

Controversy: Domestic Policy Regarding Illegal Immigrants Currently Residing Within the United States

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This paper differs significantly from the 2005 Turley/Peterson paper, which focused primarily on the War on Terror and security concerns related to immigration. Both the change in administrations, and the specific issues of recent immigration concerns point towards controversy in a different area – domestic legislative reforms that address illegal immigrants currently within the United States. This paper begins with the background presented in the original 2005 paper, with a focus on the post-September 11th administrative changes in how “immigration” is overseen at the federal level, and continues with analysis that focused on the domestic issues of immigration.
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"There is a rational middle ground between granting an automatic path to citizenship for every illegal immigrant and a program of mass deportation. That middle ground recognizes that there are differences between an illegal immigrant who crossed the border recently and someone who has worked here for many years and has a home, a family and an otherwise clean record." – President Bush, 2006

Background: Restructuring Immigration in the US

The Homeland Security Act transferred INS control from the Department of Justice to the Department of Homeland Security creating two Bureaus – one focused on letting people in (Bureau of Citizenship & Immigration Services, post 2006 known as USCIS) and one focused on keeping people out (Bureau of Immigration and Customs Enforcement or Bureau of Border Security)

Linda Schmittroth, 2004. [“Immigration Laws and Policies Since the 1980s,” *Opposing Viewpoints Resource Center*]

Title IV, Section 402 of the Homeland Security Act transferred the responsibilities of the INS from the Department of Justice to the DHS. With the goal of separating immigration services from immigration law enforcement, on March 1, 2003, the INS became the Bureau of Citizenship & Immigration Services (BCIS), responsible for processing visas and petitions for naturalization, asylum, and refugee status. Immigration enforcement became the responsibility of the Bureau of Immigration and Customs Enforcement (called the Bureau of Border Security in the act).

In addition to the restructuring, the Act also created the Under Secretary for Border and Transportation Security with broad responsibilities for border security, visas, and customs

Linda Schmittroth, 2004. [“Immigration Laws and Policies Since the 1980s,” *Opposing Viewpoints Resource Center*]

Section 401 of the Homeland Security Act delineated the responsibilities of the Under Secretary for Border and Transportation Security. These include:

- Preventing the entry of terrorists and the instruments of terrorism into the United States.
- Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States.
- Administering the immigration and naturalization laws of the United States, including the establishment of rules governing the granting of visas and other forms of permission to enter the United States to individuals who are not citizens or lawful permanent residents.
- Administering the customs laws of the United States.
- Ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce in carrying out these responsibilities.

Although most of these changes have been to increase restrictions against immigration, the course is still open as to what final direction to take on immigration

Suro, 2004. [Robert, Director of Pew Hispanic Center, “Who are “We” now? The Collateral Damage to Immigration,” *The War on our Freedoms: Civil Liberties in an Age of Terrorism*]

Much has changed in the way the United States perceives and treats immigrants since September 11, but the full character and the permanence of those changes are still to be determined. The stage of emergency actions has passed, and the initial bureaucratic realignment is in place. However, many fundamental issues have yet to be broached. Whether the legacy of September 11 for immigration is a series of measures designed to make the homeland more secure or a wholesale revision of the ways the nation relates to the foreign-born is very much in play.

It has also become apparent that the system of change that is taking place is more piecemeal than wholesale. Prior to 9/11 there were a number of foreign workers who arrived by legitimate channels, but overstayed their visas to continue working. Because of the economic benefit, many of these individuals were not sought after by immigration agencies or officials. This suddenly changed after 9/11. These changes have, unfortunately, come piecemeal – “in isolation, and as compliance issues without regard for the failures elsewhere that caused them” (Suro, 2004).

Despite these reforms, no comprehensive policy to address the growing question of illegal immigration has evolved despite the failure of border policies to curtail the problem, leaving a real need for federal reforms that address the realities of illegal immigration within the United States.

Agencies involved in immigration

Numerous agencies can be discussed within the context of immigration and its relationship to the War on Terror. The United States can be accessed via air, sea, and road and rail. In the area of airport security, agencies involved include the FAA and Customs. Sea travel involves The Coast Guard, Customs, local port security, and in extreme cases the Navy and even the Air Force. Road and rail are of key importance, with 6,000 miles of land borders in the United States. As discussed above, changes dictated in the Homeland Security Act have revised the agencies dealing with these areas.

However, one of the biggest areas of controversy is not in who controls the borders of the United States, but in who controls the enforcement of illegal immigrants once within the United States. Despite the clear federal jurisdiction in immigration enforcement, more and more local law enforcement is involved with this issue, both in identifying illegal residents within the United States and in creating policies that deal with the realities of this illegal population.

Much as the course of immigration policy in the United States is still unclear, so is the expectation of the role of local law enforcement in the larger US federal policy.

Fandl, 2008 [Fandl, Kevin, Associate Legal Advisor, USICE, adjunct Prof of Law, American University; *“Immigration Posses: US Immigration Law and Local Enforcement Practices”*, June 18, 2008;

http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1147051#]

The failure of the United States to pass comprehensive immigration at a time when the issue of immigration has reached a boiling point has created as overwhelming demand by citizens for local reform. States have responded by enacting hundreds of laws that regulate immigration at the state level. This creates significant tension both between states with conflicting laws, which creates havens in some states and rampant enforcement in others, and between states and the federal government, which is ultimately responsible for regulating immigration law.

Finally, the US Supreme Court has addressed the rights of immigrants in several cases, including deportation policies, rights in the criminal justice system, and the right to legal re-enty, in addition to cases concerning the responsibilities of local, state, and federal governments to provide services to individuals, even if they do not have legal status in the United States.

Summary of Domestic Controversy:

In the past six years, the United States Congress has attempted to pass major legislative reform of immigration policies in every congressional term. Despite these efforts, and a multitude of policy proposals, no major piece of legislation has succeeded

in becoming law since 2004. The series of reforms enacted from 2001 to 2004, primarily responsive to perceived conditions after September 11th, focused on redefining the criteria for legal immigration and increasing “national security” through border control initiatives and limitations in immigration allowances. These legislative changes also moved immigration from the INS and the DoJ to the Department of Homeland Security and the US Customs and Immigration Service (USCIS), clearly indicating the new federal priorities associated with the issue of immigration. A major criticism of these initial changes, and the failure to pass more recent proposals, is that the major crisis associated with the issues of immigration in the United States is left unaddressed. The United States has neither a successful method of addressing the issue of illegal immigration to the United States nor approaches for how to comprehensively address the public policy concerns that are a reality of 8 to 18 million illegal residents living in the country. (Wasem, 2007). Complicating the matter are a multitude of humanitarian and economic issues, not the least of which is the possible desirability of illegal immigrants as workers in certain sectors and the difficulty of implementing policies that will have real results.

The most pressing issue of congressional immigration reform is reconciling the debate over the best course of action for addressing the current unauthorized alien population within the United States.

Wasem, 2007 [Wasem, Ruth Ellen, Specialist on Immigration Policy, Domestic Social Policy Division; *CRS Report for Congress*; “Immigration Reform: Brief Synthesis of Issue”; CRS Report RS22574; May 10, 2007]

The thorniest of these immigration issues remains the treatment of unauthorized aliens in the United States. Future debates will reflect the divergent views on how to address the more than 12 million illegal alien population, as well as what the level of future permanent immigration should be. The policy issues for Congress are twofold; whether and how to reform the nation’s legal immigration system; and whether border security and interior enforcement provisions – as well as the resources of the immigration agencies charged with the administration and enforcement of immigration laws – are sufficient to implement comprehensive immigration reform.

The Affirmative:

Some policy proposals have focused on the issue of border control as the first step to addressing the question of illegal immigration. The premise has its own criticisms in the policy-making world, and three distinct drawbacks as a focus of debate. First, recent initiatives and empirical evidence indicates that this is ultimately an ineffective, or at least insufficient, way to proceed on its own. Second, attempting to address illegal immigration through better border, customs, and visa control ignores the reality that the majority of illegal immigrants arrive within the borders of the United States through LEGAL means, such as overstaying the terms of legitimate visitor and student visas (Hanson, 2008). Finally, border control alone would not address the 8-18 million illegal immigrants currently in the United States. Therefore, a more fertile ground for

philosophical and policy debate would be specific measures designed to address the specific realities of have this population in the United States. The 2007 CRS Report indicates that ultimately Border Security is only one part of needed immigration reform, highlighting that worksite enforcement, alien smuggling, and enforcement funding are equally as important for upcoming legislation (Wasem 2007).

The United States federal government has an obligation to address the issue of illegal aliens within the United States. A December 2007 Congressional Budget Office Report on The Impact of Unauthorized Immigrants on the Budgets of State and Local Governments indicates that illegal immigration requires state and local governments to spend 8%-12% more per year to provide the simple services of education, health care, and social services as required. Combined with the current economic crisis, real cost benefit discussions could be created in debates over actual immigration policies targeted at the population. Complicating the issue of cost are the numerous Supreme Court decisions that prevent discrimination against illegal immigrants in the administration of these public services, and the balancing of fiscal needs versus our concepts of fairness and justice. Certain conditions are not the “fault” of the individuals the government designates as illegal immigrants. Recent examples of policy proposals meant to address the “victims” of the holes in immigration policy include:

- The children of illegal immigrants, both legal citizens and illegal residents themselves, are severely constrained in their access to higher education, both by federal laws and by access to financial aid. Given the current Supreme Court ruling that these students CANNOT be discriminated against in secondary public education, we create an untenable second class status for potentially bright students without reform.
- Individuals who are the victims of human trafficking are also criminalized in the current system due to their illegal status with two important impacts. First, this results in double victimization, first in the custody of their handlers, and then as criminals in our system. This is a system that preys upon and punishes the most helpless of the global community, including children. The second impact is that it discourages cooperation to prosecute the real criminals at the root of these acts. A fundamental reform that allowed more nuance in handling the victims of these circumstances would allow both humanitarian and legal benefits.
- Finally, currently illegal migrant workers in many areas actually SHOULD be legal workers in the United States through the H2-B visa program, but are currently illegal (and not contributing taxes nor having access to the criminal justice system) solely due to a failure of compliance on their employers part. Both the employment of these workers and the acknowledgement of their need through the government’s visa program indicate that such workers are desirable, and better approaches to the temporary worker question are needed.

Easily viable affirmative ground would address these “humanitarian” concerns with actual policy proposals. The three examples addressed above all have recent

legislative attempts dedicated to solving the specific harms areas of each. The Dream Act (CRS RL33863 2007), increasing temporary work visa categories, reforming temporary work visas, reforming the refugee/asylum process, altering the relationship of local law enforcement with illegal immigrants for the purposed of prosecuting trafficking and employment violations, reforming federal financial aid laws for high education, are all examples of recent policy proposals that have failed to pass primarily do to politics, but with ample discussion of the costs and benefits well established in the literature. The benefit of these types of issues to education in competitive college debate is that a well-researched policy literature already exists, with identifiable and predictable negative objections also easily available for research, without locking affirmatives into only one course of policy action to address a particular harm. The expansion of the Real ID Program (CRS RS21137 2003) and the Point System to encourage more legal workers are other examples of specific policy proposals that focus on the enforcement issues related to illegal labor.

Negative Ground:

Clearly, ample, predictable negative ground is available for every debate. As the resolution would have affirmative's take some form of benign stand towards illegal immigrants, Neg would always have the plethora of arguments associated with illegal immigration bad. However, ground is clearly more diverse than that. It is conceivable that the issues addressed with affirmative plans may not address the root causes of the problem. Negatives would have the ground of increasing border control or creating different economic incentives to improve domestic economies where immigrants currently come from. While on face this may seem susceptible to perms, there is ample evidence that measures that support illegal immigrants may create an incentive for more illegal immigrants, both exacerbating the issue and possible making affirmative progress moot.

Biopower, cartography, linguistic and perceptual critiques are possible. Critiques of the personification and handling of sex workers could allow for even more specified literature development. Critques of the priority system of our current immigration policies and critiques of the nature of immigration policy in general are also possible.

KEY AREAS OF ARGUMENTATION:

Domestic Labor Market
Labor Protections
Job Loss/Creation/Maintenance
Incentives in Foreign Domestic Labor Markets
National Security/Border Control
Higher Education Access
Health Care Access
Refugees

- quota system interaction and the nature of African, South American, and Caribbean immigration allowances
- Iraqi translators

International Crime Syndicates/Gangs/Drug Cartels

Immigration Services

Deportation Procedures and the DOJ

Future Labor Investment

Federalism

Current Policy Pre-Occupations and the Topic:

Illegal immigration would offer one of the clearest links to the issues of economic policy in the United States. It is impossible to discuss the benefits or harms of allowing illegal immigration without discussing unemployment, fair living wages, taxation, and workers benefits. Immigration policy would offer a unique access point for discussing larger US Economic Policy decisions. It would also offer specific cost-benefit analysis. While clearly nothing could be more contemporary than our current concerns related to foreign relations with Russia (it's been hard to ignore the immediate fallout of invading Georgia for the past year), Immigration Policy would be a more substantial internal link discussion to economic impacts created by USFG action on both sides of the debate.

Most interestingly from a debate perspective, **the economic impact of illegal immigration on the larger economy is not conclusive.** Wharton School, 2007

["The Immigration Debate: Its Impact on Workers, Wages and Employers" May 17, 2006, Knowledge@Wharton, <http://knowledge.wharton.upenn.edu/article.cfm?articleid=1482>]

Wharton management professor [Peter Cappelli](#) and Vernon M. Briggs Jr., professor in the School of Industrial and Labor Relations at Cornell University in Ithaca, N.Y., are firm in their conviction that illegal workers exert downward pressure on wages and reduce job opportunities for low-skill U.S. citizens. Briggs believes that the negative impact of undocumented workers on American low-skill workers and on labor standards is so great that immigration authorities should clamp down on employers who hire illegals so that a clear message is sent to current and potential illegal workers: Illegal immigration will not be tolerated.

However, [Bernard Anderson](#), practice professor in Wharton's management department and an assistant secretary of labor for employment standards during the Clinton administration, says that while illegal workers do have some effect on wages and displace some American workers, their impact is far less onerous than Cappelli and Briggs assert. In addition, Anderson says, illegal immigrants work hard, do not come to the United States to receive welfare, and should be allowed to remain in the U.S. after paying penalties.

Jeffrey S. Passel, a demographer and senior research associate with the Pew Hispanic Center in Washington, D.C., says Pew, which bills itself as a nonpartisan "fact tank," has taken no formal position on the immigration issue. But he does say that the data on the broad economic impact of undocumented workers does not lend particularly strong support to either side of the argument.

Finally, while Obama plans to present his own policy initiatives to address illegal immigration in the United States (NYT, 11/8/09), this would provide better research rather than accidental restrictions. First, Obama plans to present his initial approach to the issue in May, allowing the Topic Committee time to eliminate such a proposal from a potential resolution (e.g.: amnesty, "points", etc.). Second, recent history has indicated that immigration is such a contentious legislative issue, that consensus by Congress over the next year is unlikely. At worst teams would be confronted with contemporary specific politics links in the coming year, leading to better, more specific debates.

Potential Resolutions:

The USFG should reform policies towards illegal aliens in the United States.

The USFG should reform policies towards illegal residents in one or more of the following areas: education, temporary work visas, residency requirements for greencard application, health care, tax reporting, and/or deportation procedures.

The US Congress should pass legislation increasing the rights of illegal immigrants to access education, health care, legal worker status, or appeal to deportation.