with an avalanche of fraudulent work eligibility documents. Now, employers have little to gain – and risk penalties for discrimination – by examining ID documents more carefully. The burden of verification must be lifted from employers.

Better Identification and Personal Data on Aliens – The INS must end the gaps and imperfections in its own existing alien database and expand it to include all recipients of visas and border crossing cards and all illegal aliens discovered in the country. Vast technological progress in automated fingerprint identification systems (AFIS) now allows high speed enrollment of masses of persons, cataloging and storage, and prompt retrieval of prints for electronic matching.

INS has used AFIS to record prints of as many as 1.5 million illegal entrants caught in some border areas – a practice that should be generalized. Renewing the requirement abandoned in 1981 that

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all aliens in the United States report their whereabouts annually would strengthen the INS database.

The two databases of Social Security accounts and INS's central index of aliens are powerful tools for confirming work eligibility, tracking and verifying departures of temporary entrants, and monitoring illegal immigrants, particularly criminals and repeat offenders. Measures in the 1996 law facilitate the use of this data for enforcement and prepares the way for use of digitized fingerprints or other biometrics in all individual data files. But the immigrant rights and privacy lobbies will stall these identification measures unless there is determined leadership from Washington.

The 1996 act mandates that the driver's license for all states meets federal security standards and contains the social security number. It also bars illegal aliens from receiving driver's licenses and professional and occupational licenses. The support of the states is essential for these initiatives, and for others, such as barring illegals from purchasing or renting real estate. An up-to-date and secure verification system is critical to make these restrictions work.

Tracking Visa Abusers – Coming and Going – Temporary admission to the United States involves a "two-key" system. The prospective foreign visitor must first convince a U.S. Consular officer abroad that he or she does not intend to overstay. Those receiving visas are "inspected" again on entry by INS officials.

With seven to eight million applicants for visas a year, the time available to Consuls for each individual screening continues to shrink. Consular staffing must be increased and readiness, accuracy and volume of background data on applicants must be improved. More fundamental is the de-politicizing of the State Department's management of visa issuance and insistence on strict interpretation of the law's criteria of eligibility.

There should be more use of INS "pre-inspection," as the 1996 IIRIRA promises, of U.S.-bound

travelers at major international airports abroad. It is far more effective to stop overstayers, terrorists, or frivolous asylum seekers before they reach U.S. soil. U.S. law now permits waiver of visas for visitors from countries that have low overstay rates. Inverting this approach would be effective: suspend issuance of all discretionary, temporary visas for countries whose overstay rates exceed a certain threshold.

Finding Overstayers in the U.S. – The State Department and INS must cooperate closely in developing a secure system for tracking nonimmigrant visitors from the receipt of their visa abroad. Individual case files should include personal data, the visa holder's declared personal, family, school or business contacts in the United States and travel arrangements.

Automated fingerprinting, which is non-invasive, should be required for most non-diplomatic and official visa applicants everywhere, and certainly for travelers from countries with a high incidence of overstaying. Overstays could be investigated here by matching personal and biometric data on suspected visa recipients against social security rolls, driver's license issuances, tax and criminal records, U.S. Post Office address files, and records of gun purchasers (federal prohibitions on gun ownership by illegal aliens are not being enforced). Nonimmigrant aliens in the United States three months or more should be required to report their whereabouts to the Justice Department at least yearly. As both a deterrent and as a source of revenue, the State Department and INS should make much more frequent use of departure bonds and non-refundable round-trip air tickets for highrisk visa holders.

Here again, Congress has blown hot and cold on reducing visas overstays. After legislating a major INS program in 1996 to track the entry and exit of foreign visitors, in 1998 Congress delayed the program for two and a half years at border ports of entry because of complaints from local civic and business leaders.

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INS must improve its spotty record of acting on leads supplied by other agencies and concerned citizens. Worth a try would be a well advertised 24-hour 1-800 hotline available for interested citizens to report suspected immigration violations. The agency should provide frequent, widely disseminated reports on the use of these leads.

Shifting the Costs: Making Illegal Immigration Unprofitable

Paying for Better Immigration Control – The task is to mount and maintain the political will to deploy – and pay for– the people, technology and barriers known to be effective. The build up of these enforcement agencies is expensive. Far more of the rising costs of immigration regulation must be borne by the beneficiaries of immigration: the legal and illegal immigrants themselves, their families, employers and labor contractors, and ethnic advocacies.

While this principle may seem mercenary to some, INS has increasingly applied it in recent years. In 1994, 43.8 percent of the agency's operating budget came from fees for immigration benefits, user fees, fines, confiscations and bond forfeitures. The amount now collected, nearly \$800 million, could be readily doubled in two or three years with more realistic fees for underpriced services, and with heftier and better collected fines and forfeitures. INS moved in the right direction in 1998 by increasing its fees to immigrants and their sponsors from as little as \$20 to as much as \$250 for 27 different services, such as petitions, waivers, permits, ID and travel documents and naturalization. Worth reviving is the White House's unsuccessful February 1995 proposal for a border crossing fee to raise \$400 million a year for immigration control. INS was also on the right track in 1994 in proposing, unsuccessfully, a new fee of \$130 to apply for political asylum.

Residence in the United States is one of the world's most valuable privileges. Yet U.S. tax-payers now pay for much of the cost of granting it, when the country should share in the large increase in lifetime earnings most immigrants will realize. Enlightened but unsuccessful legislation in 1989, for example, proposed a 15 percent tax on salaries paid by employers to temporary foreign workers. The Commission on Immigration Reform (CIR) in 1995 recommended a similar levy. Lawmakers endorsed the concept in 1998 by imposing a \$500 fee on employers for each foreign

worker beyond a certain threshold imported in the expanded H1-B temporary skilled worker program. A similar tax should be applied to employers of illegal aliens. More recovery for the Treasury of a portion of immigrants' and employers' windfalls from immigration, and more sharing of it with state and local governments would encourage their support for enforcement, help cover their large hidden social costs, and dampen the hyper-demand for U.S. residence.

The Informal Economy, Magnet and Sustenance for Illegal Immigrants – The underground, or "informal," economy interacts with and supports the formal U.S. economy in intimate and often pernicious ways, from low cost subcontracting of production of name-brand items, to the semi-peonage system of farm labor contractors in perishable crop agriculture, to industrial home work and street vending.

Policy makers have overlooked that INS's core missions have ballooned with the tripling of the immigrant population in the last quarter century.

Findings of a 1992 Labor Department review indicate that the informal economy in 1994 cost the country about \$110 billion in lost revenue⁷. An INS survey of former illegal aliens confirms their heavy presence in the informal sector. Fully 10.0 percent of them claimed to have worked for less than the legal minimum wage, compared to 2 percent of the overall U.S. labor force, and 13 percent were not paid for all hours worked, according to surveys of former illegal aliens done by INS in 1989 and 1992.

Combating the informal economy calls for more resources and backing for the labor and safety compliance agencies, more cooperation among them and with INS, and more involvement of state and local agencies in immigration enforcement. State and federal labor agencies must have the power, now held only by INS, to impose fines on employers of illegal aliens. Fines should be increased and collected more diligently. Cooperating state and local agencies should share in the fines and forfeitures from delinquent employers to defray the cost of this additional mission. The Labor Department's authority to sequester goods pro-

duced under flagrant violations of the Fair Labor Standards Act should be extended to egregious immigration violations.

Shared Liability between Firms and Contractors – A serious deterrent to labor and immigration violations would be to make contracting firms or farmers share liability for the violations of their contractors. The exposure of those firms to fines and the shame of big-name marketers of garments, electronics, furniture and processed meats being publicly linked with sweatshop conditions and exploitation would be important deterrents.

Congress bowed to the powerful farm lobby in 1986 by barring the INS from entering open fields without a warrant to check for unlawful workers. Since then, arrests of illegals on farms have fallen by 75,000 a year and the percentage of the paid farm workforce that is illegal has risen from 9 percent to 42 percent⁸. INS must be re-authorized to enter open fields without warrants as needed, and farmers in violation should share the sanctions imposed on their labor contractors.

Private Sector Help for a Swamped INS – Washington over time has seriously degraded INS's effectiveness by heaping new obligations on it without a comparable increase in support. Policy makers have overlooked that the agency's core missions have ballooned with the tripling of the immigrant population in the last quarter century. Even if INS is able to recover from its chronic administrative disarray, the agency on its own will not have the resources to end illegal immigration.

Privatizing some of the record-keeping and monitoring aspects of immigration enforcement is a way out, one that also transfers some of the costs of enforcement to illegal immigrants and their patrons. Reliance on the private sector in this field is not new: Internal Revenue Service and other government agencies now use private collection agencies. Prisons are operated by private firms. And private bonding companies now use bounty hunters to bring in fugitive deportable aliens to INS. The 1986 amnesty for aliens was administered by private nonprofit entities.

A major potential deterrent and market dampener would be legislation making employers who knowingly hire illegal aliens liable for at least onehalf the cost of the public assistance and services those aliens and their dependents receive during their period of employment. Using INS lists of employers in violation, private collection agencies, law firms, or other private contractors would determine the amount of the firm's liability for restitution and proceed through negotiation, administrative action or litigation to recover that amount for the state or federal government on contingency. Successful privatization here could open the door for private sector supervision of other temporary categories, such as tourists, students, "temporary protected status," and temporary workers.

Reforming Legal Immigration to Turn-off Illegal Entry

By making family reunification, humanitarian concern, and - most recently - "diversity" sacrosanct, the U.S. ideology of legal immigration provides both a motivation and a means for illegal immigration. The promise to new immigrants of ultimate reunification of their families here has created high expectation of resettlement. While 3.5 million family members are nominally required to wait for periods up to 20 years for rationed immigration visas, a feeling of entitlement leads many to enter illegally and do their waiting here. The existence of this massive backlog nurtures illegal settlement, and invites quick fixes by politicians under pressure by ethnic lobbies to end family separations. An example was Washington's willingness in 1988 to exempt from deportation scores of thousands of undocumented dependents of amnestied illegal aliens, later blessed by law in 1990.

Annual immigration lotteries since 1986 have created expectations among millions of applicants abroad. A portentous measure of the pent-up demand for resettlement in the United States is the 1994 lottery, which drew 7.5 million applicants for 55,000 slots.

Real or prospective amnesties, group waivers of deportation, or special temporary protection arrangements for presumably endangered national groups also stimulate illegal immigration. An estimated 500,000 to 600,000 aliens, mostly ineligible farm workers, entered the United States in 1987 and 1988 to fraudulently claim amnesty under the 1986 Immigration Reform and Control Act. In early 1999, Washington's decision to respond to Central America's 1998 hurricane disaster with "temporary protected status" for Central Americans illegally in the country stimulated an even larger influx from that region.

Family Chains as Magnets – The opening of more doors to the logic of family reunification, creates new flows of legal and illegal immigrants in the future. Illegal immigration would be chilled by:

- ◆ Sizable reductions of immigrant and refugee admissions now approaching 1.0 million yearly;
- ◆ Limiting family reunification to spouses and minor children of citizens;
- ◆ Ending immigration lotteries and phasing out the 4.0 million-person worldwide waiting list in favor of one-time, simultaneous admission of eligible immediate family groups.

Political Asylum an Unintended Lure – The most idealistic, impractical, and reckless feature of the legal immigration structure, is political asylum – a critical magnet for illegal immigration. NPG's proposals for reform of the philosophy and process of political asylum appear in the 1995 NPG Forum paper: "Political Asylum: Achilles Heel of Immigration Control." Its key proposals are: 1) making asylum temporary only, ending it when the conditions improve in the asylees' source countries; and 2) rejecting all asylum claims from persons who are citizens or residents of states deemed by the U.S. government to have adequate human rights conditions.

Conclusion: Choose or be Chosen

The record of three-decades of mounting illegal immigration points to some sobering conclusions. Turning it around will take a degree of political will and perseverance that has been lacking so far in all Washington administrations since Eisenhower. Even a massive, coordinated and well-funded effort involving federal and local agencies and private sector contractors will need five years or more to make major reductions in the inflow and the size of the resident illegal population.

The rising numbers of visa overstayers demands more rigorous overseas selection and far more active internal enforcement than the United States has exerted so far. The budget increases INS has gained since 1994 must be maintained and extended to those deliberately starved functions, such as worksite enforcement, that powerful economic interests see as threatening. Such progress

will not come easily in today's tight labor markets and deep ideological divisions about the civic responsibilities of business.

But efforts of emasculate immigration control in the guise of "reorganizing" the INS must be resisted. However effective, INS cannot do it alone. New monitoring and enforcement arrangements involving a much wider range of public and private sector participants must be developed. To overcome bureaucratic inertia and turf-protection and special interest tinkering will require a firm

and persistent national political commitment to the task as a priority interest.

All of this is a tall order for a U.S. political system with a notoriously short attention span. But the alternative is unacceptable. Inaction has meant growing flows of illegal immigration. If not closely regulated, millions of aliens and their smugglers and patrons will make momentous decisions about America's demographic, social and environmental future that the nation as a whole deserves to make for itself.



Notes

1. Robert Warren (1994). "Estimates of the Unauthorized Immigrant Population Residing in the United States, by Country of Origin and State of Residence: October 1992," Washington: Immigration and Naturalization Service.

David Simcox (1994). "INS Estimates 4.0 million Illegals Present in 1994: Estimate Seen as Low." *Immigration Review*. No. 18, Summer 1994.

2. Based on an estimate of 8 million persons in the U.S. in 1994 whose presence here was made possible by an initial illegal entry. Further assumed is that 40 percent of this population are women of child-bearing age present in the United States for an average of 10 years with an average annual birth rate of 93 per 1000. This yields an estimate of 3 million U.S.-born children in 1996.

- 3. Robert Warren (1994).
- 4. New York Times, December 15, 1998
- 5. "INS is Scaling Back its Workplace Raids." *Chicago Tribune*, January 17, 1999.
- 6. Ibid.
- 7. U.S. Commission on Immigration Reform. U.S. Immigration Policy: Restoring Credibility A Report to Congress. Washington: GPO, 1994.
- 8. David Simcox. "Immigration and the Informalization of the Economy." *Population and Environment*, January, 1997.
- 9. Rural Migration News, January 16, 1999.

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