



**IMMIGRATION POLICY CENTER
SPECIAL REPORT**

BREAKING DOWN THE PROBLEMS



**WHAT'S WRONG WITH
OUR IMMIGRATION SYSTEM?**

OCTOBER 2009

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BREAKING DOWN THE PROBLEMS: WHAT'S WRONG WITH OUR IMMIGRATION SYSTEM?

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The Immigration Policy Center's *Special Reports* are our most in-depth publications which provide detailed analyses of special topics in U.S. immigration policy.

ABOUT THE IMMIGRATION POLICY CENTER

The Immigration Policy Center, established in 2003, is the policy arm of the American Immigration Council. IPC's mission is to shape a rational national conversation on immigration and immigrant integration. Through its research and analysis, IPC provides policymakers, the media, and the general public with accurate information about the role of immigrants and immigration policy on U.S. society. IPC reports and materials are widely disseminated and relied upon by press and policymakers. IPC staff regularly serves as experts to leaders on Capitol Hill, opinion-makers, and the media. IPC is a non-partisan organization that neither supports nor opposes any political party or candidate for office. Visit our website at www.immigrationpolicy.org and our blog at www.immigrationimpact.com.

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EXECUTIVE SUMMARY

Over the past two decades, America has experienced dramatic political, cultural, and scientific advances that have redefined its role in the world. From the rapid expansion of new technologies that have changed the way we communicate, to two costly and consuming wars, to drastic economic changes, it is obvious that this is not the America of the 1990s. Yet, while the country changes and evolves, our immigration system remains frozen in time, locked into legal limits on immigration that were set in 1990 and subsequently restricted by laws passed in 1996. The impact of this outdated and inefficient immigration system on American society has been far-reaching. And as the problems have grown, so too has the level of emotion. Inflamed rhetoric often obscures the genuine problems and therefore hinders consensus on effective solutions. The first step in solving our immigration crisis is to understand the complex nature of these problems.

THE PROBLEMS

It is misleading to characterize our immigration crisis as solely a question of what to do about the 11 to 12 million unauthorized immigrants living in the United States. Our problems extend to a much **broader range of issues.**

For instance:

- **Insufficient numbers of visas** are made available to bring in either high-skilled or less-skilled workers at the levels needed to meet the changing needs of the U.S. economy and labor market.
- **Arbitrary visa caps** have created long backlogs of family members who must wait up to 20 years to be reunited with family living in the United States.
- **Wage and workplace violations** by unscrupulous employers who exploit immigrant workers are undercutting honest businesses and harming **all** workers.
- **Inadequate government infrastructure** is delaying the integration of immigrants who want to become U.S. citizens.

Furthermore, the lack of a comprehensive federal solution has created a range of lopsided, enforcement-only initiatives that have cost the country billions of dollars, while doing little to impede the flow of unauthorized immigrants. In fact, the current immigration system's structural failures, and the inadequate or misguided responses to these failures, have led to the largest unauthorized population in our nation's history.

This paper, while not an exhaustive study of every problem within our immigration system, addresses several key areas and discusses issues stemming from the lack of federal response and long-delayed immigration reform. This paper begins with an explanation of how our current immigration system functions, and then defines and discusses the problems under two broad categories: **Structural Failure** and **Inadequate Responses**.

WHY DON'T THEY JUST GET IN LINE?

Permanent Legal Immigration Is Limited and Difficult. There are few legal ways for most immigrants to come to the United States, and all are restricted to certain categories of persons. For the vast majority of unauthorized immigrants, the idea that they could be legal if they would just “get in line” is incorrect. **There is no “line” for most unauthorized immigrants.** If you don’t fit into one of the limited categories, you cannot qualify for permanent legal status.

STRUCTURAL FAILURE

Our nation’s immigration laws are outdated and inadequate to meet the needs of the United States in the 21st century.

Failures of the outdated immigration system have created the following issues:

- Outdated visa caps that divide families and hurt U.S. businesses.
- Deterioration of workplace conditions that harm **all** workers.
- Lengthy backlogs on visa and citizenship applications.
- 12 million unauthorized people living in limbo in the country.
- 4 million U.S.-citizen children living in mixed status families with at least one parent who is an unauthorized immigrant.

INADEQUATE RESPONSES

The U.S. government has tried without success to stamp out unauthorized immigration through enforcement efforts without a corresponding effort to address the pull of jobs and family. This approach has deepened the immigration crisis.

A lopsided response to unauthorized immigration has created the following issues:

- Despite spending billions of dollars, the problem is not going away.
- Expensive and ineffective enforcement measures are not working.
- The U.S. border has become more dangerous than ever.

This paper will be followed by a series of solutions-oriented papers that discuss potential fixes to our nation’s immigration crisis in the areas of *Legalization, Family Immigration, Employment Verification, Citizenship and Naturalization, Enforcement, and Future Flow*. While addressed individually, the key to effective immigration reform lies in resolving these issues together through a comprehensive solution that serves our nation’s economic and national-security interests.

PART I: HOW THE IMMIGRATION SYSTEM CURRENTLY FUNCTIONS

There are many misconceptions about how the legal immigration system works, leading many Americans to believe that unauthorized immigrants could be legal if they would just “get in line.” However, **there was never any “line” for the vast majority of unauthorized immigrants.** They do not have the necessary family relationships or employment connections to apply for legal entry, and very few qualify for refugee status. Those few who might have been eligible for a visa would have faced years or even decades of waiting time.

Permanent Legal Immigration is Limited and Difficult

There are limited **legal** ways for immigrants to come to the United States, and all are restricted to certain categories of persons. The current numerical caps were instituted decades ago and have not been responsive to our nation’s changing economic and labor demands. There are four main ways of immigrating legally and permanently to the United States. If you don’t fit into one these categories, you cannot qualify for permanent legal status:

- **Family-based immigration.** A legal, qualified family member in the United States can seek permission (by petition) to bring in certain eligible foreign-born family members. U.S. citizens can petition for “green cards”¹ for their spouses, parents, children, and siblings. Legal Permanent Residents (green-card holders) can petition for their spouses and unmarried children. No other family relationships qualify. In all cases, the legal resident or U.S.-citizen family member must demonstrate an income level above the federal poverty line, and legally commit to support those family members brought to the United States.²
- **Employment-based immigration.** People who wish to come to the United States on an employment-based visa, and who fit into one of the employment categories, must have a job offer in the United States and an employer willing to sponsor him or her – a process that can be very expensive and time consuming. Most of the qualifying professions are high-skilled and require high levels of education, targeting professionals like scientists, professors, and multinational executives,³ and there are insufficient legal channels for low-skilled workers.
- **Humanitarian-based immigration.** Each year the U.S. government provides protection within U.S. borders to a limited number of persons who are fleeing persecution in their homelands. These individuals must prove that they have a “well-founded fear of persecution” based on their race, religion, membership in a social group, political opinion, or national origin.⁴
- **Other.** There are other, limited ways that people may obtain a green card, such as the diversity lottery.⁵ However, these mechanisms are highly restrictive and limited to extremely small groups of qualified individuals.

Nonimmigrant Visas are Complicated, Confusing, and Often Unavailable When Needed

People also come to the United States as “non-immigrants” for temporary periods of time. The nonimmigrant visa category covers people like tourists, high-skilled workers, musicians on tour, students, farmworkers, and visiting scientists. While many of these workers truly are temporary, others aspire to remain in the United States but cannot do so because of the legal limitations described above.

PART II: STRUCTURAL FAILURE

U.S. immigration laws are outdated and inadequate to meet the needs of our society in the 21st century. The following five points highlight the areas of the immigration system that are broken and need remedy within a full and comprehensive reform package.

- 1. Family-based immigration backlogs mean that family members remain separated for long periods of time.** Immigrants eligible to apply for family-based visas must wait for years, even decades, to reunite with their family members. There are three reasons for the enormous backlogs:
 - **Demand exceeds supply.** U.S. citizens are entitled to apply for visas for spouses, children, and parents without regard to overall caps, but other close family members, including children over the age of 21, must wait years to reunite with loved ones. For example, an immigrant residing in the United States legally with a green card must currently wait at least five years to receive a green card for her minor child. A naturalized U.S. citizen from the Philippines must wait over 20 years before obtaining a green card for a brother or sister.⁶
 - **Per-country limits create long backlogs in certain countries.** In 1976, Congress created equal per-country caps for all countries in the world, meaning that Mexico is assigned the same annual quota as Iceland or Belgium. The result is that families from high-immigration countries—such as India, China, the Philippines, and Mexico—must wait disproportionately longer than families from low-demand countries. For example, if the married son or daughter of a U.S. citizen is a resident of Mexico, then he or she must wait 16 years for a U.S. green card.⁷
 - **Processing delays and inconsistent policies heighten problems and create more illegal entry.** In the past, lack of resources and overly rigid bureaucratic procedures have led to breakdowns in the immigration system’s ability to conduct quick background checks, coordinate visa procedures between the Department of Homeland Security (DHS) and the Department of State, or make common-sense provisions for family reunification. While U.S. citizens and Legal Permanent Residents wait their turn to get a green card for their family member, it is nearly impossible for that family member to receive permission even to visit the United States. Mothers, fathers, and children therefore face either years of separation or the risks inherent in entering the United States illegally.

CASE IN POINT

John D. Park immigrated to the United States with his family from Korea when he was ten years old. His family’s temporary visas were sponsored by a California company. While in the United States, John worked hard to learn English, and by his senior year in high school was a straight-A student with a 4.55 grade-point average, finishing at the top of his class. Just before college, he received word that his visa would soon expire, so he pursued the idea of having

his U.S.-born sisters sponsor him for a green card. However, he soon found out that the long sibling backlog meant at least an eleven-year wait for a visa. By the age of 17, John had become an unauthorized immigrant. Without legal status, John would not be eligible for legal work or higher education. Returning to Korea meant living without his family in a country that he left as a child.

- 2. The employment-based visa system is not responsive to employers' labor needs.** Each year there are 140,000 employment-based green cards available to qualified immigrants. The number was set years ago by Congress, without regard to real labor-market needs, and has not been updated to conform to current economic realities. The numbers of workers who are necessary to fill gaps in our labor supply changes depending on a wide range of economic factors. In times of economic recession, like now, the current limit on employment-based green cards may be sufficient. However, the recession will end, the economy will rebound, and U.S. employers will need more workers. Some employers may need permanent workers to fill permanent jobs; others may require temporary workers to fill transitory gaps in certain industries or during particular seasons. In some cases, employers may only be able to obtain visas for temporary workers when they actually need permanent workers. Workers who arrive on temporary visas may find permanent jobs, but are unable to adjust to a permanent visa under the current system. In other words, the current system does not have the flexibility needed to respond to the country's evolving economic needs.

Furthermore, the current visa allocation system leaves few visas for less-skilled workers. The types of jobs most associated with unauthorized immigrants are the least likely to qualify for work visas. Each year, the number of green cards available for less-skilled workers—such as hotel workers, landscapers, and construction workers—is limited to just **5,000 for the entire United States**. The insufficient number of green cards available for these types of jobs is at the heart of the unauthorized immigration problem. Employers in restaurants, hotels, and other service-sector jobs who want to petition for immigrant workers because the local labor pool does not meet their demand face visa backlogs approaching 10 years. As a result, the immigration system provides no effective legal avenue for people abroad who wish to come to the United States to work in industries that need them. Until there are more legal avenues for employers to hire immigrant workers to meet economic demands, unauthorized immigration will continue to fill the gap, and we will not be able to regain control over immigration.

- 3. Millions of unauthorized workers and other immigrants, many of whom have U.S.-citizen families, reside in the United States with no means to become legal residents.** Moreover, the lack of flexibility and discretion in existing immigration law further weakens their chance to obtain legal status. Efforts to penalize behavior such as overstaying a visa or working without authorization often produce unintended and illogical results. Many U.S. citizens are shocked to find that their immigrant spouse is not eligible for legal status because of non-criminal immigration violations, such as overstaying a visa (even when it happened many years in the past). In fact, there are severe consequences with few safety valves for legitimate exceptions or waivers. For example, the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRAIRA) created bars on admission to the United States for individuals who have been unlawfully present in the country for any period of time. Individuals who have been unlawfully present for more than 180 days, but less than one year, and who voluntarily depart, may not reenter the country for three years. People unlawfully present for an aggregate period of one

year or more are subject to a ten-year bar. Because of such laws, even people otherwise eligible for employment-based or family-based visas are unable to adjust their status in the United States, and if they leave the country in order to get a visa at a U.S. consulate abroad, they cannot reenter the United States until the three- or ten-year period has passed. This means that unauthorized immigrants in the United States who are eligible for visas are encouraged to remain here illegally rather than risk being separated from family members for three years, ten years, or even permanently.

CASE IN POINT

Juan Jose Morales was married to a U.S. citizen and was eligible for a visa. However, because he had been present in the United States without authorization, he was subject to the bars on admissibility. He remained illegally in the United States, rather than leaving to obtain his visa and then being subject to a bar on re-entry. He decided to go to Mexico to visit his mother for Mother's Day in 2003, and used a smuggler to return to his home and his wife. Unfortunately, Morales never made it home to his family because the smuggler left him and 18 other immigrants to suffocate to death in a trailer.⁸

- 4. Unscrupulous employers who hire unauthorized workers in order to maximize profits are lowering wages and working conditions for ALL workers.** Lack of legal status makes unauthorized workers extremely vulnerable to abuse by unscrupulous employers, and at the same time jeopardizes the competitiveness of those employers who try to follow the law. Because they have few labor protections and are often fearful of asserting their rights, joining an organizing campaign, or complaining about poor workplace conditions, unauthorized workers often endure low wages and poor, even dangerous, working conditions. Immigrant workers are often victims of wage theft by employers who pay less than minimum wage or do not pay them at all. This, in turn, is bad for all U.S. workers. When vulnerable unauthorized workers are willing to accept substandard wages and working conditions, it undermines U.S. workers in many industries, and makes it difficult for law-abiding employers to compete with those employers who hire unauthorized workers in order to make a bigger profit.

Researchers have found that on-the-job death rates for Latino workers are disproportionately high. Since records were first collected in 1992, statistics have shown that Latino workers are killed in the workplace at a higher rate than workers of other ethnic or racial groups. Immigrants are especially vulnerable because they tend to work in dangerous industries such as construction and agriculture, they may not be given the same safety equipment as other workers, and their lack of English skills may mean that they cannot read safety warnings. According to the Bureau of Labor Statistics, workplace deaths involving Latinos peaked in 2006, when 990 fatal injuries were reported.⁹ Recently, the gap between Latino and non-Latino workers has narrowed, but Mexican-born workers still accounted for 42 percent of foreign-born-worker deaths—the most of any group—in 2008.¹⁰

CASE IN POINT

In one of the most egregious examples of exploitation, owners of the Agriprocessors meat packing plant in Postville, Iowa, have been accused of a range of labor-law violations, such as sexual harassment, child labor (including 17-hour work days), and abuse (including one incident in which a floor supervisor allegedly blindfolded an immigrant with duct tape, “then took one of the meat hooks and hit the Guatemalan with it”).¹¹

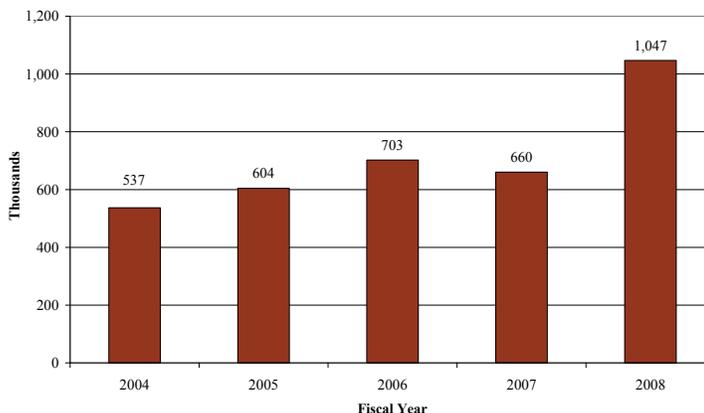
5. **Inadequate infrastructure causes delays in the integration of immigrants who want to become U.S. citizens.** Most Americans agree that we want immigrants to integrate into American culture, learn English, and become U.S. citizens. Immigrant integration benefits everyone because it enables immigrants to realize their full potential, contribute more to the U.S. economy, and develop deeper community ties. However, the United States has no comprehensive integration strategy. For example, despite a significant increase in demand for English classes, funding has repeatedly been cut for English as a Second Language (ESL) programs. As a result, there are currently wait lists of one to three years for adult ESL classes in most cities.¹²

Naturalization is a powerful sign and symbol of integration into U.S. society. In order to become a U.S. citizen, an immigrant must first reside in the United States continuously for five years as a Legal Permanent Resident (three years in the case of the spouse of a U.S. citizen), or serve for at least one year in the U.S. Armed Forces. He or she must be of “good moral character” as determined by a criminal background check with the Federal Bureau of Investigation (FBI), be proficient in spoken and written English, and demonstrate a basic understanding of U.S. government and history. And the would-be citizen must take an Oath of Allegiance to the United States, its Constitution, and its laws, and renounce allegiance to any other nation. Only by becoming a U.S. citizen can an immigrant vote in federal and most state elections, serve on a jury, run for public office, hold jobs that require a security clearance, or travel abroad for unrestricted periods of time. Moreover, only U.S. citizens can sponsor their siblings and married adult children to come to the United States, or bring their spouses, unmarried minor children, or parents here without being subjected to long waiting times.

Many immigrants are eager to demonstrate their commitment to this country by becoming U.S. citizens, but they face a costly naturalization process filled with bureaucratic obstacles and unfair delays.

- Naturalizations have been on the rise since the mid-1980s. According to a March 2009 report by the Office of Immigration Statistics (OIS), the “average annual number of persons naturalizing increased from less than 120,000 during the 1950s and 1960s to 210,000 during the 1980s, 500,000 during the 1990s and to 680,000 during 2000 to 2008.” More than one million immigrants became naturalized citizens in Fiscal Year (FY) 2008 {Figure 1}.¹³

Figure 1: New Naturalized Citizens in the United States, FY 2004-2008



Source: Office of Immigration Statistics, Department of Homeland Security, *2008 Yearbook of Immigration Statistics*, Table 21.

- The number of naturalization applications filed with USCIS nearly doubled from 730,000 to 1,380,000 in 2007.¹⁴
- Last year, however, the number of immigrants applying to become U.S. citizens plunged 62 percent, as the cost of naturalization rose and the economy soured.¹⁵

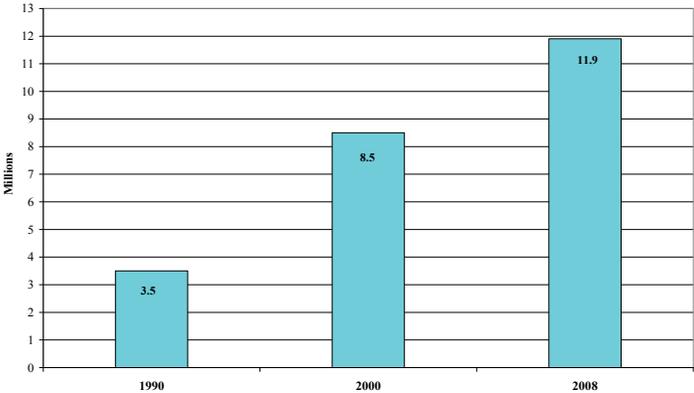
Since the early 1990s, the federal government has repeatedly failed to allocate the resources needed to effectively process the growing number of naturalization applications. The processing of applications for all immigration benefits, including naturalization, has been funded since 1988 primarily through fees paid by applicants themselves—not through direct congressional appropriations. The revenue generated by fees has not only proven insufficient to cover the costs of processing an ever-fluctuating number of applications, but is used to pay for other administrative tasks that are not directly related to the actual processing of applications. As a result, the processing of applications for naturalization, Legal Permanent Residence, and other immigration benefits has become a perpetually underfunded operation subject to chronic backlogs and delays.¹⁶ Yet the application fees continue to increase, which may prevent or delay an immigrant's opportunity to naturalize. In addition, certain elderly and disabled immigrants have difficulty meeting the eligibility requirements. Because of the problems in the naturalization process, immigrants who want to become U.S. citizens have difficulty doing so. The result of these delays is that, for the first time in many years, the number of immigrants attempting to naturalize has gone down.

PART III: INADEQUATE RESPONSES

For more than two decades, the U.S. government has tried to stamp out unauthorized immigration through enforcement efforts at the border and in the interior of the country, but without success—and without fundamentally reforming the broken immigration system that spurs unauthorized immigration in the first place. Missing has been a corresponding effort to address the inevitable pull of jobs and family. The following five points discuss this “enforcement only” strategy which has merely deepened the crisis:

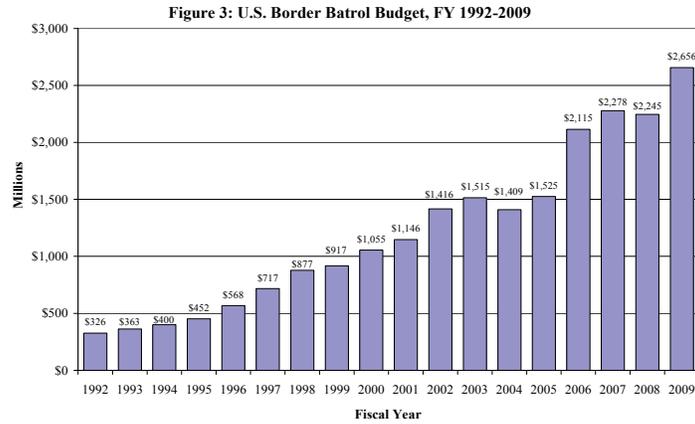
6. The United States has spent billions of dollars on ineffective border enforcement. At the same time that spending on immigration enforcement has skyrocketed, the number of undocumented immigrants in the United States has roughly *tripled* from 3.5 million in 1990 to 11.9 million in 2008 {Figure 2}.¹⁷ (Research has shown that recent decreases in the number of unauthorized border crossings have little to do with enforcement, but are due primarily to the downturn in the U.S. economy.) Furthermore, the Pew Hispanic Center estimates that between 25 percent and 40 percent of all unauthorized immigrants do *not* sneak across the border, but come to the United States on valid visas and then stay after their visas expire, meaning that border enforcement is irrelevant to a large portion of the unauthorized population.¹⁸

Figure 2: Unauthorized Immigrants in the United States, 1990, 2000 & 2008

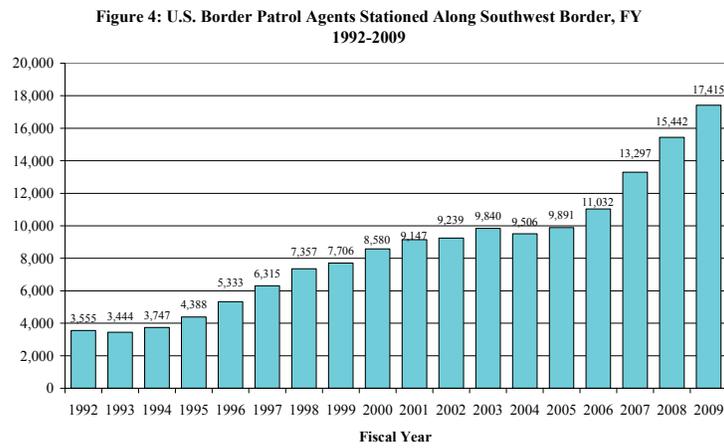


Source: Estimates by the Pew Hispanic Center; Office of Immigration Statistics (U.S. Department of Homeland Security); U.S. Immigration & Naturalization Service.

Yet, since 1992, the annual budget of the U.S. Border Patrol has increased by 714 percent; from \$326.2 million in FY 1992 to \$2.7 billion in FY 2009 {Figure 3}.¹⁹ At the same time, the number of Border Patrol agents stationed along the southwest border has grown by 390 percent; from 3,555 in FY 1992 to 17,415 in FY 2009 {Figure 4}.²⁰ The Border Patrol has also increased its technological resources, ranging from fences and cameras to sensors and aircraft.

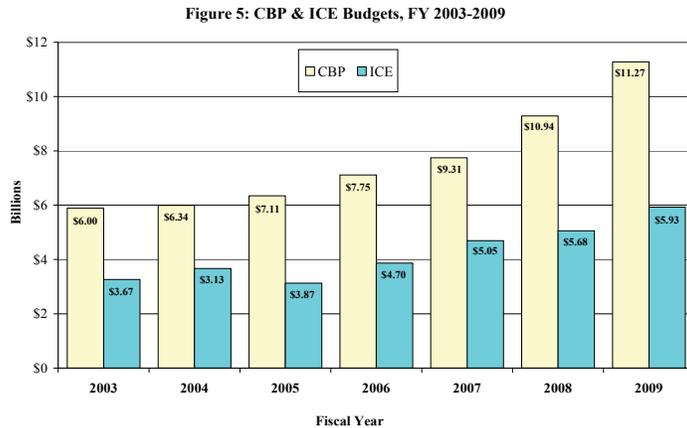


U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.



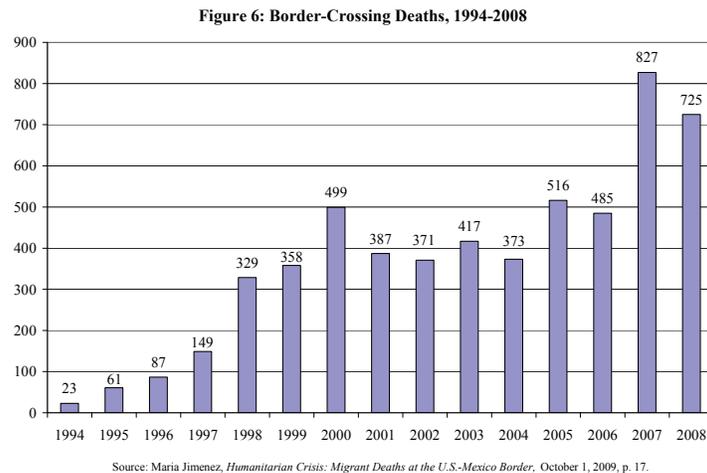
U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.

Since the creation of DHS in 2003, the budget of U.S. Customs and Border Protection (CBP), the parent agency of the Border Patrol within DHS, has increased by 92 percent; from \$6.0 billion in FY 2003 to \$11.3 billion in FY 2009. The budget of U.S. Immigration and Customs Enforcement (ICE), the DHS interior-enforcement counterpart to CBP, has increased by 82 percent; from \$3.3 billion in FY 2003 to \$5.9 billion in FY 2009 {Figure 5}.²¹ Despite all this additional spending, the number of immigrants entering the United States without authorization has not decreased as a result of additional enforcement.



Source: U.S. Department of Homeland Security, *Budget-in-Brief* for Fiscal Years 2005 through 2010.

7. **Border security without adequate legal channels for immigration has created a more dangerous border and reduced “circularity” of migration.** Because of increased border enforcement, it has become much more dangerous and expensive to cross the border. Operation Blockade and Operation Gatekeeper (initiated in 1993 and 1994, respectively), and other enhanced border-enforcement measures, have successfully closed off traditional points of entry and diverted unauthorized migrants into more dangerous areas. The probability of death or injury as a result of heat exhaustion, exposure, suffocation, or drowning has increased. The Government Accountability Office (GAO) found, in fact, that border deaths had more than doubled between 1995 and 2005.²² Data show that the number of border deaths has increased dramatically in recent years, now reaching an average of approximately one death per day. In Arizona alone, the number of deaths increased by 20 percent during FY 2009; between October 1, 2008 and August 31, 2009, 191 immigrants died, according to the U.S. Border Patrol’s Tucson Sector.²³ Border deaths typically increase during the hot summer months. At least 5,607 deaths occurred between 1994 and 2008, according to a report released in October 2009 by the American Civil Liberties Union (ACLU) of San Diego & Imperial Counties and Mexico’s National Commission of Human Rights {Figure 6}.²⁴



Because of increased enforcement along the U.S.-Mexico border, and the heightened risks of crossing the border, many unauthorized immigrants cannot survive the trip alone and rely on professional smugglers. Since the 1990s, migrants have paid enormous sums to smugglers to assist them and their family members in crossing the border. Smugglers charge over \$2,000 to take people across the U.S.-Mexico border.²⁵ Often, migrants are indebted to the smugglers for years after they arrive in the United States, sometimes working as indentured servants until their debts are paid. Smugglers have also turned to kidnapping the loved ones of immigrants in order to extort additional money from their cargo. “Human smugglers think nothing of engaging in hostage taking and extortion to generate more profit for their illegal activities,” said John Morton, DHS Assistant Secretary for ICE.²⁶ Moreover, there have been increased reports of violence associated with rivalries between smuggling networks, affecting both immigrants and border communities.

Once in the United States, however, unauthorized immigrants are far less likely to leave than they would have been before the buildup of border enforcement in the mid-1990s. In the past, a large portion of unauthorized immigration to the United States tended to be “circular,”

meaning that immigrants came here to work for short periods of time and earn money, and then returned to their home countries, often repeating the cycle. However, this has changed in recent years. Research confirms that migrants who intend to return to their home countries increasingly find themselves “stuck” in the United States. According to researchers Douglas Massey, Jorge Durand, and Nolan J. Malone, “the end result of a border buildup is typically longer trip durations, lower probabilities of return migration, and a shift toward permanent settlement.”²⁷ They found that in the early 1980s, the average stay of an unauthorized immigrant was two to three years; by 1990 it was nine years. Moreover, the probability that any one unauthorized immigrant would return home had decreased.²⁸ What had been a circular flow of migration had become permanent settlement, or “reduced circularity of migration.”

- 8. As border enforcement fails, electronic employment-verification programs (such as E-verify) are erroneously hailed as the next “magic bullet” to end unauthorized immigration.** Over the past several years, one of the proposed “solutions” to the problem of unauthorized immigration has been expansion of the E-Verify employment-verification system.²⁹ E-Verify is a federal web-based program through which U.S. businesses can attempt to verify the work authorization of new hires. E-Verify is a voluntary system, except where state laws require businesses to register to use E-Verify, as well as a few other exceptions in which the federal government has made E-Verify mandatory. There have been multiple attempts to expand E-Verify and make it mandatory for all employers. This is despite the fact that E-Verify is an extremely controversial program because of the high probability for database errors,³⁰ misuse of the system by employers,³¹ and the burden it imposes on the Social Security Administration (SSA).³² Furthermore, E-Verify does not even identify unauthorized workers effectively. Some unauthorized workers are erroneously confirmed as authorized to work because E-Verify cannot identify counterfeit, stolen, or borrowed identity documents. And E-Verify cannot identify unauthorized workers when employers who knowingly hire them simply do not run their workers through the system, or when work is performed “off the books” in the underground economy.

Perhaps most importantly, while touted as an immigration-enforcement tool, the reach of E-Verify goes well beyond immigrants. If E-Verify were to become a mandatory, nation-wide program, it would affect every single person who works in the United States, including native-born U.S. citizens. Even tiny error rates would mean big problems for large numbers of U.S. citizens and other legal workers. Under a mandatory E-Verify, approximately 60 million new hires would have to be verified annually, and up to 3 million U.S. workers per year would have to navigate government bureaucracy to fix database errors.³³

Unfortunately, many people still believe that electronic employment verification is a straightforward and simple solution to the problem of unauthorized work in the United States. However, years of experience with employer sanctions, the I-9 system, and the E-Verify program have proven that the devil is in the details, and that even the best intentions can result in harmful consequences for some people. Furthermore, no employment-verification system alone can resolve the problems created by our broken immigration system. A mandatory employment-verification system must be part of comprehensive immigration reform which requires unauthorized immigrants to legalize their status and creates legal pathways for future workers to come to the United States.

CASE IN POINT

Ken Nagel, a restaurant owner in Phoenix, recently hired one of his own daughters—a *native-born U.S. citizen*—to work in his restaurant. When he put her information through E-Verify, he received a “tentative nonconfirmation,” meaning the system could not verify that she was authorized to work in the United States.³⁴

9. Interior immigration enforcement measures are resulting in an enforcement culture that criminalizes immigration violations and results in mistakes and civil rights violations.

Immigration enforcement has consistently focused on identifying individuals for deportation, and then deporting them. One measure of our immigration-enforcement priorities is the ICE detention system. ICE operates the largest detention and supervised-release program in the country. A total of 378,582 immigrants from 221 countries were in custody or supervised by ICE in FY 2008; activities in 2009 remain at a similar level. On September 1, 2009, ICE had 31,075 immigrants in detention at more than 300 facilities throughout the United States and territories, with an additional 19,169 immigrants in Alternative to Detention programs.³⁵

Since 1994, the number of detention beds available has increased six-fold, from 6,785 to 33,400 in 2008.³⁶ At the same time, the number of crimes for which immigrants may be deported, and the categories of crimes for which immigrants may be subject to mandatory detention, have expanded. Since 2005, ICE detention bed space has increased 78 percent. During 2008 alone, ICE detained a record 378,582 persons—a 60 percent increase from 2005.³⁷ Between 2005 and 2009, the ICE budget for detention nearly doubled from \$860 million to \$1.72 billion.³⁸

The ever-expanding ICE detention program is emblematic of enforcement-only policies which have harmful side effects that go far beyond the unauthorized population. It is important to recognize that unauthorized immigrants live in “mixed-status” families and communities, meaning that U.S. citizens, legal immigrants, and unauthorized immigrants live in the same households and neighborhoods. Policies meant to target unauthorized immigrants also impact their family members, employers, and neighbors. A large number of the people affected are U.S.-citizen children. Nationwide, there are approximately four million U.S.-citizen children with at least one unauthorized-immigrant parent, and policies that target their parents have grave effects on the children. Worksite raids, door-to-door raids, and other policies that lead to the detention and deportation of unauthorized immigrants separate parents from children and husbands from wives. U.S.-citizen children are left in an untenable situation when one (or both) of their parents is deported. Furthermore, because immigration law is so complex, enforcement has led to mistakes and civil rights violations. U.S. citizens have been erroneously detained and even deported.

CASES IN POINT

Pedro Guzman, a U.S. citizen born in California, was deported to Mexico when the Los Angeles County Sheriff’s Office determined that Mr. Guzman was a Mexican national. Mr. Guzman, who is cognitively impaired, was sent to Mexico—a country where he had never lived—where he survived by eating out of trash cans for several months and bathing in rivers.³⁹

Juana Villegas, a pregnant woman, was detained by police after being stopped for a traffic violation. On July 3, 2008, she was driving in Nashville (where local police officers have an agreement with ICE to enforce immigration laws) when she was pulled over for “careless driving.” Mrs. Villegas, nine months pregnant, was forced to wait in her hot car with her three children for over an hour. Eventually, the children were allowed to leave with a family member without Villegas’s permission, and she was taken into custody. By the time Mrs. Villegas was released from the county jail six days later, she had gone through labor with a sheriff’s officer standing guard in her hospital room, where one of her feet was cuffed to the bed most of the time. County officers barred her from seeing or speaking with her husband. Up until an hour before the actual birth, Mrs. Villegas’s hand and foot remained shackled to the hospital bed. Mrs. Villegas appeared in court and was sentenced to time served for driving without a license. The charge of careless driving was dismissed.

10. The enforcement-only model has pushed immigrants further underground, undermining community safety and national security. Unauthorized immigrants are often reluctant to report crimes they have witnessed or been victims of because they fear they may be deported as a result of coming forward. When unauthorized immigrants and their family members are reluctant to cooperate with the police and report crimes, everyone in the community is less safe. The failure to come forward as witnesses and victims makes the work of the police much more difficult, and means that crimes against Americans go unsolved. Law enforcement officials themselves have stated time and time again that trust with immigrant communities is crucial to preventing and investigating crimes, and hence essential to maintaining safe communities.⁴⁰ That trust cannot be gained under the current system.

In some communities, it is well known that local police are working with ICE to enforce federal immigration laws. Not only does this frighten the immigrant community and make them less willing to cooperate, but it takes resources away from crime fighting. In Maricopa County, Arizona, for example, Sheriff Joe Arpaio has diverted county resources away from investigating crimes and has spent them on immigration enforcement. As a result, response times to 911 calls have increased, arrest rates have dropped, and thousands of felony warrants have not been served.⁴¹

Furthermore, the current broken immigration system does not enhance our national security.⁴² There are nearly 12 million unauthorized immigrants living in the United States, and billions of dollars are being spent trying to identify and deport them. Americans cannot be secure under a system that allows smugglers and traffickers, rather than the U.S. government, to decide who enters the country. Immigration reforms that bring immigrants out of the shadows, correctly identify them, and encourage people to enter the United States through legal channels would allow law-enforcement and border-enforcement agents to focus on people who pose a threat to national security or public safety.

CASE IN POINT

In 2003, the *Tampa Tribune* reported on the murder of a Mexican national named Petra Martinez and her son Urel Martin. The local police department believed that some members of the community had information on the case, but declined to come forward for fear of immigration-related repercussions. Clearwater Police Department's Hispanic Outreach Officer William Farias said he "wasn't surprised people were hesitant to talk... cultural differences and fear of deportation often keep undocumented immigrants from coming forward."⁴³

A 2007 headline read, "Immigrants Deported After Calling Police," after a woman in Carrollton, Georgia, was arrested when she called for help after being attacked in her home.⁴⁴

COMPREHENSIVE IMMIGRATION REFORM IS NECESSARY

While the U.S. immigration system appears to be fair, reasonable, and highly regulated on paper, the facts on the ground illustrate that it is badly broken and in urgent need of reform. A continuation of our "enforcement-only" policies is not a practical or effective solution. Under the existing system, people are dying at the border, immigrants are living and working in abject conditions, families trying to reunite legally are separated for many years, employers are unable to hire the workers that they need, U.S. workers suffer from the unlevel playing field shared with exploited immigrant workers, and law-abiding U.S. employers are in unfair competition with unscrupulous employers who increase profits by hiring cheap and vulnerable labor. Meanwhile, the United States continues to spend billions of dollars maintaining this system.

Most Americans understand that we cannot deport 12 million people or hope that they will choose to "self-deport." It is clear that relentlessly building up enforcement resources has not worked in the past and is not a realistic solution to our current problems. The underlying flaws of the legal immigration system must be addressed first. The United States must create a fair, humane, and practical immigration system for the 21st century that is responsive to the needs of our economy and encourages legal behavior.

Endnotes

- ¹ “Green cards” are the colloquial term for authorization to remain permanently in the United States as a Legal Permanent Resident.
- ² Ruth Ellen Wasem, [U.S. Immigration Policy on Permanent Admissions](#) (Washington, DC: Congressional Research Service, July 20, 2009).
- ³ Ibid.
- ⁴ Ibid.
- ⁵ The Congressionally mandated Diversity Immigrant Visa Program makes available 50,000 diversity visas (DV) annually, drawn from random selection among all entries to persons who meet strict eligibility requirements from countries with low rates of immigration to the United States (Pub. L. 101-649).
- ⁶ See U.S. Department of State, [Visa Bulletin](#).
- ⁷ Ibid.
- ⁸ John Sevigny, “Husband of U.S. Citizen Among Victims of South Texas Migrant Smuggling Tragedy,” *Associated Press*, May 19, 2003.
- ⁹ Mariano Castillo, [“Labor Report: Hispanic Workplace Deaths Decline,”](#) CNN, August 20, 2009.
- ¹⁰ Ibid.
- ¹¹ Julia Preston, [“After Iowa Raid Immigrants Fuel Labor Inquiry,”](#) *New York Times*, July 27, 2008.
- ¹² Naleo Educational Fund, [The ESL Loqjam](#), October 2006.
- ¹³ James Lee and Nancy Rytina, [Naturalizations in the United States: 2008](#) (Washington, DC: Department of Homeland Security, Office of Immigration Statistics, March 2009), p. 2.
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- ¹⁵ Marisabel Torres and Olga Medina, [Citizenship Beyond Reach](#) (Washington, DC: National Council of La Raza, September 2009).
- ¹⁶ Julia Gelatt and Margie McHugh, [Immigration Fee Increases In Context](#) (Washington, DC: Migration Policy Institute, February 2007), pp. 3-5.
- ¹⁷ See Walter Ewing, [Money for Nothing: Immigration Enforcement without Immigration Reform Doesn’t Work](#) (Washington, DC: Immigration Policy Center, American Immigration Law Foundation, May 2008), p. 7.
- ¹⁸ Jeffrey S. Passel, [The Size and Characteristics of the Unauthorized Migrant Population in the U.S.](#) (Washington, DC: Pew Hispanic Center, March 7, 2006), p. 16.
- ¹⁹ Statistics provided by U.S. Border Patrol Headquarters, Office of Public Affairs, September 25, 2009.
- ²⁰ Ibid.
- ²¹ U.S. Department of Homeland Security, *Budget-in-Brief* for Fiscal Years 2005 (p. 13), 2006 (p. 15), 2007 (p. 17), 2008 (p. 19), 2009 (p. 19), and 2010 (p. 19).
- ²² U.S. Government Accountability Office, [Illegal Immigration: Border Crossing Deaths Have Doubled Since 1995; Border Patrol’s Efforts to Prevent Deaths Have Not Been Fully Evaluated](#), GAO-06-770, August 2006.
- ²³ Maria Leon, [“Number of Undocumented Migrant Deaths Mount on Arizona Border,”](#) *Latin American Herald Tribune*, September 29, 2009.
- ²⁴ Maria Jimenez, [Humanitarian Crisis: Migrant Deaths at the U.S.-Mexico Border](#) (San Diego, CA: American Civil Liberties Union of San Diego & Imperial Counties and Mexico’s National Commission of Human Rights, October 1, 2009), p. 17.
- ²⁵ Douglas Massey, [Testimony before the U.S. Senate Committee on the Judiciary](#), “Securing the Borders and America’s Points of Entry, What Remains to Be Done,” May 20, 2009.
- ²⁶ White, Josh and Dagny Salas, [“Better to be Deported Alive Than to be Dead,”](#) *Washington Post*, August 23, 2009.
- ²⁷ Douglas Massey, Jorge Durand, and Nolan J. Malone, *Beyond Smoke and Mirrors, Mexican Immigration in an Era of Economic Integration* (New York: Russell Sage Foundation, 2002), p. 129.
- ²⁸ Ibid, p. 133.
- ²⁹ E-Verify (formerly Basic Pilot) is one of three voluntary electronic employment eligibility verification pilot programs that were created under the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). Originally a pilot project in five states, E-Verify has been expanded to a voluntary system in all 50 states. Employers transmit identity information through E-Verify, where it is electronically checked against both Social Security Administration (SSA) and Department of Homeland Security (DHS) databases. The system then either confirms to the employer that the worker is employment-authorized or it issues a “tentative nonconfirmation”

(TNC) notice indicating that the databases cannot immediately confirm that the worker is employment-authorized. If the employer receives a TNC, the worker then has eight federal working days from the issuance of the TNC to contest the finding with SSA or DHS. If the worker does not contest the finding, the TNC becomes final and the employer must terminate the worker or risk being found in violation of immigration laws. For more information, see National Immigration Law Center, [The History of Basic Pilot/E-Verify](#) (Washington, DC: October 2008). For detailed instructions about how the program works, see Department of Homeland Security and Social Security Administration, [E-Verify User Manual for Employers](#), March 2009.

³⁰ See Office of the Inspector General, Social Security Administration, [Congressional Response Report: Accuracy of the Social Security Administration's Numident File](#), A-08-06-26100, December 2006).

³¹ See Westat, [Findings of the Web-Based Basic Pilot Evaluation](#) (Rockville, MD: September 2007).

³² ["The Facts on Employment Verification: Current Proposals are Unworkable for SSA, Threaten Progress in Reducing Disability Claims Backlog"](#) (letter from Representative Michael R. McNulty and Charles B. Rangel to Democratic Colleagues, March 27, 2008).

³³ [Transcript of Hearing on Employment Eligibility Verification Systems](#) (Subcommittee on Social Security, Committee on Ways and Means, U.S. House of Representatives, June 7, 2007).

³⁴ Ronald J. Hansen, ["Economy Serves Up Unhappy Meal: Worst Lull in 2 Decades is Hurting Valley Restaurateurs,"](#) *Arizona Republic*, March 3, 2008.

³⁵ Dora Shriro, [Immigration Detention Overview and Recommendations](#) (Washington, DC: U.S. Department of Homeland Security, Immigration and Customs Enforcement, October 6, 2009).

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³⁸ *Ibid.*

³⁹ Paloma Esquivel, ["Suit Filed Over Disabled U.S. Citizen's Deportation Ordeal,"](#) *Los Angeles Times*, February 28, 2008.

⁴⁰ For example, see International Association of Chiefs of Police, [Enforcing Immigration Law: The Role of State, Tribal and Local Law Enforcement](#) (Alexandria, VA: November 30, 2004), and Major Cities Chiefs Association, [Immigration Committee Recommendations For Enforcement of Immigration Laws by Local Police Agencies](#), June 2006.

⁴¹ *East Valley Tribune*, ["Reasonable Doubt,"](#) July 9-10, 2008.

⁴² See [Coalition for Immigration Security](#), July 20, 2006.

⁴³ Natasha Gregoire, "Police Appeal for Clues in Slaying of Mom, Son," *Tampa Tribune*, July 22, 2003.

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