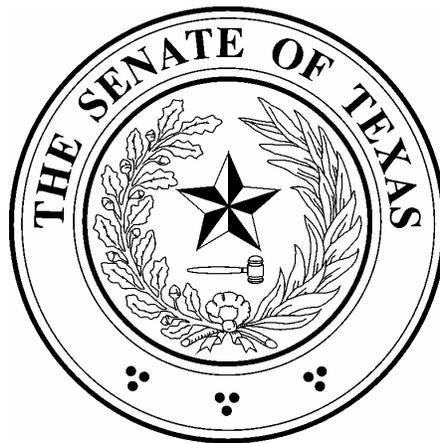


LIFTING THE LAMP BESIDE TEXAS' DOOR

*Addressing the Challenges and Opportunities of
Immigration in Texas for the 2007-2009 Biennium*

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January 25, 2006

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INTRODUCTION

"Give me your tired, your poor,
Your huddled masses yearning to breathe free,
The wretched refuse of your teeming shore,
Send these, the homeless, tempest-tost to me,
I lift my lamp beside the golden door!"

"The New Colossus"

Emma Lazarus (1883)

Inscribed at the foot of the Statue of Liberty

In 1883, Emma Lazarus, the daughter of Portuguese Jewish immigrants, wrote these inspired words, giving steady purpose to Americans for generations. And with that brave sonnet, America gave birth to an idea that ours is a nation of immigrants, a nation forged together in a dream for a better life for ourselves and our children. Ever since, the Statue of Liberty, the "Mother of Exiles," has been a beloved friend and a living symbol of freedom to millions around the world.

Over history, the American ideal of tolerance and prosperity has been tested repeatedly and vigorously. From our founding, conflict over the legal status of African-American slaves challenged our basic notions of fairness, freedom, and equality. Again, in 1882, racial prejudice prevailed when the Chinese Exclusionary Act banned Chinese immigrants from eligibility for citizenship. Similarly, at the turn of the 20th century, Italian, Irish and German Catholic immigrants faced their own share of discrimination.

Today, in nearly every state, immigrants from Mexico and Latin America are the targets of prejudice and discrimination. Despite these challenges, the "lamp beside the golden door" has remained for those who brave all odds to seek it.

The Statue of Liberty and all she represents stands tall.

This is why recent federal, and especially, state, and local initiatives targeting immigrant families and their children are disappointing and dangerous. Across America, for example, immigrants are attacked for not paying their way, when the truth is that Social Security would collapse without their \$6 - \$7 billion subsidy.

In Texas, Governor Perry soon will ask the Legislature to spend \$100 million to create a state border patrol. Rep. Leo Berman (R-Tyler) and others are filing bills to exclude U.S.-born children of illegal immigrants from access to public education, health care, unemployment, and housing. And Farmers Branch, a Dallas suburb, recently became the first Texas municipality to enact measures fining landlords who rent to illegal immigrants and declaring English the city's official language.

For Texas to move forward on immigration, our values and principles must be clear.

First, immigration is a federal issue. The U.S. Constitution grants the federal government powers over foreign affairs, citizenship, war and other areas related to immigration. A state-created patchwork of immigration laws and enforcement will be inconsistent, incompatible, and unevenly enforced.

Second, immigration enforcement costs must be paid by the federal government. Why should state taxpayers bear the burden of a federal obligation? Our priorities in Texas should include education, healthcare, infrastructure and criminal justice – areas already challenged. Instead of shifting the costs of federal government to Texas taxpayers, Governor Perry’s \$100 million should go to fund TEXAS Grants, a program to help Texas children get a college education.

Third, the U.S. Constitution protects all Texans from unreasonable search, seizure and detention. In 1992, in the landmark El Paso case, *Murillo v. Musegades*, the court held that “the stopping, questioning, detaining, frisking, arresting, and searching of individuals based solely upon racial and ethnic appearance reprehensibly violates the Fifth Amendment.” Too often, local immigration enforcement becomes racial profiling, where a segment of our society is targeted merely because of the color of their skin.

Fourth, private sector employees and state workers should not be turned into immigration agents. Private sector employees and state workers do not possess the resources, time, nor expertise to enforce federal immigration law. In addition, making community-based workers such as teachers, nurses and police officers immigration agents undermines their ability to build the necessary trust, skills, and opportunities they need in the communities where they work and live. Nearly every major city police chief is already on record against local enforcement of immigration laws.

Fifth, Texas deserves a fair, comprehensive and responsible federal immigration framework that meets the emerging economic needs of 21st century America. Mexico is Texas’ greatest trading partner, with more than \$50 billion in Texas exports in 2005. Furthermore, almost all experts agree our economy needs immigrant labor for the emerging technology, construction, service, and agriculture jobs of the future. The federal government must pass fair and comprehensive immigration policies that meet basic economic needs of 21st century America.

A BRIEF HISTORY OF IMMIGRANTS IN THE UNITED STATES AND TEXAS

*IMMIGRATION AND U.S. HISTORY – THE EVOLUTION OF THE OPEN SOCIETY*¹

EARLY SETTLERS

The first inhabitants to the New World, scientists believe, came when the last great Ice Age lowered the level of the Pacific Ocean sufficiently to expose a land bridge between Asia and North America, enabling people to cross the ocean from Asia. Recent evidence suggests that the ancestors of the present-day native Americans settled in North America more than 30,000 years ago and by about 10,000 B.C., had expanded their settlement as far as the tip of South America.

Some 116 centuries later, migration to America occurred again, this time coming from the opposite direction. European monarchs and merchants—whether Spanish, Portuguese, French, English, or Dutch—encouraged exploration and then settlement of the newly "discovered" lands of the Americas. The descendants of the occupants of these lands, native American Indians, sometimes joke that the "Indians had bad immigration laws." In fact, there were a variety of responses. In some cases, Indian tribes welcomed the new settlers, negotiating treaties, many of which were abrogated by the colonists. In other instances, the Indians fought newcomer who encroached upon their lands. Whatever the response, though, most tribes found themselves overwhelmed by the better-armed Europeans.

The continents of the Western Hemisphere soon became a microcosm of the European continent, peopled in the north by northern and western Europeans and in the south by the Spanish and Portuguese.

Because of the diversity of national origins, it was by no means certain at the time of English settlement that those who spoke the English language would dominate the development of the area that eventually became the United States. To the south of the British-occupied territories were Spanish colonies, to the north were the French, between were Dutch and Swedish settlements. By the second half of the eighteenth century, though, the French had been defeated and had withdrawn from Canada, a *modus vivendi* of sorts had been established with Spain and the small Dutch and Swedish settlements had been incorporated into the middle colonies of New York, New Jersey, Pennsylvania and Delaware. Hence, it was a certainty by the time of the Revolution that the newly formed republic would be one in which the English influence would prevail.

Despite Anglo-American dominance, however, the colonial period saw the establishment of a tendency towards ethnic pluralism that also was to become a vital part of U.S. life. At least a dozen national groups found homes in the area. Most came in search of religious tolerance, political freedom and/or economic opportunity. Many,

¹ Excerpt from *Select Commission on Immigration and Refugee Policy (SCIRP), U.S. Immigration Policy and the National Interest*, Lawrence H. Fuchs and Susan Forbes Martin, principal authors, Staff Report 161-216 (1983). [footnotes have been renumbered and subtitles have been added—ed.].

particularly some ancestors of those who later thought of themselves as "the best people," came as paupers, or as bond servants and laborers who paid for their passage by promising to serve employers, whom they could not leave for a specified number of years. Not all came of their own free will. Convicts and vagrants were shipped from English jails in the seventeenth century. Beginning in Virginia in 1619, some 350,000 slaves were brought from Africa until the end of the slave trade in 1807.

Non-English arrivals were treated with ambivalence, whether they were Dutch, German or even Scotch-Irish Presbyterians from Great Britain. The Germans who came to Pennsylvania, for example, had first learned of the colony through an advertising campaign designed by William Penn to attract their attention and migration. The earliest German settlers came in the hopes of finding liberty of conscience, and once their glowing reports were sent back to Germany, other of their nationality—seeking not only religious toleration but economic opportunity—followed. They were welcomed by many English colonists who applauded their industry and piety. Yet, they were attacked by others who questioned if they would ever assimilate.

This question asked about each successive wave of immigrants was to become a familiar refrain in U.S. history, but the ambivalence towards foreigners was by no means great enough during the colonial period to cause restrictions on immigration. In fact, the Declaration of Independence cites as one of the failings of King George III, and thus a justification for revolution, that "He has endeavored to prevent the Population of these States; for that purpose obstructing the Law for Naturalization of Foreigners; refusing to pass others to encourage their migrations hither, and raising the conditions of new Appropriations of Lands."

After the revolution and the creation of a new government, Americans kept the gates of their new country open for several reasons. The land was vast, relatively rich and sparsely settled. At the time of the first census, taken in 1790, America had a recorded population of 3,227,000—all immigrants or descendants of seventeenth and eighteenth century arrivals.² The population density at that time was about 4.5 persons per square mile. Labor was needed to build communities as well as to clear farms on the frontier and push back the Indians. People were needed to build a strong country, strong enough to avoid coming once again under the rule of a foreign power. Moreover, many U.S. citizens thought of their new nation as an experiment in freedom—to be shared by all people, regardless of former nationality, who wished to be free.

Despite all of these reasons for a liberal immigration policy, some doubts still remained about its wisdom. Although people were needed to build a new nation, some feared that the entry of too many aliens would cause disruptions and subject the United States to those foreign influences that the nation sought to escape in independence.

² More than 75 percent of this population was of British origin, another eight percent was German and the rest were mainly Dutch, French or Spanish. In addition, approximately a half million black slaves and perhaps as many Native Americans lived within the borders of the United States.

A NEW NATION

With the signing of the Treaty of Paris in 1783, the United States was officially recognized as an independent nation and the history of official U.S. immigration policy began.

Beginning in 1790, Congress passed a series of acts regulating naturalization. The first act permitted the liberal granting of citizenship to immigrants. After a heated debate—in which the losing side argued not only for strict naturalization requirements, but also for barriers against the admission of "the common class of vagrants, paupers and other outcasts of Europe"—Congress required a two-year period of residence and the renunciation of former allegiances before citizenship could be claimed.

By 1795, though, the French Revolution, and the ensuing turmoil in Europe, had raised new fears about foreign political intrigue and influence. A new naturalization act, passed in 1795, imposed more stringent requirements including a five-year residency requirement for citizenship and the renunciation of not only allegiances but titles of nobility. Still, some thought U.S. standards for naturalization were too liberal, and, in 1798, another law was passed that raised the residency requirement to fourteen years. At the same time, the Alien Enemies Act and the Alien Friends Act gave the president powers to deport any alien whom he considered dangerous to the welfare of the nation. One proponent of these laws explained his support: "If no law of this kind was passed, it would be in the power of an individual State to introduce such a number of aliens into the country, as might not only be dangerous, but as might be sufficient to overturn the Government, and introduce the greatest confusion in the country."

The xenophobia that gave rise to the Alien Acts of 1798 passed with the transfer of power from the Federalist to the Republican Party in 1800. The Alien Friends Act was permitted to expire, and, in 1802, a new Naturalization Act re-established the provisions of the 1795 Act—what was to become a permanent five-year residency requirement for citizenship. While the Republicans were by no means free of suspicion of foreigners, they were not sufficiently fearful of the consequences of immigration to impose any restraints on the entry or practices of the foreign born. Instead, they pursued a policy that has been aptly described by Maldwyn Allen Jones in his history, *American Immigration*:

Americans had to some degree reconciled the contradictory ideas that had influenced the thinking of the Revolutionary generation and had developed a clearly defined immigration policy. All who wished to come were welcome to do so; but no special inducement or privileges would be offered them.

For the next 75 years, the federal government did little about the regulation of immigration. It did establish procedures that made the counting of a portion of all immigrants possible. In 1819, Congress passed a law requiring ship captains to supply the Collector of Customs a list of all passengers on board upon arrival at U.S. ports. The

list was to indicate their sex, occupation, age and "country to which they severally belonged." At first only Atlantic and Gulf port information was collected; Pacific ports were added after 1850. Immigration information from Hawaii, Puerto Rico and Alaska dates only from the beginning of the twentieth century, as does the recording of information across land borders with Canada and Mexico.

Although a fully accurate picture of the level of all immigration cannot be made, the data available have enabled historian to sketch the general composition and trend of U.S. immigration. These data show a steadily increasing level of immigration. Immigrants arriving between the end of the Revolutionary War and the passage of the 1819 act are estimated to have totaled about 250,000. During the next ten years, over 125,000 came, and between 1830 and 1860, almost 4.5 million European immigrants arrived in the United States. Never before had the United States had to incorporate so large a number of newcomers into its midst. At first, the new arrivals were greeted with enthusiasm. With a nation to be built, peasants from Norway were as welcome as skilled craftsmen from Great Britain and experienced farmers from western, Protestant Germany. The novelist Herman Melville characterized this spirit:

There is something in the contemplation of the mode in which America has been settled, that, in a noble breast, should forever extinguish the prejudices of national dislikes.

Settled by the people of all nations, all nations may claim her for their own. You cannot spill a drop of American blood without spilling the blood of the whole world...

We are the heirs of all time, and with all nations, we divide our inheritance. On this Western Hemisphere all tribes and people are forming into one federate whole; and there is a future which shall see the estranged children of Adam restored as to the old hearthstone in Eden.

THE FIRST WAVE

Beginning in the 1830s, though, the composition of the groups entering the United States began to change, and few U.S. residents thought so romantically about the new immigrants.

Waves of Irish during the potato famines and German Catholic immigrants flowed into the country during the European depressions of the 1840s. These Catholics entered a country that was not only overwhelmingly Protestant, but that had been settled by some of the most radical sectarians, who prided themselves on their independence from the Pope's authority as well as from any king's. To begin with, U.S. residents had brought with them from Europe centuries of memories of the Catholic-Protestant strife that had so long dominated that continent's social and political life. Much anti-Irish feeling arose from these roots and was nourished by an oversimplified view of Catholicism which saw Catholics as unable to become good citizens—that is,

independent and self-reliant—since they were subject to order from the church. Even before the mass immigration of Catholics during the 1840s and 1850s, the xenophobic inventor Samuel F. B. Morse warned his fellow Americans:

How is it possible that foreign turbulence imported by shiploads, that riot and ignorance in hundreds of thousands of human priest-controlled machines should suddenly be thrown into our society and not produce turbulence and excess? Can one throw mud into pure water and not disturb its clearness?

It was easy to blame these new immigrants for many of the problems of the rapidly changing, increasingly urban nineteenth century U.S. society. Hostility against immigrants grew as they were accused of bringing intemperance, crime and disease to the new world. The first *Select Committee of the House of Representatives* to study immigration concluded:

that the number of emigrants from foreign countries into the United States is increasing with such rapidity as to jeopardize the peace and tranquility of our citizens, if not the permanency of the civil, religious, and political intuitions of the United States.... Many of them are the outcasts of foreign countries; *paupers, vagrants, and malefactors* ... sent hither at the expense of foreign governments, to relieve them from the burden of their maintenance.

A Protestant magazine sounded a further alarm by suggesting that "the floodgates of intemperance, pauperism and crime are thrown open by immigrants, and if nothing be done to close them, they will carry us back to all of the drunkenness and evil of former times."

Out of these fears arose an alliance of those committed to saving the United States from the alleged dangers of immigration. Composed of social reformers who hoped to preserve the nation's institutions, some Protestant evangelicals who hoped to preserve the nation's morals and nativists who hoped to preserve the nation's ethnic purity, they formed associations, such as the secret Order of the Star-Spangled Banner, and political parties, such as the Know-Nothing Party.

These groups were committed to placing a curb on immigration itself and to ensuring that foreigners not be permitted to participate in the nation's political affairs. The naturalization statutes were a principal target of their concern. A pamphlet of the Know-Nothing Party warned of the inadequacy of these laws in protecting the nation against fraud:

It is notorious that the grossest frauds have been practiced on our naturalization laws, and that thousands and tens of thousands have every year deposited votes in the ballot box, who could not only not read them, and knew nothing of the nature of the business in which they were

engaged, but who had not been six months in the country, and in many cases, hardly six days.

The party hoped to avoid these problems by eliminating the participation of even naturalized immigrants in the political process.

At its most vitriolic, nativism manifested itself in anti-Catholic riots against the Irish. New York, Philadelphia and Boston all saw such violence. Exposés revealing the "truth" about Catholic nunneries—that they were dens of iniquity and vice—precipitated the burning of convents and Catholic churches.³ Although strident, nativist voices did not prevail. Attacks on ethnic groups usually came from a small, but vocal portion of the population that by no means represented the wishes of all Americans. Even during the times in which nativism reached its peak, there continued to be a variety of potent support for unlimited immigration. Economic needs, reinforced by the ideals of opportunity and freedom that were more deeply rooted in the country than was the anti-Catholic heritage or fears of foreign takeover, worked against restricting immigration or making requirements for citizenship or voting more stringent.

THE NEW IMMIGRANTS

After the Civil War, the country's desire for immigrants seemed insatiable. Railroads were being laid across the nation, thus opening vast lands for settlement. Labor was needed to gouge the earth for coal and iron, to work in rapidly developing mills and to build cities.

As demand for labor increased, so too did the number of immigrants. From 1860 to 1880, about 2.5 million Europeans entered this country each decade; during the 1880s the number more than doubled to 5.25 million. Another 16 million immigrants entered during the next quarter century, with 1.25 million entering in 1908.

Because the numbers of immigrants were so large, it appeared as if the United States had never before experienced immigration of this sort. Not only was there a change in the size of the flow, there was also a change, once more, in the source of immigration. The migration before the 1880s had been overwhelmingly from northern and western Europe. Even the hated Irish Catholics had come from a country where English was generally spoken and Irish immigration was now traditional. Less than three percent of the foreign-born population of the country had come from eastern or southern Europe. During the 1890s that pattern began to reverse itself, and during the first decade of the twentieth century, about 70 percent came from the new areas.

Just as the Irish and Germans had appeared to Americans to be more "foreign" than English Protestants, so too did the new immigrants appear to be more "foreign" than the old ones. In what may be an inevitable process, the old immigrants had become

³ Not all convent-burning was indicative of anti-Catholicism per se. The burning of the Ursuline Convent at Charlestown, Massachusetts was due mainly to the local brickmakers' resentment of Irish economic competition.

familiar and, therefore, respectable while the new ones were put under the closest possible scrutiny for signs of dissimilitude. And, alien characteristics are exactly what many Americans found—strange coloring, strange physiques, strange customs and strange languages.

The new immigrants were disliked and feared. They were considered culturally different and incapable of this country's version of self-government, and not because of their backgrounds but because they were thought to be biologically and inherently inferior. Influential professors of history, sociology and eugenics taught that some races could never become what came to be called "100 percent American."

A leading academic proponent of nativism, Edward Ross, wrote of Jews that they are "the polar opposite of our pioneer breed. Undersized and weak muscled, they shun bodily activity and are exceedingly sensitive to pain." He also lamented that it was impossible to make Boy Scouts out of them. Italian, he noted, "possess a distressing frequency of low foreheads, open mouths, weak chins, poor features, skewed faces, small or knobby crania and backless heads." According to Ross, Italians "lack the power to take rational care of themselves."...

Even though mortality statistics do not support the contention that the new immigrants were inherently diseased or biologically inferior, such sentiments began to take their toll. In 1882 the United States passed its first racist, restrictionist immigration law, the Chinese Exclusion Act. From 1860 to 1880, Chinese immigration had grown from 40,000 to over 100,000. Chinese labor had been welcomed to lay railway lines and work in mining. However, with the completion of the transcontinental railroad, which was followed by a depression in the 1870s, intense anti-Chinese feelings developed, particularly in the West, where hard-working and ambitious Chinese had made lives for themselves.

The attacks upon the Chinese often focused upon their inability, in the eyes of their opponents, to assimilate. In 1876, a California State Senate Committee described the Chinese as follows:

They fail to comprehend our system of government; they perform no duties of citizenship.... They do not comprehend or appreciate our social ideas.... The great mass of the Chinese ... are not amenable to our laws... They do not recognize the sanctity of an oath.

The supposed criminality of the Chinese was of particular concern. Although the crime statistics of the period do not bear out the accusations, the Chinese were believed to be criminals nevertheless. The state senate committee complained that "the Pacific Coast has become a Botany Bay to which the criminal classes of China are brought in large numbers and the people of this coast are compelled to endure this affliction." The Chinese were especially accused of bringing gambling and prostitution to the region. In 1876, *Scribner's Magazine* noted that "no matter how good a Chinaman may be, ladies never leave their children with them, especially little girls." The legislative committee

concluded that "the Chinese are inferior to any race God ever made...[and] have no souls to save, and if they have, they are not worth saving."

Restrictionists—looking for justifications for closing other types of immigration—also eyed European immigrants as criminally inclined. The Police Commissioner of New York, Theodore Bingham, wrote in the *North American Review* that "85 percent of New York criminals were of exotic origin and half of them were Jewish." The author of an article in *Collier's Magazine* labeled Italians as "the most vicious and dangerous" criminals, and he suggested that "80 percent of the limited number of clever thieves" were Jewish.

Again, the crime statistics do not bear out the accusations. The majority of immigrants were arrested for the petty crimes—vagrancy, disorderly conduct, breach of the peace, drunkenness—associated with poverty and difference in values. Immigrants were statistically more likely to commit minor offenses than were the native born who tended to commit property crimes and crimes of personal violence. According to statistics, there was only one real cause for concern as for as immigrant crime was concerned. The children of the foreign born were the most likely group of all to commit crimes. Their crimes more often resembled those of the native born, though, than those of immigrants. This pattern indicates, more than anything else, that acculturation occurred even in the area of crime.

Despite the known evidence that immigrants were neither inherently criminal nor diseased, nativist arguments emphasizing the inferiority of immigrants were widely accepted. Restrictionists called for legislation that would decide whether the United States would be, as some put it, peopled by British, German and Scandinavian stock, or the new immigrants, "beaten men from beaten races; representing the worst failures in the struggle for existence."

Earlier, nativism had been offset by confidence that the United States had room for all, by a tradition of welcoming the poor and the oppressed and by belief that life in the New World would transform all comers into new Adams and Eves in the American Eden. At the end of the century, however, these ideas were affected by four historical developments.

- The official closing of the U.S. frontier;
- Burgeoning cities and increased industrialization;
- The persistence of immigrants from southern and eastern Europe in maintaining their traditions; and
- The Catholic or Jewish religion of most of the new immigrants.

In the light of these developments, many Americans began to doubt the country's capacity to welcome and absorb the ever-increasing waves of new immigrants.

1891-1917 IMMIGRATION REFORM AND THE LITERACY TEST

Evidence of this new feeling about European immigration could be seen as early as 1891. There had been earlier attempts at controlling the entry of immigrants to the United States—in the Act of 1875 that excluded prostitutes and alien convicts and in the Act of 1882 that barred entry of lunatics, idiots, convicts and those liable to become a public charge—but these were not as comprehensive as the measure debated that year. One of the principal spokesmen for the bill, Henry Cabot Lodge, of Massachusetts, urged his fellow congressmen to establish new categories of admission to the United States in order to "sift ... the chaff from the wheat" and prevent "a decline in the quality of American citizenship." The 1891 bill added new categories of exclusion that mirrored the concerns about the biological inferiority of immigrants. Those suffering from loathsome or contagious diseases and aliens convicted of criminal involving moral turpitude were barred from entry. The bill also provided for the medical inspection of all arrivals.⁴

Both houses of Congress quickly passed the measure; in the Senate, noted the *New York Times*, "the matter did not even occupy ten minutes." The measure did not go far enough for the quantitative restrictionists, though, since it did not succeed in stemming the flow of new entrants. In their efforts to change immigration policy, these restrictionists began to center their arguments upon one area of regulation—literacy.

As early as 1887, economist Edward W. Bemis gave a series of lectures in which he proposed that the United States prevent the entry of all male adults who were unable to read and write their own language. He argued that such a regulation would reduce by half or more those who were poor or uneducated. As awareness of the nature of the new immigration grew, nativists realized that a literacy test would also discriminate between desirable and undesirable nationalities, not just individuals. The proponents of the test saw it as an effective method of nationality restriction because, unlike the other "proofs" of cultural inferiority, literacy could easily and readily be measured.

The new immigrants were often attacked for their attachments to their native languages and what was perceived to be a failure to learn English. In an editorial, the *Nation* magazine proposed that a literacy test was insufficient and that English-language ability should be a requirement of entry. Recognizing that a proposal to make English a requirement of entry would effectively limit immigration to residents of the British Isles, the *Nation* declared in 1891 what other restrictionists believed—that "we are under no obligation to see that all races and nations enjoy an equal chance of getting here."

A literacy bill was first introduced in the Congress in 1895, and under the leadership of Senator Lodge passed both houses. In the last days of his administration, President Cleveland vetoed it, suggesting that the test was hypocritical. The House overrode his veto, but the Senate took no action and the proposal died. In a new wave of xenophobia that followed the assassination of President McKinley by an anarchist

⁴ Further grounds of exclusion similar in intent were added in 1903 and 1907.

mistakenly believed to be an immigrant, a new bill passed the House. Despite the support of the new president, Theodore Roosevelt, the bill's sponsors were unable to gain a favorable vote in the Senate, and it too died.

In 1906, new, comprehensive legislation was proposed that included a literacy test for admission and both a literacy and an English-language requirement for naturalization. The restrictionists, now aided by labor unions wary of competition, were opposed to their endeavors by newly organized ethnic groups as well as business leaders opposed to any elimination of new labor sources. In all but one area, the restrictionists were triumphant. Once again, though, they were unsuccessful in gaining passage of a literacy requirement for either entry or naturalization. English-language proficiency was made a basis for citizenship, though, since most congressmen agreed with Representative Bonyng that "history and reason alike demonstrate that you cannot make a homogenous people out of those who are unable to communicate with each other in one common language."

In 1907, after the restrictionist attempt to impose a literacy requirement failed, immigration to the United States reached a new high—with the arrival of 1,285,000 immigrants—and an economic depression hit the country. That same year, Congress passed legislation to establish a joint congressional presidential Commission to study the impact of immigrants on the United States. Its members appointed in 1909, the Dillingham Commission, as it is usually known, began its work convinced that the pseudoscientific racist theories of superior and inferior peoples were correct and that the more recent immigrants from southern and eastern Europe were not capable of becoming successful Americans. The Commission's recommendations were published in 1911 with 41 volumes of monographs on specific subjects, including discussions of immigrants and crime, change in the bodily form of immigrants and the industrial impact of immigration. In the view of the Commission, their finding all pointed to the same conclusions:

- Twentieth century immigration differed markedly from earlier movements of people to the United States;
- The new immigration was dominated by the so-called inferior peoples—those who were physically, mentally and linguistically different, and, therefore, less desirable than either the native-born or early immigrant groups; and
- Because of the inferiority of these people, the United States no longer benefited from a liberal immigration admissions policy and should, therefore, impose new restrictions on entry.

The Commission endorsed the literacy test as an appropriate mechanism to accomplish its ends.

The demand for large-scale restriction still did not succeed, though, because of the continuing demand for labor, the growing political power of the new immigrant groups and the commitment of the nation's leaders to preserving the tradition of free entry. In 1912, Congress once more passed a literacy test, but President Taft successfully vetoed it,

extolling the "sturdy but uneducated peasantry brought to this country and raised in an atmosphere of thrift and hard work" where they have "contributed to the strength of our people and will continue to do so." Another veto, his time by President Woodrow Wilson, defeated the work of the restrictionists in 1915. According to Wilson, the literacy test "seeks to all but close entirely the gates of asylum which have always been open to those who could find nowhere else the right and opportunity of constitutional agitation for what they conceived to be the natural and inalienable rights of men."

After the United States entered World War I in 1917, Congress finally overrode the presidential veto and enacted legislation that made literacy a requirement of entry. The bill also codified the list of aliens to be excluded, and it virtually banned all immigration from Asia.

"AMERICANIZATION" AND NATIONAL ORIGINS QUOTAS

The efforts of the restrictionists were finally successful, in large measure because World War I brought nervousness about the loyalty and assimilability of the foreign born to a fever pitch. The loyalty of immigrants became a hot political issue. Theodore Roosevelt, for example, stormed against "hyphenated Americans," as he voiced his concerns that the country was become little more than a "poly-glot boarding house." A frenzy of activity against German Americans (who only a short while before were thought, along with the English, Scots and Scandinavians to be the best qualified to enter) led to the closing of thriving German-language schools, newspapers and social clubs. The Governor of Iowa took what may have been the strongest measures; he decreed that the use of any language other than English in public places or over the telephone would be prohibited.

This agitation against the foreign born culminated in two efforts: a movement to "Americanize" immigrants and the development of immigration restrictions based on national origins quotas. The Americanization movement had had its start in 1915 when two government agencies, operating independently of each other, began assessing the number and efficacy of immigrant education programs operating in the country. One of these agencies, the Bureau of Naturalization, undertook a letter-writing campaign aimed at learning the degree to which such programs existed. The following summer, the Bureau held a conference in Washington to discuss the information it collected and propose plans for speeding the acculturation of immigrants. In the meantime, though, the Bureau of Education convened its own conference, out of which came the National Committee of One Hundred—prominent citizens organized "for the purpose of assisting in a national campaign for the education of immigrants to fit them for American life and citizenship." With the efforts of these two agencies for guidance, hundreds of communities, private organizations and businesses embarked upon their own programs of Americanization. Lobbying efforts by the Bureau of Education led many states—twenty between 1919 and 1921—to pass legislation establishing Americanization programs to ensure that all immigrants would learn English, the "language of America," as a California commission called it.

Industry also joined the movement. It was frequently asserted that "ignorance of English is a large factor in [job] turnover" and similarly that "there is an important connection between ignorance of English and illiteracy to economic loss." The National Association of Manufacturers encouraged Americanization programs among its members. Henry Ford set up classes within his plants and required attendance of his 5,000 non-English-speaking employees. The International Harvester Company produced its own lesson plans for the non-English-speaking workers in its plants. They clearly taught more than English itself. The first plan read:

I hear the whistle. I must hurry.

I hear the five minute whistle.

It is time to go into the shop....

I change my clothes and get ready to work....

I work until the whistle blows to quit.

I leave my place nice and clean.

I put all my clothes in the locker.

I must go home.

By 1923, the Bureau of Naturalization announced it had 252,808 immigrants in 6,632 citizenship-training courses around the nation. Of these, 4,132 were conducted in public school building, 1,256 in homes, 371 in factories and 873 at other locations.

The success of the Americanization programs in enrolling immigrants was not enough to satisfy the opponents of immigration. Still convinced that racial differences precluded the full assimilation of the new immigrants, some nativists doubted the ability of Americanization classes to transform immigration into "100 percent Americans." Some were convinced that all immigrants should be compelled to learn English, and if they could not, should be subject to deportation. Theodore Roosevelt proclaimed that "I would have the government provide that every immigrant be required to learn English, with instruction furnished free. If after five years he has not learned it let him be returned to the country from which he came." To Roosevelt and other nativist, failure to learn English represented some sort of disloyalty or a failure of will; both were clearly reasons for expelling the alien.

As the movement to compel assimilation of those already here progressed, those fearful of the consequences of immigration also sought new restrictions on entry. Restrictionists had learned that the literacy requirement which they believed held so much promise was not succeeding as had been expected. Immigration from southern and eastern Europe continued. The literacy rates of European countries showed increasing

numbers eligible for entry; Italy even established schools in areas of high emigration to teach peasants to be literate so that they could pass the new U.S. test for entry.

To quantitative restrictionists, new measures were needed. The suspension of all immigration—an idea never before of any great appeal in U.S. immigration history—began to gain support. The two groups most associated with it, organized labor and "100 percenters," had little else in common. Labor supported suspension of immigration because of the competition for jobs that occurred with the entry of aliens.

The 100 percenters feared that European people and ideas—whether "bestial hordes" from conquered Germany or the "red menace" of Bolshevism—would contaminate U.S. institutions and culture.

The extreme form of restrictionism proposed by those wishing to ban all immigration gained some support in the House of Representatives, where arguments that postwar immigration was composed largely of Jews who were "filthy, un-American, and often dangerous in their habits" were particularly effective, but failed to pass the Senate Committee on Immigration, which was dominated by easterners with large businesses and ethnic constituencies favorable to immigration.

WARTIME BRACEROS AND REFUGEES

Although the quota system of the 1920s stood substantially intact until 1965, U.S. immigration policy was affected by the events of World War II—in particular the shock this country received when it learned most graphically of the fate of the refugees refused entry. Even before that knowledge came, the war challenged long-held notions about U.S. tradition and needs. The United States realized that it once again needed the labor of aliens, for example. This country and Mexico then negotiated a large-scale temporary worker program—the bracero program—designed to fill the wartime employment needs of the United States. Also, in large part because of the alliance of the United States with China, Congress repealed the ban on all Chinese immigration, making it possible for a small number of Chinese once again to enter the country as legal immigrants. Notions of the inherent inferiority of certain groups [were] dispelled when those same groups became allies in the fight against other groups that were proving to be much stronger enemies than expected.

For a short period, the atmosphere was right for a liberalization of immigration policy. At the close of the war, especially after Americans learned of the Nazi atrocities, they seemed united in their appreciation of democracy and their commitment to renewing the U.S. role as a haven for the oppressed. An important first step was taken by President Harry S. Truman who issued a directive in December 1945 admitting 40,000 war refugees. Responding to the plight of U.S. soldiers who had married overseas, Congress passed the "War Brides Act" in 1946, which permitted 120,000 alien wives, husbands and children of members of the armed forces to immigrate to the United States.

THE IMMIGRATION AND NATIONALITY ACT (INA)

In the years following the war, the executive branch continued to take an active role in reshaping immigration policy, even after the advent of the Cold War when public attitudes towards the issue turned more conservative. Most of these efforts, though, were in the area of refugee admissions and did not change the basic structure of U.S. immigration law. President Truman prodded the Congress to pass the Displaced Persons Act of 1948. After its expiration, Congress passed the Refugee Relief Act, under which 214,000 persons were admitted. Designed principally to expedite the admission of refugees fleeing Iron Curtain countries, the Act incorporated safeguards to prevent the immigration of undesirable aliens. Additional measures were passed in 1956 and 1957 to facilitate the entry of Hungarians displaced by revolution in that country and "refugee-escapees" fleeing Communist or Communist-occupied or dominated countries and countries in the Middle East. In 1960, the Refugee Fair Share Law was passed to provide a temporary program for the admission of World War II refugees and displaced persons who remained in camps under the mandate of the United Nations High Commissioner for Refugees. This legislation gave the Attorney General a specific mandate to use his parole authority to admit eligible refugee-escapees. Although the statute was for a limited period of time, it was more comprehensive than other refugee admission programs and provided an ongoing mechanism to assist refugees.

Despite these strides in developing a policy that permitted refugees to escape from some of the restrictions of the national origins quota requirements, little else in the way of progress occurred in the immigration area until the 1960s. In fact the determination to preserve the quota system was so strong that the refugee measures provided that those entering under those provisions were to be charged to future quotas of their country of origin, as long as these did not exceed 50 percent of the quota of any one year. The refugee acts were seen as complements to the national origins policy; they made the 1924 law more responsive to emergencies but did not significantly alter immigration policy itself.

During the early 1950s, the climate was not ripe for any major liberalizing changes. Concern with communist expansion dominated U.S. thinking in the early 1950s, and the stand against communism often took the form of opposition to anything foreign. It was a period in which ethnic customs and values could easily be defined as "un-American."

It was in such an atmosphere that congressional hearings on a new immigration law took place. They were conducted under the leadership of Senator Patrick A. McCarran who, with his followers, believed that there were in the United States what he called "indigestible blocks" which would not assimilate into the American way of life. In 1952, the McCarran-Walter bill—passed into law as the Immigration and Nationality Act—consolidated previous immigration laws into one statute, but, in so doing, it preserved the national origins quota system. The Act also established a system of preferences for skilled workers and the relatives of U.S. citizens and permanent resident aliens, and tightened security and screening procedures.

It established a 150,000 numerical limitation on immigration from the Eastern Hemisphere; most Western Hemisphere immigration remained unrestricted, although it established a subquota for immigrants born in the colonies or dependent areas of the Western Hemisphere. Finally, the Act repealed Japanese exclusion and established a small quota for the Asia-Pacific Triangle under which Orientals would be charged.

Congress passed the McCarran-Walter Act over the veto of President Truman who favored the liberalization of the immigration statutes and the elimination of national origins quotas. In his veto message, he strongly reaffirmed U.S. ideals.

Such a concept [national origins quota] is utterly unworthy of our traditions and ideals. It violates the great political doctrine of the Declaration of Independence that "all men are created equal." It denies the humanitarian creed inscribed beneath the Statue of Liberty proclaiming to all nations: "Give me your tired, your poor, your huddled masses, yearning to breathe free...."

President Truman on September 4, 1952 appointed a commission to study and evaluate the immigration and naturalization policies of the United States. On January 1, 1953 the Commission issued its report, *Whom We Shall Welcome*, a statement of support for a nondiscriminatory, liberal immigration policy. The Commission summarized its findings:

The Commission believes that our present immigration laws flout fundamental American traditions and ideals, display a lack of faith in America's future, damage American prestige and position among other nations, ignore the lessons of the American way of life.

The Commission believes that laws which fail to reflect the American spirit must sooner or later disappear from the statute books.

The Commission believes that our present immigration laws should be completely rewritten.

INA AMENDMENTS OF 1965

It was not until 1965 that major changes—some urged as early as the Truman Commission—were actually made in the Immigration and Nationality Act. The election of John F. Kennedy, a descendent of Irish immigrants and the first Catholic president of the United States, marked a turning point in immigration history and focused attention again on immigration policy. As a senator, Kennedy had written *A Nation of Immigrants*, a book denouncing the national origins quota system. Now, as President, he introduced legislation to abolish the 40-year-old formula.

That a Catholic could be elected president signified the extent to which the United States had changed since the 1920s. Across the country came a lessening in anti-Catholic, anti-Asians and anti-Semitic sentiment, in part the result of a new tolerance of racial and ethnic differences stimulated by the civil rights movement. By the mid-1960s, Congress was ready for proposals to liberalize immigration policy, particularly after the assassination of President Kennedy and the Lyndon Johnson presidential landslide of 1964. The effort to eliminate the national origins quotas—begun many years earlier—culminated in the passage of the Immigration and Nationality Act Amendments of 1965.

The amendments accomplished the following:

- Abolished the national origins formula, replacing it with a per country limit of 20,000 on every country outside the Western Hemisphere, and an overall ceiling of 160,000 for those countries;
- Placed a ceiling of 120,000 on immigration from the Western Hemisphere with no country limits; and
- Established Eastern Hemisphere preferences for close relatives, as well as those who had occupational skills needed in the United States under a seven-category preference system.

In signing the new bill, President Lyndon Johnson said:

from this day forward, those wishing to emigrate into America shall be admitted on the basis of their skills and their close relationship to those already here.

The fairness of this standard is so self-evident ... yet the fact is that for over four decades the immigration policy of the United States has been twisted and has been distorted like a harsh injustice of the national origins quota system ... *families were kept apart because a husband or a wife or a child had been born in the wrong place.* Men of needed skill and talent were denied entrance because they come from southern or eastern Europe or from one of the developing continents. The system violated the basic principles of American democracy—the principle that values and reward each man on the basis of his merit ... it has been un-American. (emphasis added).

The new amendments, as the President suggested, heralded in a new era in U.S. immigration policy. No longer would one nationality be given a larger quota than another in the Eastern Hemisphere. Preferences would be given to reuniting families and to bring those who had certain desirable or needed abilities. These were to be the goals of immigration policy, and the goal of preserving the racial and ethnic domination of northern and western Europe would no longer be an explicit part of U.S. immigration law.

ANTI-HISPANIC SENTIMENT, BEGINNING OF THE BACKLOG

The United States was, of course, far from free of prejudice at that time, and one part of the 1965 law reflected a change in policy that was in part due to antiforeign sentiments. Prejudice against dark-skinned people, particularly in social and economic life, remained strong. In the years after World War II, as the proportion of Spanish-speaking residents increased, much of the lingering nativism in the United States was directed against those from Mexico and Central and South America. The 1952 law—in keeping with the "Good Neighbor" policy, as it was described by Franklin Delano Roosevelt—had not placed any limitations on immigration from these regions, but by 1965 the pressure for such restriction had mounted. Giving in to these pressures as a price to be paid for abolishing the national origins system, Congress put into the 1965 amendments a ceiling on immigration from the Western Hemisphere that was designed to close the last remaining open door of U.S. policy. This provision went into effect on July 1, 1968.

The legislation did not accomplish its goal regarding Western Hemisphere immigration without substantial costs. In 1976, the House Judiciary Committee reported on the effect of ending the Good Neighbor open door: a steadily increasing backlog of applicants from Latin America, with prospective immigrants waiting two years for a visa. The Committee, recognizing that the ceiling on Western Hemisphere migration had been part of a compromise in the passage of the 1965 amendments, noted:

When repealing the national origins quota system, the 89th Congress did not provide an adequate mechanism for implementing the Western Hemisphere ceiling.... The result, completely unforeseen and unintended, has been considerable hardship for intending immigrants from this hemisphere who until 1968 enjoyed the privilege of unrestricted immigration.

In 1976 a new law was passed to make regulations regarding immigration the same for both hemispheres, applying to countries of the Western Hemisphere the 20,000-per-country limit and the preference system that was in effect in the Eastern Hemisphere. The only provision to cause any controversy in the 1976 Act was the application of the per-country ceiling provision to Mexico, which had exceeded the 20,000 limit every year since the enactment of the 1965 amendments. There was considerable support for the idea that special provisions should be permitted for contiguous countries, particularly Mexico, because of the special relationship that had developed as a result of shared borders. President Gerald Ford noted in his statement on signing the 1976 amendments into law that he would submit legislation to Congress to increase the immigration quotas for Mexicans desiring to come to the United States, and President Jimmy Carter endorsed similar legislation in 1977. No action, however, was taken to provide this special treatment for Mexico.

The 1976 law maintained two last vestiges of differential geographic treatment—the separate annual ceilings of 170,000 for the Eastern and 120,000 for the Western Hemispheres and the special ceiling (600 visas per year) assigned to colonies and dependencies. In 1978, new legislation combined the ceilings for both hemispheres into a worldwide total of 290,000 with the same seven-category preference system and per-country limits applied to both. Senator Edward Kennedy described the benefits accruing from the 1978 legislation:

The establishment of a worldwide ceiling corrects an anomaly in the law, and is a logical step in consequence of the major immigration reforms Congress enacted in 1965—on which I served as floor manager at the time.

**IRCA, IMFA, IMMIGRATION ACT OF 1990, AEDPA, and IIRIRA
or "1996 ACT"⁵**

In 1986, after years of debate, Congress enacted the most far-reaching immigration legislation since the 1950s—the Immigration Reform and Control Act (IRCA). IRCA was conceived as a multi-pronged attack on undocumented migration. Its major features were:

- An imposition of penalties on employers who hire undocumented workers ("employer sanctions");
- Legalization of long-term undocumented noncitizens;
- Legalization of noncitizens who had performed agricultural labor in the United States ("Special Agricultural Workers" or "SAWs"); and
- Protection of U.S. citizens and permanent residents from employment discrimination occasioned by employer sanctions.

Less noticed, but of significant importance, was another piece of legislation enacted in 1986—the Immigration Marriage Fraud Amendments (IMFA). IMFA sought to curtail sham marriages by prescribing detailed procedures for noncitizens seeking permanent residence on the basis of marriage.

While IRCA and IMFA took aim at unlawful migration, the Immigration Act of 1990 worked a major overhaul of the legal immigration system. The Act substantially expanded employment-based immigration, provided additional visa numbers for some family-based categories, and created the new category of "diversity immigrants," meant to provide visas to immigrants from "low admission" countries and regions. The 1990 Act also rewrote the exclusion and deportation grounds and adopted a number of provisions directed at ensuring the removal of noncitizens with criminal convictions.

⁵ Excerpt from *Immigration and Citizenship: Process and Policy (5th ed.)*, Thomas Alexander Aleinikoff, David A. Martin, and Hiroshi Motomura, Thomson West Publications (2003).

In the latter half of the 1990s, Congress again focused on the problem of illegal immigration to the United States. With support from both the Clinton Administration and a Republican-controlled Congress, the INS budget more than doubled in the 1990s. The bulk of these funds went to increased border enforcement and resources for the detention and removal of unauthorized noncitizens.

These priorities were reflected in two important statutes, the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) and the Illegal Immigration Reform and Immigration Responsibility Act of 1996 (IIRIRA, or "1996 Act"). In both AEDPA and the 1996 Act, Congress streamlined and accelerated the removal of noncitizens with criminal records. The statutes severely restrict judicial review of administrative removal orders; they also substantially limit avenues of relief from deportation. In order to deter the arrival of noncitizens without proper documents the legislation establishes an "expedited removal" procedure that largely eliminates the role of immigration judges in such expulsion decisions. Also, after the 1996 Act, asylum applications for the first time face filing deadlines.

The major welfare reform legislation enacted in 1996, the Personal Responsibility and Work Opportunity Reconciliation Act, had dramatic implications for immigrants. It severely restricted the access of permanent residents to most means-tested benefit programs and affirmed the exclusion of undocumented migrants from such programs. The legislation's most severe impact was to cut off food stamps and Supplemental Security Income (SSI) for noncitizens already in the United States and already receiving aid. Since 1996, Congress has restored benefits for many noncitizens who had been receiving food stamps and SSI, but the bars for future immigrants remain.

A significant aspect of the public policy debate over undocumented migration has been a certain tension between the federal government and the states. One key issue is how pays the costs attributed to undocumented immigration, especially education, medical care, and the incarceration of undocumented criminals. Another fundamental issues is how far states may go in trying to control costs by denying benefits to the undocumented.⁶

No legislation since 1996 has changed the basic structure of the Immigration and Nationality Act. Up through the late summer of 2001, Congress was actively considering several propositions to expand admission of workers, especially agricultural works. A guestworker program with Mexico had figured prominently in talks between Presidents George W. Bush and Vicente Fox. The overall trend in the proposals was to change lawful immigration indirectly—not by altering basic immigration categories, but rather

⁶ Editor's note: California Proposition 187 is perhaps the most visible example of a state's effort to control the costs of immigration. Under Governor Pete Wilson, the 1994 ballot initiative was designed to deny undocumented immigrants social services, health care, and public education. Proposition 187 passed with 58.8% of the vote, but was overturned by a federal court. For more information, see *R.I.P. Prop 187* available at <http://www.salon.com/news/feature/1999/07/30/immigration/index.html> (last visited January 10, 2007).

by easing the transition from nonimmigrant to permanent resident, and by allowing those here unlawfully to become permanent residents.

The terrorist attacks of September 11, 2001 dramatically changed the terms of the immigration debate, not only by prompting a basic shift in much of the public's thinking about immigration and national security, but also by leading to a number of concrete changes to immigration law. Congress and the Bush Administration took measures that:

- broadened then national security grounds for inadmissibility and deportability;
- expanded detention of noncitizens who are suspected of terrorism, or who are from countries associated with terrorism;
- relied more heavily on nationality in deciding immigration law enforcement priorities;
- strengthened restrictions on nonimmigrants, both before and after admission to the United States;
- increased the role of the states and localities in immigration law enforcement;
- restructured agency responsibilities, including the breakup of the Immigration and Naturalization Service, mainly into various units of the Department of Homeland Security;
- limited the number and delayed the processing of refugee admissions;
- limited public access to removal hearings and noncitizens access to the evidence against them in removal hearings.

TEXAS IMMIGRATION AND DEMOGRAPHIC TRENDS

IMMIGRATION TO TEXAS

In Texas, immigrant workers have been essential to the state's economic growth, particularly in the agricultural sector. In 1942, the U.S. government passed the Mexican Farm Labor Program Agreement with Mexico, better known as the *Bracero* program, to supply much of the workers needed during WWII. The agreement, which was in effect until 1964, guaranteed a minimum wage and humane treatment of migrant workers.

Initially, Texas farmers decided not to participate in the program and instead hired undocumented farm workers directly from Mexico.⁷ It was not until the end of the 1950s

⁷ Handbook of Texas Online. "Bracero Program," available at

after the passage of the "Texas Proviso" that Texas growers decided to fully participate in the program. The "Texas Proviso" in the 1952 Immigration and Nationality Act prohibited the prosecution of companies that hired undocumented workers. With few legal barriers, undocumented workers were easily able to travel and work in the United States. This policy continued until the 1986 Immigration Reform and Control Act started penalizing employers for hiring undocumented workers.⁸

Texas became a major residence for immigrants during the 1980s, when it became the fourth largest state with a foreign-born population in the nation.⁹ Since 1988, Texas has admitted an average of 84,372 legal immigrants each year, which is the third largest average annual admittance of immigrants in the United States.¹⁰ In 2000, the U.S. Census counted 31.1 million foreign-born residents in the U.S., a 57 percent increase over the 1990 Census total of 9.8 million.¹¹ The total U.S. population, by contrast, rose by just 3 percent over the same period.¹²

Six states—California, New York, Texas, Florida, Illinois and New Jersey—accounted for more than two-thirds of the 2000 foreign-born resident count, with 21.3 million persons.¹³ And the immigrant population in these six states is rising rapidly. Their 2000 count of 21.3 million was nearly 50 percent higher than the equivalent 1990 Census count of 4.4 million, for an increase of 6.9 million persons.¹⁴

Texas, with 2.9 million foreign-born residents, had the third-highest total in the U.S. (after California and New York) and ranked seventh among all states in its

<http://www.tsha.utexas.edu/handbook/online/articles/BB/omb1.html> (last visited September 7, 2006).

⁸ Daniel T. Griswold, *Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States*, Center for Trade Policy Studies, CATO Institute, (2002), p. 4, available at <http://www.freetrade.org/pubs/pas/tpa-019.pdf#search=%22%20site%3Awww.freetrade.org%20willing%20workers%3A%20fixing%20the%20problem%20of%20illegal%20mexican%20migration%20to%20the%20united%20states%22> (last visited October 3, 2006).

⁹ United States Bureau of the Census, *Profile of the Foreign-Born Population in the United States: 2000*, p. 14 (2001), available at <http://www.census.gov/prod/2002pubs/p23-206.pdf> (last visited October 2, 2006).

¹⁰ Department of Homeland Security, *Fiscal Year 2002 Yearbook of Immigration Statistics, Table 13*, (2003), available at <http://www.uscis.gov/graphics/shared/aboutus/statistics/IMM02yrbk/IMM2002list.htm> (last visited October 2, 2006).

¹¹ *Special Report: Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy*, Carole Keeton Rylander, Texas Comptroller (December 2006) ("Comptroller's Report").

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

percentage of residents who are immigrants, at 3.9 percent.¹⁵ Texas' foreign-born—71 percent of whom come from Mexico or other Latin American countries—are concentrated in the state's urban areas.¹⁶ Even so, the Census found foreign-born Hispanics in every Texas county except Loving County.¹⁷

Texas' foreign-born population is concentrated in seven council of government (COG) regions (Houston-Galveston, North Central Texas, Lower Rio Grande Valley, Upper Rio Grande, Alamo Area, Capital Area and South Texas).¹⁸ In 2000, these seven COGs accounted for almost three-quarters of the state's population and 88 percent of its foreign-born residents, 90 percent of whom were from Mexico or other Latin American countries.¹⁹

UNDOCUMENTED IMMIGRANTS ²⁰

The Pew Hispanic Center estimates that the U.S. had 11.1 million undocumented immigrants in 2005. Of these, Texas accounted for between .4 million and .6 million. The Center estimates that 30 percent of the foreign-born population is undocumented.

Recent research detailing the demographic characteristics of undocumented immigrants has reported U.S. totals rather than state-level characteristics. Texas is estimated to have about 4 percent of all undocumented immigrants residing in the U.S. The Pew Hispanic Center estimates that as of March 2005, two-thirds of undocumented immigrants in the U.S. had been in the country for 0 years or less, and 40 percent had been here for five years or less. Adult males composed the largest number of undocumented immigrants. Adults accounted for 84 percent of all undocumented immigrants and males made up 58 percent of all adults.

The largest number of undocumented immigrants came from Latin America, with the majority of those coming from Mexico. In 2005, 6.2 million of the nation's estimated 11.1 million undocumented immigrants came from Mexico, or 56 percent of the total. From 2000 to 2005, the number of undocumented immigrants from Mexico rose by 31.5 percent.

Undocumented immigrants are more likely to work in low-wage occupations that do not require a high level of educational attainment. The largest numbers of undocumented immigrants (31 percent) work in service occupations, followed by

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ Excerpt from *Comptroller's Report* at 3.

construction (9 percent) and production, installation and repair (5 percent). The fewest number of undocumented immigrants work in farming (4 percent), primarily because farm workers make up a relatively small portion of all occupations in general. Farming, however, has the highest concentration of Texas undocumented workers. Nearly a quarter (24 percent) of all farm workers are undocumented immigrants. Other fields with large concentrations of undocumented labor include cleaning (17 percent of all workers), construction (4 percent) and food preparation (2 percent).

SECURITY AND IMMIGRATION IN A POST 9-11 WORLD

U.S. SECURITY

History has shown that anti-immigration sentiment almost always follows a threat to national security. Soon after the beginning of World War II, Franklin D. Roosevelt signed Executive Order 9066, which resulted in the forcible interment of 120,000 Japanese nationals and Japanese Americans in 10 camps around the country.²¹ During the Iranian Hostage crisis of 1980-81, President Carter ordered all Iranian students in the United States to report to INS offices and show the lawfulness of their presence in the country.²² In January 1991, the Attorney General mandated the photographing and fingerprinting of virtually all nonimmigrants bearing Iraqi and Kuwaiti travel documents, before they would be allowed to enter the country—part of the U.S. response to Iraq's invasion of Kuwait.²³ Today, the events of 9/11 have caused the United States to rethink immigration once again. And despite the fact that no terrorists have arrived in the United States through Mexico, the focus over the past years has been on our Southern Border.²⁴

On September 29, 2006, the U.S. Senate approved the Secure Fence Act of 2006 (H.R. 6061), authorizing the building of 700 miles of fence along the U.S. southwestern border. Many landowners, businesspeople, law enforcement officials, and environmentalists oppose the new law. A recent *Washington Post* article highlights the new law's most significant flaws.²⁵

1. The passage of H.R. 6061 ignores the availability of cheaper and more effective technology to guard the border.

²¹ See *Japanese-Americans Internment Camps During World War II*, The Special Collections Department, J. Willard Marriott Library, University of Utah, and Private Collections, available at <http://www.lib.utah.edu/spc/photo/9066/9066.htm> (last visited January 10, 2007).

²² See *Narenji v. Civiletti*, 617 F.2d 745 (D.C. Cir. 1979), cert. denied, 446 U.S. 957, 100 (1980).

²³ 56 Fed.Reg. 1566 (1991).

²⁴ Peter Beinart, "The Wrong Place to Stop Terrorists" *Washington Post* (May 4, 2006).

²⁵ John Pomfret, "Border fence meets wall of skepticism" *The Washington Post* (October 10, 2006)

2. The cost of maintaining the fence would be extremely expensive, especially in areas where summer flash floods are likely to uproot sections of the fence.
3. Such a barrier would have a negative ecological impact on the region's wildlife, for example by impeding pronghorn sheep and jaguar from roaming freely between the United States and Mexico.
4. In order to build the fence, new roads would have to be built in some regions of the border, thus creating new routes to enter the U.S. illegally.
5. Since a lawsuit from environmental agencies and landowners is probable, the deadline for the completion of the wall is unrealistic.

Based on the cost of the existing fence along the San Diego-Mexico border, the House Appropriations Committee estimates that the fence will cost about \$9 million a mile, bringing the total cost to \$6.3 billion.²⁶ The fence in San Diego was originally estimated to cost \$14 million, but met with logistical and legal hurdles that lead to huge cost overruns.²⁷ The first nine miles alone cost \$39 million, and the fence has yet to be finished.²⁸ Though the California legislature has appropriated an additional \$35 million to complete the fence—for a total cost of \$74 million, or more than \$5 million a mile—decade-long litigation has delayed its completion.²⁹

Recent polls indicate that voters are growing wary and resentful of fences and similar fear-based initiatives to generate support for anti-immigrant policies.³⁰ According to a recent article by the International Relations Americas Program, the majority of respondents acknowledged that the U.S. government utilizes Americans' fear when developing its foreign policies.³¹ The respondents also agreed that the U.S. should draft foreign policy "in terms of being a good neighbor with other countries because cooperative relationships are ultimately in the best interests of the United States."³²

²⁶ MSNBC, *The Cost of That Border Fence*, available at <http://firstread.msnbc.msn.com/archive/2006/10/26/8879.aspx> (last visited October 31, 2006).

²⁷ *Id.*

²⁸ *Id.*

²⁹ John Pomfret, "Border fence meets wall of skepticism"

³⁰ International Relations Center, Americas Program, *Fear and Loathing in the North*, available at <http://americas.irc-online.org/updater/3646> (last visited November 6, 2006).

³¹ *Id.*

³² *Id.*

"Estamos tan ligados culturalmente los mexicanos en el estado de Chihuahua con los norteamericanos en Texas, que debemos convencer el Senado que lo que se está construyendo en la frontera es un muro de odio," Senator Eliot Shapleigh (D-El Paso) told *Noticias 860* last December.³³

In addition to obstructing cultural ties, building a wall obstructs the main objectives of international trade agreements, such as the General Agreement on Tariffs and Trade (GATT) and the North American Free Trade Agreement (NAFTA): to promote economic growth, increase exports by eliminating barriers to trade and investment, and create jobs that support expanded trade. According to the Office of Trade and Industry Information (OTII), export-supported jobs account for an estimated 7.9 percent of Texas's total private-sector employment.³⁴ Furthermore, according to data released in 2001, 22.7 percent of all manufacturing workers in Texas depend on exports for their jobs.³⁵

Since Mexico's entry into GATT and NAFTA, in 1986 and 1993 respectively, Mexico has become the United States' number one trade partner.³⁶ In 2005, Mexico was Texas's largest market.³⁷ Last year alone, Mexico received exports of \$50.1 billion (39 percent) of Texas's total merchandise export.³⁸

During a visit to The University of Texas of the Permian Basin, in October 2006, Nobel Prize winner and former Soviet President, Mikhail Gorbachev, commented on the importance of innovative ideas to control immigration flows and argued against the building of a fence along the US-Mexico border.³⁹ In a reference to President Reagan's 1987 visit to the Berlin Wall, when Reagan told Mr. Gorbachev, "this wall should be torn down," Mr. Gorbachev said, "I don't think the U.S. is so weak and so much lacks confidence as not to be able to find a different solution.... Now the United States seems to be building almost the Wall of China between itself and this other nation with which it has been associated for many decades and has had cooperation and interaction with."⁴⁰

³³ *Rechaza senador de Estados Unidos muro fronterizo*, *Noticias 860*, <http://www.860noticias.com.mx/modules/news/article.php?storyid=4080> (last visited January 10, 2007).

³⁴ Office of Trade and Industry Information, Texas: Exports, Jobs, and Foreign Investment, available at http://www.ita.doc.gov/td/industry/otea/state_reports/texas.html (last visited April 10, 2006).

³⁵ *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ *Id.*

³⁹ Midland Reporter-Telegram, Gorbachev compares proposed U.S. border wall to Berlin Wall, available at http://www.mywesttexas.com/site/printerFriendly.cfm?brd=2288&dept_id=475626&newsid=17342695 (last visited October 25, 2006).

⁴⁰ *Id.*

In October 2006, President Bush said, "The Secure Fence Act is part of our efforts to reform our immigration system. We have more to do. Meaningful immigration reforms means that we must enforce our immigration laws in the United States."⁴¹ Texas Governor Perry publicly has opposed the concept of a wall bordering Texas and Mexico.⁴² "Any of those types of legislation that create division are bad," Perry told the *Express-News*.⁴³ "We need to look at ways to be bringing people together rather than driving wedges between them."⁴⁴

TEXAS SECURITY

OPERATION RIO GRANDE AND THE VIRTUAL BORDER WATCH PROGRAM

On June 1, 2006, Governor Perry announced a new three-part border security plan that includes the expansion of Operation Rio Grande, a request for \$100 million to finance long-term border security operations, and the creation of a \$5 million camera-based border watch program.

The State of Texas piloted the virtual program for one month in November 2006.⁴⁵ Already, the effectiveness of the program has been called into question.⁴⁶ The *El Paso Times* reported in January 2007 that a month-long pilot of the camera program resulted in the apprehension of 10 undocumented immigration—a fraction of the 12,000 undocumented immigrations apprehended through regular law enforcement in the same period. Furthermore, the cost of the program averaged \$20,000 per arrest.⁴⁷

The high costs and demonstrated ineffectiveness of the virtual border watch program support critics who would focus more on rewriting the INA and using more effective technology to solve border security needs.

⁴¹ President Bush Signs Secure Fence Act, White House Press Release, available at <http://www.whitehouse.gov/news/releases/2006/10/20061026.html> (last visited January 10, 2007).

⁴² *Perry backs guest work ers, but not border fence*, R.G. Ratcliffe, San Antonio Express-News, December 7, 2006.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ Brandi Grissom, *Costly border cameras had little effect*, El Paso Times, January 7, 2007.

⁴⁶ *Id.*

⁴⁷ *Id.*

IMMIGRATION ENFORCEMENT AND THE MILITARY

The Posse Comitatus Act (18 U.S.C. § 1385) is a federal law enacted in 1878 at the end of Reconstruction.⁴⁸ Its original purpose was to stop federal military soldiers from overseeing elections in former Confederate States.⁴⁹ Today, it generally prohibits federal military personnel and units of the United States National Guard, under federal authority, from acting in a law enforcement capacity within the United States, except where expressly authorized by the Constitution or Congress.⁵⁰

In May 2006, President Bush announced Operation Jumpstart, an initiative to send up to 6,000 National Guard soldiers to the border to assist with immigration law enforcement.⁵¹ "The Guard will assist the Border Patrol by operating surveillance systems, analyzing intelligence, installing fences and vehicle barriers, building patrol roads, and providing training," President Bush explained in a nationally televised address.⁵²

Congressman Silvestre Reyes (D-El Paso), a former Border Patrol officer, responded to the proposal: "To solve this problem (undocumented immigration), we need professional, trained Border Patrol agents who know the challenges we face on the border. We need to provide the Border Patrol with the technology and resources they need, and we must enforce existing immigration laws."⁵³

In Texas, the Posse Comitatus Act is particularly important because it serves as a protection ensuring border residents a life free from military-based law enforcement in their communities. In Redford, Texas, in 1997, those protections failed and a Marine mistakenly shot to death an 18-year-old boy.⁵⁴

⁴⁸ *Posse Comitatus Act*, Wikipedia, available at http://en.wikipedia.org/wiki/Posse_Comitatus_Act (last visited January 11, 2007).

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ President Bush Addresses the Nation on Immigration Reform, White House Press Release, available at <http://www.whitehouse.gov/news/releases/2006/05/20060515-8.html> (last visited January 11, 2007).

⁵² *Id.*

⁵³ *Plan to put troops on border raises concerns*, Emma Perez-Treviño, Brownsville Herald, May 14, 2006, available at http://www.brownsvilleherald.com/ts_more.php?id=70759_0_10_0_M (last visited January 11, 2007).

⁵⁴ Major General John T. Coyne USMC, Investigation to Inquire Into the Circumstances Surrounding the Joint Task Force-6 (JTF-6) Shooting Incident That Occurred on 20 May 1997 Near the Border Between the United States and Mexico, United States Marine Corps, April 07, 1998, available at http://shapleigh.org/files/focus_documents142.pdf (last visited August 28, 2006).

THE COYNE REPORT

On May 20, 1997, an 18-year old goat herder, Esequiel Hernandez Jr., was shot to death by a camouflaged Marine leading an anti-drug patrol near Redford, Texas.⁵⁵ In response to this incident, the Pentagon appointed Major General John Coyne to investigate and issue a detailed report on the events and circumstances that led to that fatal misstep.⁵⁶ The main finding of the Coyne report was that the military should not be involved in domestic law enforcement, they are not prepared for it, they are not trained for it, and as a result they are inappropriate for it.⁵⁷ Among its principal findings the 1998 report determined that:

1. The Marines involved in the incident did not receive sufficient training on the appropriate use of force among civilians;
2. Basic Marine Corps training is intended to instill an aggressive spirit as an essential component of combat skills;
3. More training is needed before junior, fully armed Marines are placed in a domestic environment to perform noncombat duties;
4. None of the training received by Marines prepares them to recognize the humanitarian duty to render aid; and,
5. The potential for civilian casualties in counter-drug operations should have been a recognized risk that was addressed in the planning and training of the Marines in this particular situation.

The U.S. Secretary of Defense at the time, William Cohen, suspended anti-drug patrols along the Border soon after Esequiel Hernandez was killed. Judith Miller, general counsel for the Department of Defense, bluntly told Secretary Cohen that should another Redford-like incident occur, "we will not be able to protect those involved from possible criminal action from state officials."⁵⁸

The ten-state U.S.-Mexico Border Legislative Conference concurred, issuing Policy Statements in August 2005 and May 2006.⁵⁹ These Statements stipulated that 1)

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *Id.*

⁵⁸ *Was Justice Denied on the Border?*, San Antonio Express-News, December 12, 1998.

⁵⁹ XIII Border Legislative Conference, (May 11-13, 2006 Monterrey, Nuevo Leon), (Policy Statement to encourage U.S. & Mexico Federal Governments to pursue comprehensive immigration reform), available at <http://www.borderlegislators.org/Meetings/XIII%20Monterrey/Immigration%20Policy%20Statement.pdf> (last visited July 24, 2006).

only experienced and certified immigration officials should be in charge of enforcing immigration laws; and 2) immigration enforcement programs should be methodically planned to prevent the violation of U.S. and Mexico laws, human rights, and the loss of life.⁶⁰

Recent history has shown the importance of well-trained and experience personnel enforcing immigration law. *Murillo v. Musegades*, the class action lawsuit filed against the INS in El Paso more that a decade ago, represents a clear case of civil rights violations.⁶¹ The lawsuit against the U.S. Immigration and Naturalization Service (INS) and thirteen of its federal agents highlights the serious harm incurred by individuals when government officials violate basic U.S. laws.⁶² Plaintiffs in this case were subjected to violations of the Fourth and Fifth Amendments through the widespread unlawful searches, seizures, and harassment by the federal agents.⁶³

The Esequiel Hernandez case is instructive on the dangers of military-based law enforcement in civilian communities and the risk of having ill trained personnel enforcing immigration law. Moreover, the Coyne report includes information and recommendations as relevant today as when it was published in 1998.

USE OF LOCAL LAW ENFORCEMENT TO ENFORCE FEDERAL IMMIGRATION LAW

On August 14, 2006, El Paso Chief of Police Richard D. Wiles provided testimony before the House Judiciary Committee that the Major City Chiefs (MCC), an group comprised of the 57 law enforcement executives of the largest police organizations in the United States and Canada, opposed the use of local law enforcement to enforce federal immigration laws.⁶⁴

Chief Wiles cited an MCC report identifying the following concerns:

1) The potential of undermining trust and cooperation of immigrant communities. El Paso, like many other communities, has a significant immigrant community. In addressing crime and disorder at a macro-level, we cannot simply police around undocumented immigrants. We need the trust and cooperation of victims and witnesses whether they are documented or not. A failure in this regard means that crimes go

⁶⁰ *Id.*

⁶¹ *Murillo, et. al. v. Musegades, et. al.*, 809 F. Supp. 487 (West. Dist. Tex. 1992), available at http://shapleigh.org/files/focus_documents141.pdf (last visited August 28, 2006).

⁶² *Id.*

⁶³ *Id.*

⁶⁴ Testimony of Richard D. Wiles, El Paso Chief of Police, before the U.S. House Judiciary Committee, hearing in El Paso, Texas, August 14, 2006, available at <http://www.judiciary.house.gov/media/pdfs/wiles081706.pdf> (last visited December 14, 2006).

unreported and as such, our ability to maintain public order, safety and security in the community is compromised. There are many reports where perpetrators threaten undocumented victims with deportation if they report the crime. Immigration enforcement by local police would likely increase these threats and undermine the level of trust and cooperation between local police and immigrant communities. Local police contacts in immigrant communities are important as well in the area of intelligence gathering to prevent future terrorists attacks and strengthen homeland security.

2) **Lack of Resources.** Many local departments are struggling with resources. This is especially true as the federal government reduces funding to local agencies. Additionally, most departments are having major problems with retention as well as recruitment of new officers. The applicant pool as been reduced over the last few years because of the increase in law enforcement opportunities (post 9/11 Homeland Security positions, increase in U.S. Border Patrol, etc) as well as current military operations overseas.

3) **Complexity of Federal Immigration Law.** Federal immigration laws are extremely complicated in that they involve both civil and criminal statutes. The federal government and its designated agencies under the Department of Justice and the Department of Homeland Security have clear authority and responsibility to regulate and enforce immigration laws.

4) **Lack of Local Authority and State Law Limitations of Authority.** The federal government has clear authority over immigration and immigration enforcement. Federal law does not require the states or local police agencies to enforce immigration laws nor does it give the states or local agencies the clear authority to act in the area of immigration. In addition, state laws and local authority may restrict a local police officer's authority to act. Federal agents are specifically authorized to stop persons and conduct investigations as to immigration status without a warrant. Local police officers may be constrained by state and local laws that deal with their general police powers such as the ability to arrest without a warrant, lengths of detention and prohibitions against racial profiling.

5) **Risk of Civil Liability.** Because of the aforementioned issues, local police agencies would face the risk of civil liability and litigation if they chose to enforce federal immigration laws.⁶⁵

⁶⁵ *Id.*

In conclusion, Chief Wiles added, " Because of the lack of resources, lack of training in very complex immigration laws, lack of authority at the state and local level and the increased risk of civil liability and litigation, this will most certainly place a tremendous burden on local police agencies and their municipalities."⁶⁶

Despite these concerns, other local law enforcement officials are attempting federal immigration enforcement experiments in Texas. Two diverging views come from examples in El Paso County and Starr County.

A CASE STUDY: EL PASO COUNTY

Leo Samaniego, Sheriff of El Paso County, recently began stepped-up local immigration enforcement by conducting immigration raids in hotels and on job sites.⁶⁷ El Paso County Sherriff's Deputies set up roadblocks where vehicle occupants are stopped and asked for their driver's licenses and car insurance information.⁶⁸ He also ordered the detention and search of buses for the purpose of arresting undocumented immigrants.⁶⁹ The newspaper *El Diario de Juárez* reported that Sheriff Samaniego and his deputies participated in at least seven immigration raids so far this year – on February 9, 21, 24, March 14 and 15, and April 18 and 23 – leading to the detention of 400 individuals.⁷⁰

Regarding the use of Operation Linebacker funds by El Paso County Sheriff Leo Samaniego to conduct roadblocks and enforce immigration laws, Sheriff Samaniego exposed the taxpayers of El Paso County and the state of Texas to potential civil liability for violating the civil rights of citizens under 42 USC ' 1983, which states:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable.

⁶⁶ *Id.*

⁶⁷ Patricia Giovine, "Persigue Sheriff a indocumentados." *El Diario de Juárez*, April 19, 2006, available at <http://www.diario.com.mx/servicios/hemeroteca/nota.asp?notaid=f745fa5bee21fedf28f72037926fd415> (last visited January 11, 2007).

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *See* *El Diario de Juárez*, available at <http://www.diario.com.mx/> (last visited January 11, 2007).

On May 19, 2006, Senator Juan Hinojosa (D-McAllen), Chair of the Texas Senate Hispanic Caucus, expressed with his concerns regarding Sheriff Samaniego's use of Operation Linebacker funds for immigration raids and roadblocks in a letter to Governor Perry.⁷¹ In his letter Senator Hinojosa stated, "These raids and roadblocks are questionable in their legality, may give rise to civil rights lawsuits against Texas, and will distract local law enforcement from focusing on criminal activity such as drug trafficking and violent crimes."⁷²

While our nation has an obligation to protect its borders and enforce its immigration laws, the appropriate and only authority to carry out these duties is the U.S. Border Patrol. In asking his deputies to engage in immigration enforcement, Sheriff Samaniego exposed his staff and taxpayers to civil liability.⁷³ Under Texas law, such actions may constitute violations of the Code of Criminal Procedure, Article 2.131 through 2.138 related to racial profiling.⁷⁴ On May 26, 2006, a lawsuit was filed in U.S. District Court in El Paso (EPO6CA0188) against the El Paso County Sheriff Department charging it with violations of Fourth Amendment rights, based on the illegal search, detention and arrest of six undocumented immigrants on a bus headed toward Fort Hancock on March 21, 2006.⁷⁵

On July 21, 2006, the County of El Paso signed a settlement agreement with plaintiff Carl Starr ordering "that the El Paso County Sheriff's Department shall memorialize in writing its policy that prohibits Sheriff's Department Deputies from enforcing civil immigration law," and "that the El Paso County Sheriff's Department shall provide training for its peace officers to assist the officers in understanding the limits of their authority with regard to enforcement of civil immigration law."⁷⁶

Additionally, the court ordered the County of El Paso to pay Starr \$500 and the Texas Civil Rights Project \$3,500.⁷⁷

A CASE STUDY: STARR COUNTY

Not all border sheriffs agree with Samaniego's procedures on immigration enforcement. On May 27, 2006, the *McAllen Monitor* reported that Hidalgo County

⁷¹ Letter from Senator Juan Hinojosa (D-McAllen) to Texas Governor Rick Perry, May 19, 2006.

⁷² *Id.*

⁷³ *Starr v. County of El Paso*, Settlement Agreement and Release, Cause No. CA 0188-PRM (Western District of Texas, El Paso Division), July 21, 2006.

⁷⁴ *Id.* at 1.

⁷⁵ *Id.*

⁷⁶ *Id.* at 2.

⁷⁷ *Id.*

Sheriff Lupe Treviño introduced a new policy, modeled after one in Houston, which states: "Deputies shall not make inquiries as to the citizenship status of any person, nor will deputies detain or arrest persons solely on the belief that they are in this country illegally."⁷⁸ Sheriff Treviño stated that "if we deviate from this, we put ourselves in a litigious position."⁷⁹ The bottom line, added Sheriff Treviño, is that "Texas police officers are obliged to follow the code of criminal procedures. It is clearly not the duty of a police officer to detain solely based on immigration status."⁸⁰

In that same news story, Houston Police Department spokesman Lieutenant Robert Manzo, stated that "roadblocks are rarely used in their department because the legality of such roadblocks is often challenged."⁸¹

TECHNOLOGICAL SOLUTIONS

A viable alternative to the virtual watch program or a wall is the use of Unmanned Aerial Vehicles (UAV).⁸² UAVs current uses are mostly military, but they are being tested as a tool for law enforcement in North Carolina, Maryland, Los Angeles, and even Scotland.⁸³ UAV technology has come a long way, as the high-end UAVs have incredible flight endurances, top speeds, and ranges.⁸⁴ However, the smaller UAVs are a useful tool in patrolling the border. The Scan Eagle has been used to gather information for the U.S. Navy and has recorded 16 hour flight endurances.⁸⁵ It has a 10-foot wingspan and does not require any sort of runway, as it is launched by a catapult and retrieved by catching a rope on the top of a 50-foot pole.⁸⁶

⁷⁸ Cari Hammerstrom, "Sheriff Changes Policy Regarding Citizenship Questioning" *The Monitor* (May 27, 2006), available at <http://www.themonitor.com/SiteProcessor.cfm?Template=/GlobalTemplates/Details.cfm&StoryID=13420&Section=Valley> (last visited June 6, 2006).

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.*

⁸² Brock N. Meeks, "'Eyes in the sky' for homeland security," MSNBC.com, August 27, 2005, available at <http://www.msnbc.msn.com/id/9069787> (last visited January 11, 2007).

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ Boeing ScanEagle UAV Makes First Autonomous Flight, Boeing News Release, June 20, 2002, available at http://www.boeing.com/news/releases/2002/q2/nr_020620m.html (last visited January 11, 2007).

⁸⁶ *Id.*

An even smaller, less costly alternative exists in the Raven, a hand-launched UAV currently used for "over-the-hill," short-range surveillance in Iraq and Afghanistan.⁸⁷ It is small, with only a four-foot wingspan, and is so easily operated that one of the best Raven "pilots" in the Iraq theater was a cook, according to *USA Today*.⁸⁸ Col. John Burke even said that the controls resemble a PlayStation controller.⁸⁹ Applying these unmanned military tools would prove to be more effective and less costly than hiring the extravagant amount of border patrol agents required to oversee a wall.

Unmanned Aerial Vehicles (UAVs) are currently being used in Iraq and Afghanistan for military purposes.⁹⁰ They are also slated to be tested in Los Angeles to aid law enforcement in carrying their duties and provide an "eye-in-the-sky" by using technology capable of sending stream color video to an officer on the ground.⁹¹ There is also a growing wave of autonomous vehicles that do not need to be controlled in any way. Its plan is programmed and the vehicle flies.⁹² While the present can yield remote-controlled unmanned vehicles, the future will yield reliable autonomous vehicles.

THE ECONOMIC IMPACT OF IMMIGRATION

IMMIGRANT'S USE OF PUBLIC ASSISTANCE

In December 2006, the Texas Comptroller released a special report finding that undocumented immigrants contribute more to the Texas economy than the cost of the public services they receive:

The absence of the estimated 1.4 million undocumented immigrants in Texas in fiscal 2005 would have been *a loss to our gross state product of \$17.7 billion*. Undocumented immigrants produced \$1.58 billion in state revenues, which exceeded the \$1.16 billion in state services they received. (emphasis added).⁹³

⁸⁷ Tom Vanden Brook, "Drones reshaping Iraq's battlefields," *USA Today*, July 6, 2006, available at http://www.usatoday.com/tech/news/techinnovations/2006-07-06-uavs-iraq_x.htm (last visited January 11, 2007).

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ Comptroller's Report at 1.

Other research and reports support the same conclusion that documented and undocumented immigrants are indispensable to a healthy national and state economy.

Contrary to public perception, undocumented immigrants are ineligible for federal public assistance, including food stamps, Medicaid/Medicare, Supplemental Security Income, housing assistance, federal student financial aid, unemployment insurance, and cash welfare.⁹⁴ Although undocumented immigrants using fake social security numbers subsidize Social Security and Medicare with approximately 8.5 billion dollars annually, these workers are not eligible to collect their benefits.⁹⁵

Certain legal immigrants are also ineligible for federal public assistance. In 1996, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) imposed a five-year residency requirement before newly arrived legal immigrants can access federal public benefits, and gave states the option not to provide Medicaid, State Children's Health Insurance Program (CHIP), and welfare benefits to legal immigrants after the five-year bar.⁹⁶ Though Texas uses state funds to provide CHIP to legal immigrant children during their five-year bar, it is among only a handful of states that opted not to provide Medicaid or welfare after the five-year bar. Congress requires states to cover legal immigrant children under CHIP after the five-year bar, if they choose to operate a stand-alone program (not a part of Medicaid), which Texas does.

PRWORA was enacted ostensibly to reduce the burden on taxpayers caused by immigrant reliance on public assistance. Yet, numerous studies conducted before the passage of PRWORA found that immigrants consistently use fewer public services than native born Americans.⁹⁷ In a joint study conducted by the International Migration Policy Program of the Carnegie Endowment for International Peace and the Urban Institute, researchers found that "(t)here is no reputable evidence that prospective immigrants are drawn to the United States because of its public assistance programs."⁹⁸

The commonly held belief that immigrants represent a burden on the state and federal health care system is also unsupported by research. In a recent study published by the American Journal of Public Health, researchers found that "per capita total health care expenditures of immigrants were 55 percent lower than those of U.S.-born persons (\$1139

⁹⁴ U.S. Department of Justice, *Fact Sheet Illegal Immigration Reform and Immigrant Responsibility Act of 1996* (March 24, 1997), available at <http://www.uscis.gov/graphics/exec/prnfriendly.asp> (last visited October 16, 2006).

⁹⁵ "Health Care Expenditures of Immigrants in the United States: A Nationally Representative Analysis," *American Journal of Public Health*, vol. 95, no. 8 (August 2005), p. 1431.

⁹⁶ Sarita A. Mohanty, MD., M.P.H., "Unequal Access: Immigrants and U.S. Health Care," *Immigration Policy Center*, vol. 5, Issue 5 (July 2006), p. 2.

⁹⁷ *Id.* at 3.

⁹⁸ "Immigrants & Welfare," *Research Perspectives on Migration*, vol. 1, no. 1 (September/October 1996), p3.

vs. \$2546).⁹⁹ The study analyzed data collected on 21,241 people in the Agency for Healthcare Research and Quality's 1998 Medical Expenditure Panel Survey. The authors of the study concluded that their findings "show that widely held assumptions that immigrants are consuming large amounts of scarce health care resources are invalid; these findings support calls to repeal legislation proposed on the basis of such assumptions. The low expenditures of publicly insured immigrants also suggest that policy efforts to terminate immigrants' coverage would result in little savings."¹⁰⁰

IMMIGRANTS' USE OF HEALTH CARE

Anti-immigrant reformers argue that undocumented immigration poses an enormous strain on the emergency health care system, since uninsured immigrants turn to the emergency room (ER) for both preventive and emergency care. Emergency care is one of the few services available to undocumented immigrants; this care is funded by federal emergency Medicaid and state and local governments.

Like other uninsured populations, immigrants are forced to use the emergency room to meet their health care needs. However, studies have shown that uninsured U.S. citizens are more responsible for high emergency room use than non-citizens. In a recent study on the use of hospital emergency rooms by the uninsured, researchers found that "(c)ontrary to popular perceptions, communities with high (emergency room) use have fewer numbers of uninsured, Hispanic, and non-citizen residents."¹⁰¹ Using data from a sample of about 46,600 people, the study found that the size of an area's non-citizen population was not correlated with higher emergency room use. In fact, the communities with a larger share of non-citizens had a lower rate of emergency room use than in communities with a lower percentage of non-citizens. This suggests that many of the people using emergency rooms who are presumed to be undocumented immigrants are, in fact, U.S. citizens. (See chart on following page).

⁹⁹ "Health Care Expenditures of Immigrants in the United States: A Nationally Representative Analysis," *American Journal of Public Health*, vol. 95, no. 8 (August 2005), p. 1431.

¹⁰⁰ *Id.*, p. 1437.

¹⁰¹ Peter J. Cunningham, "What Accounts For Differences In The Use Of Hospital Emergency Departments Across U.S. Communities?," *Health Affairs, The Policy Journal of the Health Sphere*, (July 2006), p.324, available at <http://content.healthaffairs.org/cgi/content/full/hlthaff.25.w324v1/DC1> (last visited October 26, 2006).

Variation In Population And Health System Characteristics Across Sixty U.S. Communities, By Quartile Of Emergency Department (ED) Use, 2003

Characteristic	Quartile			
	1 (high ED use)	2	3	4 (low ED use)
Sample size (persons)	11,880	13,370	10,016	11,274
Population characteristics				
Less than 100% of poverty	12.9%	14.7%	13.8%	11.3%
Less than 200% of poverty	32.5	35.1	34.1	31.3
Uninsured	12.0	12.7	13.8	14.8
Privately insured	59.6	61.4	58.7	60.1
Medicaid/SCHIP	9.5	9.8	10.1	10.4
Medicare	15.2	13.5	15.0	12.4**
Black	15.1	13.5	10.8	6.4**
Hispanic	8.8	8.0	16.5	24.9**
Noncitizen	4.1	3.8	7.4	10.3**
Under age 18	23.7	26.6**	24.9	27.1**
Age 65 or older	12.9	11.2	13.3	10.9
In fair/poor health	15.1	13.7	13.3	12.9
2+ chronic conditions	13.4	12.7	11.6	10.2**
Average population size	2,009,300	1,409,600**	1,798,100	3,238,300**

SOURCE: All data based entirely on the Community Tracking Study (CTS) household survey, 2003, available online at <http://www.hschange.com/index.cgi?data=02> (last visited January 11, 2007).

This study found that the most likely predictor of emergency room use is income: 97% of all ER visits were by people with income below the poverty level. The study did find that Hispanics were more responsible for using the ER in high ER use communities (65% of all visits) than Blacks (37%) or Whites (24%). However, ER visits by citizens outnumbered visits by non-citizen by almost 2 to 1. Most notably, the study found a high use of emergency rooms among Medicare and Medicaid recipients. This suggests that future increases in emergency room use will be driven by the growth in our senior population and baby-boom retirees, not by undocumented immigrants.¹⁰² The following graph shows the use of emergency rooms by insurance coverage, race/ethnicity, citizenship and income.

¹⁰² *Id.* at 333.

Use Of Hospital Emergency Departments (EDs) In Communities With High And Low ED Use, 2003

	ED visits per 100 people		ED visits as a proportion of all outpatient visits (%)	
	High-ED-use communities	Low-ED-use communities	High-ED-use communities	Low-ED-use communities
All people	45.4	22.5**	21.0	14.2**
Insurance coverage				
Uninsured	71.2	15.6**	25.2	10.8**
Medicaid/state	90.8	33.0**	37.2	16.5**
Private	33.4	19.8**	18.0	14.1**
Medicare	42.8	28.6**	18.4	14.7**
Race/ethnicity				
White	37.7	20.3**	18.9	13.9**
Black	57.4	36.0**	24.0	18.4**
Hispanic	65.5	21.5**	25.5	13.7**
Citizenship				
Citizen	46.3	23.3**	21.3	14.4**
Noncitizen	24.3	15.5	12.1	11.9
Family income (as percent of poverty)				
<100%	96.5	33.4**	32.2	16.9**
100-199%	51.0	21.3**	23.1	13.5**
200-299%	46.2	24.8**	21.1	15.9**
300-399%	31.7	21.8**	19.3	13.7**
400% or higher	28.8	19.4**	16.3	13.2**

Source: All data based entirely on the Community Tracking Study (CTS) household survey, 2003, available online at <http://www.hschange.com/index.cgi?data=02> (last visited January 11, 2007).

Even in Texas, the state with the highest uninsured population and the third-largest immigrant population, immigrants are not to blame for the state's health care crisis. Almost one-quarter of Texas residents lack health insurance, compared to 13% nationwide.¹⁰³ However, after immigrants are removed from this count, Texas is still ranked first nationally as the state with the highest percentage of uninsured people—21 percent.¹⁰⁴

Even though undocumented immigrants are disproportionately employed in some of the occupations that pose the greatest health risk and are the least likely to have insurance, they are not to blame for the crisis facing the U.S. health care system. Attempting to solve the grave problems in our health care system by enacting laws that ignore many of the underlying causes and instead blame immigrants is a flawed approach that will do little to improve the health care system for U.S. citizens. Not only will limiting immigrants' access to health care do little to resolve these challenges, it will lead to a general deterioration in the health of the immigrant workforce, which will compromise our economic competitiveness.

¹⁰³ Center for Public Policy Priorities, Medicaid and CHIP Enrollment Update (Austin, TX., 2006), p. 5.

¹⁰⁴ *Texas on the Brink*, "Distant Dream," Office of Texas Senator Eliot Shapleigh, 3rd Ed., January 2007.

Physicians for a National Health Program (PNHP), an organization of 14,000 members with chapters across the country, proposes an alternative approach that will strengthen our health care system for all users. Instead of targeting immigrants as a means to address the inefficiencies of the U.S. health care system, PNHP urges lawmakers to consider a comprehensive single-payer national health program.¹⁰⁵ Olveen Carrasquillo, a member of the organization and co-author of a study on immigrants and the health care system argues: "The future economic success of the United States depends on a healthy immigrant workforce. Our findings suggest an urgent need for partnerships between health organizations and community groups to improve access to care, particularly for minority immigrants...a national health program that includes all immigrants would cost much less than is widely assumed."¹⁰⁶

TAXES

Immigrants pay considerable taxes, which can outweigh the costs of illegal immigration to the nation. Undocumented immigrants pay real estate taxes, sales and other consumption taxes the same as citizens and legal immigrants do. These taxes fund the majority of state and local costs of schooling, health care, roads, and other services.

Evaluating the drain of immigration on the U.S. economy *without* taking into account their contributions through the tax system is referred to by economists as the "static" model.¹⁰⁷ According to a recent report conducted by Immigration Policy Center, a non-partisan organization, the static model is flawed because it does not include the multiple roles that immigrants play in the U.S. economy.

The static model, favored by critics of immigration, excludes the impact that immigrants have as workers, consumers, and entrepreneurs in the nation's economy. Economists that use the static model assume that immigrant workers do little more than increase the labor supply, hence lowering the wages of native workers and increasing the profits for businesses. One of the fallacies of this model is that it incorrectly assumes that immigrants and U.S. workers are interchangeable when, in fact, rather than substituting each other, immigrant workers complement the U.S. labor force. The Immigration Policy Center notes, for example, that less-skilled immigrant construction workers boost "the productivity of U.S.-born carpenters, plumbers, and electricians, but do not necessarily substitute for them."¹⁰⁸ Another flaw in the static model is that it fails to account for immigrant's purchasing power, which in turn creates more jobs and invigorates the

¹⁰⁵ Physicians for a National Health Program, *Immigrant's Health Care Costs are Low*. http://www.pnhp.org/news/2005/july/immigrants_health_c.php. Accessed: October 30, 2006.

¹⁰⁶ *Id.*

¹⁰⁷ Immigration Policy Center, *Economic Growth & Immigration*, (November 2005), p. 7, available at http://www.aif.org/ipc/special_report/2005_bridging.pdf#search=%22economic%20growth%20%26%20immigration%20bridging%20the%20demographic%20divide%20ipc%22 (last visited September 13, 2006).

¹⁰⁸ *Id.*

nation's economy. A study conducted by the University of Georgia¹⁰⁹ demonstrates the relevance of the Latino buying power in the U.S. economy. It estimates that, from 1990 to 2010, the U.S. Latino buying power will grow by 347 percent, faster than African-American (203 percent) and Native American (240 percent) buying power and at the same pace as Asian buying power. The study attributes the growth in Latinos' purchasing power to their demographics, better employment opportunities, strong immigration, and the relatively young Latino population entering the workforce.

Further, contrary to popular belief, banks are not the sole beneficiaries of immigrants' entry into the financial mainstream. As noted by *Business Week*, when financial institutions move immigrants out of the cash economy, they not only invest in banks, they also acquire credit cards, car loans, and home mortgages; this in turn helps the U.S. gross national product, because consumers with credit spend more than those with limited cash.¹¹⁰ When immigrants become more active consumers, they increase the taxes generated to pay for schools, health care, roads, and other services – the very services they are accused of exploiting.¹¹¹

In April 2006, Standard and Poor's (S&P) conducted a report to study the impact of undocumented immigration in the United States.¹¹² The report noted that although it is difficult to evaluate the impact of undocumented immigrants on states' and localities' credit ratings, "many localities that attract high numbers of undocumented immigrants, such as California, Texas, Florida, and New York, also enjoy relatively low unemployment rates, healthy income growth and increasing property values, all of which contribute to stable financial performance."

The report points out that previous studies have demonstrated that funds, originated from sales taxes paid by undocumented immigrants, compensate some of the costs that these immigrants generate. The study cited California, the state with the largest number of undocumented immigrants, and where, according to the report, undocumented immigrants, by paying sales taxes, generate roughly one-third to one-half of their cost to the state.¹¹³

¹⁰⁹ Jeffrey M. Humphreys, "The Multicultural Economy 2005 America's Minority Buying Power," *Georgia Business and Economic Conditions, The University of Georgia*, vol. 65, no 3 (2005), p 6, available at <http://www.nmsdcus.org/infocenter/Multicultural%20Economy%202004.pdf#search=%22the%20multicultural%20economy%202004%20americas%20minority%20buying%20power%22> (last visited September 20, 2006).

¹¹⁰ *Business Week*, *Embracing Illegals* (July 18, 2005), available at http://www.businessweek.com/magazine/content/05_29/b3943001_mz001.htm (last visited October 31, 2006).

¹¹¹ Standard & Poor's Ratings Direct, as cited by *Business Week*, *Econ 101 on Illegal Immigrants*, (April, 2006), available at http://www.businessweek.com/investor/content/apr2006/pi20060407_072803.htm (last visited May 10, 2006).

¹¹² *Id.*

¹¹³ *Id.*

In a study conducted in the Washington, D.C., metropolitan area, from 1999 - 2000, immigrant households paid nearly \$10 billion in taxes, or about 18 percent of all taxes paid by households in the region, a share that was proportionate to their share of the population. The report concluded that immigrants should be welcomed to the Washington D.C. area, because of their significant and growing role on the region's economy and tax base.¹¹⁴

SOCIAL SECURITY

According to S&P each year the U.S. Social Security Administration retains roughly \$6 billion to \$7 billion of Social Security contributions in an "earnings suspense file" (an account for W-2 tax forms that cannot be matched to the correct Social Security number"). This revenues file, in 2002 alone, accounted for \$56 billion in earnings, or about 1.5 percent of total reported wages. Presumably, the majority of these unmatched numbers belong to undocumented immigrants who do not claim their benefits. The director of the Social Security administration, Stephen C. Goss, agrees, having made the assumption that undocumented immigrants are the main contributors to this file. According to a *NY Times* article, researchers from the Center for Urban Economic Development, have also argued that undocumented immigrants are the main contributors to these revenues.¹¹⁵

Immigration and Texas' Labor Market

As the chart *Estimates of the Unauthorized Migrant Population* shows, the total undocumented population in Texas is between 1.4 and 1.6 million, ranking Texas as the second state in the nation with the largest undocumented immigrant population.

¹¹⁴ Randy Capps, Everett Henderson, *The Urban Institute* ; Jeffrey S. Passel, *Pew Hispanic Center*; Michael Fix, *Migration Policy Institute* "Civic Contributions: Taxes Paid by Immigrants in the Washington, DC, Metropolitan Area," *The Community Foundation*, available at http://www.urban.org/UploadedPDF/411338_civic_contributions.pdf. Accessed (last visited August 14, 2006).

¹¹⁵ Eduardo Porter, "Illegal Immigrants Are Bolstering Social Security With Billions," *The New York Times*, April 5, 2005, available at <http://www.nytimes.com/2005/04/05/business/05immigration.html?ei=5090&en=78c87ac4641dc383&ex=1270353600&adxnnl=1&partner=kmarx&adxnnlx=1156539984-8LeD2Z0vyIN6Do5Mo/ymXw> (last visited July 17, 2006).

Estimates of the Unauthorized Migrant Population for States based on the March 2005 CPS

(In thousands)

U.S. total **11,100 (10,700-11,500)**

California	2,500-2,750
Texas	1,400-1,600
Florida	800-950
New York	550-650

Based on March 2005 Current Population Survey

Source: Pew Hispanic Center

Although conservative groups emphasize the negative impact that immigrants have in Texas,¹¹⁶ numerous studies contradict this assessment. According to economic indicators, the Texas economy is expanding, if at a slower rate than in previous years, and is healthy overall. D'Ann M. Peterson of the Federal Reserve Bank of Dallas contends that although there is a slowing trend in the economy at the national level that is reflected at the state level, major Texas' cities are growing steadily.¹¹⁷ Another indicator of the state's healthy economy is the increase in per capita income (chart 1). The business-cycle indices for most major cities also reveal economic expansion (chart 2). Finally, steady job growth is a sign of the strength of the Texas economy.

Despite the immigration turmoil in Texas' border communities this year, employment growth at the border exceeded the state average (chart 3). The Federal Reserve Bank of Dallas concludes that the Texas economy will most likely continue to grow the rest of 2006 and into the next year.

¹¹⁶ Federation for American Immigration Reform, *Immigration Impact: Texas*, available at http://www.fairus.org/site/PageServer?pagename=research_research79e6 (last visited September 5, 2006).

¹¹⁷ Federal Reserve Bank of Dallas, *Midyear Update: Major Metros Driving Texas Expansion* (July/August, 2006), available at <http://www.dallasfed.org/research/swe/2006/swe0604b.html> (last visited January 11, 2007).

Chart 1

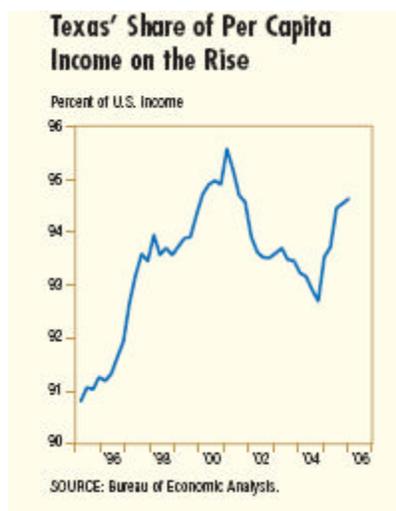


Chart 2

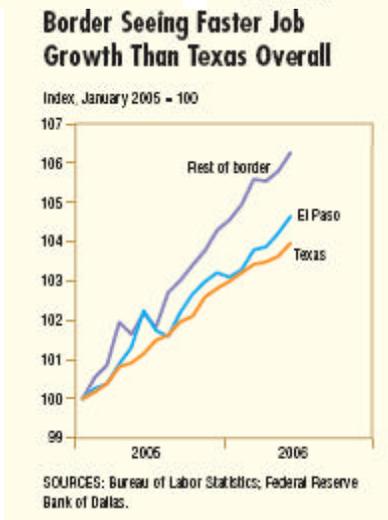
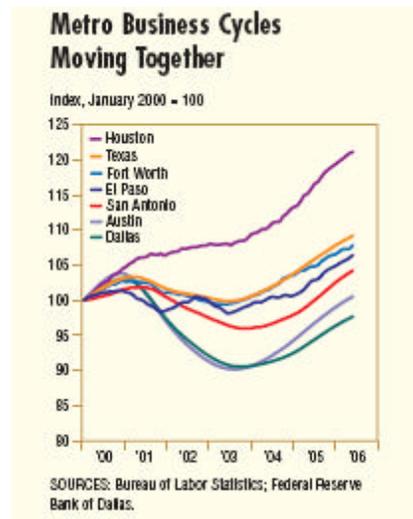


Chart 3

On August 28, 2006, a coalition formed by the Texas Association of Business (TAB) announced a campaign oppose enforcement-only immigration reform, which the coalition contends would have a disastrous impact on the state's economy.¹¹⁸ This coalition, made up of 36 business leaders, recently published an op-ed asking Congress to pass a comprehensive immigration bill that would provide a pathway to citizenship for undocumented workers.¹¹⁹ In support of their request, the TAB coalition argued that Texas economy depends heavily on and benefits from its undocumented workforce.¹²⁰ The coalition noted the change in the native workforce, the small number of high school

¹¹⁸ *Pass Immigration Reform*, Viewpoints, Dallas Morning News, August 28, 2006, available at http://www.dallasnews.com/sharedcontent/dws/dn/opinion/viewpoints/stories/DN-ceoviewpoints_28edi.ART.State.Edition1.3e0cd43.html (last visited August 11, 2006).

¹¹⁹ *Id.*

¹²⁰ *Id.*

dropouts looking for unskilled work, the retiring of baby boomers, and the decline in fertility rates among natives as the primary reasons that undocumented labor is so critical to Texas.¹²¹ The businessmen emphasized that they were not looking for "cheap labor," but for *available* labor.¹²² According to the group, a typical construction worker earns more than \$50,000 a year including overtime pay.¹²³ "Employers say they do everything they can to attract native-born workers. But few young Americans want to do hard physical labor, particularly in our climate," wrote the coalition. "And in the less-skilled construction trades – masonry, concrete, drywall, tile – more than 80 percent of Texas' workforce is Latino."¹²⁴

The coalition also argued that without immigrant labor, the agricultural and construction industries would suffer: produce would perish in the fields with no workers to harvest it, construction in the school system alone would come to a standstill, and regional economies would be disrupted.¹²⁵ The chairmen, CEOs, and stockholders on the TAB coalition concluded that immigrants not only contribute to Texas economy, but also renew and reinvigorate the country.¹²⁶ They added that their companies will only support immigration reform that values these contributions, helps immigrants achieve the American dream, and enables business to operate within the law.¹²⁷

TEXAS' PROPOSAL TO TAX IMMIGRANTS' REMITTANCES

Most immigrants do not come to the United States to stay permanently, but for temporary employment. In 2003, 78 percent of immigrants came to the United States to seek employment.¹²⁸ A primary motive for immigrants from less developed countries to seek employment in more developed countries like the U.S. is to gain greater access to capital.¹²⁹ Developing countries tend to have under-developed economic markets and

¹²¹ *Id.*

¹²² *Id.*

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.*

¹²⁶ *Id.*

¹²⁷ *Id.*

¹²⁸ Juan Castillo, "U.S. Payday is Something to Write Home About." *Austin American Statesman*. (December 14, 2003), p. J-1.

¹²⁹ Daniel T. Griswold, *Willing Workers: Fixing the Problem of Illegal Mexican Migration to the United States*, Center for Trade Policy Studies, CATO Institute, (2002), p. 6, available at <http://www.freetrade.org/pubs/pas/tpa-019.pdf#search=%22%20site%3Awww.freetrade.org%20willing%20workers%3A%20fixing%20the%20problem%20of%20illegal%20mexican%20migration%20to%20the%20united%20states%22> (last visited October 3, 2006).

jobs that provide little or no insurance for workers. Given this reality, families often send a member to work abroad in an advanced market, and send money back to support the family at home.¹³⁰

Known as “remittances,” these payments play a vital role in the global economy¹³¹ and have become a major source of support for many developing countries.¹³² In 2002, remittances yielded \$72.4 billion in revenue for developing countries.¹³³ Remittances provide investment funds and capital for families in developing countries, where it is often difficult to obtain loans or commercial credit. This capital benefits the foreign exchange reserves and wealth of the recipient economy; it also provides relief to the macro economy by fostering greater economic activity.

Currently, legislatures in Texas, Arizona and Georgia are considering taxing immigrants' wire transfers to create revenue to fund healthcare, education and state border patrols. By taxing remittances, state legislators are not only condoning double taxation, but are impeding economic development in immigrants' home countries and, ironically, generating *more* illegal immigration.

Take for example the social networks of Mexican immigrants, better known as Mexican Hometown Associations (HTAs).¹³⁴ These social groups promote the well being of their hometowns through financial contributions in the form of remittances, and economic development, thereby reducing migration to the U.S. Rather than taxing remittances, we should support bilateral agreements such as the U.S.-Mexico Partnership for Prosperity and Mexico's 3 for 1 programs.

President Kennedy's Alliance for Progress also provides a roadmap for future initiatives promoting democracy and economic development in Latin America.¹³⁵ The Alliance for Progress, chartered in August, 1961, called for an annual increase of 2.5% in per capita income in Latin American countries, the establishment of democratic governments, more equitable income distribution, land reform, and economic and social

¹³⁰ *Id.*

¹³¹ *Id.*

¹³² *Id.*

¹³³ Dilip Ratha, "Workers' Remittances: An Important and Stable Source of External Development Finance," Global Development Finance 2003: Analysis and Summary (2003), available at <http://siteresources.worldbank.org/INTRGDF/Resources/GDF2003-Chapter7.pdf> (last visited October 16, 2006).

¹³⁴ Xóchitl Bada. "Mexican Hometown Associations" Americas Program, (2003), available at http://americas.irc-online.org/citizen-action/series/05-hta_body.html (last visited August 28, 2006).

¹³⁵ Alliance for Progress, The Columbia Encyclopedia, 6th Ed. (2001-05), available at <http://www.bartleby.com/65/al/AlliancPro.html> (last visited January 11, 2007).

planning.¹³⁶

According to a recent study, remitters already pay a high cost when they send wire transfers.¹³⁷ Remittance taxes and other barriers to wealth creation in Latin American countries exacerbate the migration issues these barriers were created to address in the first place. A wiser course is to encourage sustainable economic development in these countries.

CONCLUSION: THE RIGHT APPROACH FOR TEXAS

Today, in nearly every state, immigrants from Mexico and Latin America are the targets of prejudice and discrimination. Despite these challenges, the “lamp beside the golden door” has remained for those who brave all odds to seek it.

The Statue of Liberty and all she represents stands tall.

This is why recent federal, and especially, state, and local initiatives targeting immigrant families and their children are disappointing and dangerous. Across America, for example, immigrants are attacked for not paying their way, when the truth is that Social Security would collapse without their \$6 - \$7 billion subsidy.

In Texas, Governor Perry soon will ask the Legislature to spend \$100 million to create a state border patrol. Rep. Leo Berman (R-Tyler) and others are filing bills to exclude U.S.-born children of illegal immigrants from access to public education, health care, unemployment, and housing. And Farmers Branch, a Dallas suburb, recently became the first Texas municipality to enact measures fining landlords who rent to illegal immigrants and declaring English the city’s official language.

For Texas to move forward on immigration, our values and principles must be clear.

- **Immigration is a Federal Issue**

Above all, Texas lawmakers must recognize that immigration is a federal issue. The U.S. Constitution grants the federal government powers over foreign affairs, citizenship, war and other areas related to immigration. A state-created patchwork of immigration laws and enforcement will be inconsistent, incompatible, and unevenly enforced.

¹³⁶ *Id.*

¹³⁷ The Pew Hispanic Center, *Billions in Motion: Latino Immigrants Remittances and Banking*, available at <http://pewhispanic.org/files/reports/13.pdf> (last visited May 11, 2006).

- **Texas Deserves a Fair, Comprehensive and Responsible Federal Immigration Framework that Meets the Emerging Economic Needs of 21st Century America**

Texas deserves a fair and comprehensive federal immigration framework that meets the emerging economic needs of 21st century America. Mexico is Texas' greatest trading partner, with more than \$50 billion in Texas exports in 2005. Furthermore, almost all experts agree our economy needs immigrant labor for the emerging technology, construction, service, and agriculture jobs of the future. The federal government must pass fair and comprehensive immigration policies that meet basic economic needs of 21st century America.

- **Immigration Enforcement Costs Must be Paid by the Federal Government**

We must demand that all immigration enforcement costs be paid by the federal government. State taxpayers should not bear the burden of a federal obligation. We cannot divert our limited state resources from critical state needs, including education, healthcare, infrastructure and criminal justice. Instead of using Texas' hard earned tax dollars to fight illegal immigration and beef up border security – both federal responsibilities – Governor Perry's \$100 million should go to fund TEXAS Grants, a program to help Texas children get a college education.

By doing this, Texas policy would recognize the value of giving young immigrants the tools they need to become full participants in the Texas economy. Knowing that today's young immigrants are tomorrow's taxpayers, we should ensure they have access to quality public education and the opportunity to get a higher education. We should not only maintain Texas as one of the vanguard states in which undocumented students can qualify for in-state tuition, but also increase our investment in higher education. Immigrants that learn more, earn more. The U.S. Supreme Court has adopted a policy that speaks about educating our future leaders, regardless of immigration status. In *Plyer v. Doe*, the court cited in its opinion the many negative consequences of preventing undocumented immigrants' access to education.¹³⁸

- **The U.S. Constitution Protects all Texans From Unreasonable Search, Seizure, and Detention**

Texas lawmakers must also stand up for the protections guaranteed by the U.S. and Texas Constitutions, which protect all Texas residents from unreasonable search, seizure and detention. In 1992, in the landmark El Paso case, *Murillo v. Musegades*, the court held that “the stopping, questioning, detaining, frisking, arresting, and searching of individuals based solely upon racial and ethnic appearance reprehensibly violates the Fifth Amendment.” If we do not unite in opposition to local law enforcement's abuse of its powers in attempting to enforce our borders, we run the risk of increased racial

¹³⁸ *Plyer v. Doe*.

profiling, where a segment of our society is targeted merely because of the color of their skin.

- **Private Sector Employees and State Workers Should Not be Turned Into Immigration Agents**

We must also prevent private sector employees and state workers from being turned into immigration agents. Private sector employees and state workers do not possess the resources, time, or expertise to enforce federal immigration law. In addition, making community-based workers such as teachers, nurses and police officers immigration agents undermines their ability to build the necessary trust, skills, and opportunities they need in the communities where they work and live. Nearly every major city police chief is already on record against local enforcement of immigration laws.

When the 80th session of the Texas Legislature begins on January 9, 2007, this Senate office will work for fair and comprehensive immigration policies that will benefit our state and remain committed to the American Dream that is written for all to see at the foot of our Statute of Liberty.

* * *