Center for Immigration Studies

Downsizing Illegal Immigration
A Strategy of Attrition Through Enforcement
By Mark Krikorian

Senators John McCain and Edward Kennedy recently unveiled a major bipartisan immigration proposal backed by a coalition of business, labor, and ethnic organizations. Unfortunately, this plan, like other suggested immigration plans (including President Bush's) is based on a false premise: Since the federal government can't quickly deport the 10-12 million illegal aliens, the only alternative is legalization – i.e., amnesty.

But there is a third way that rejects this false choice, and it is the only approach that can actually work: Shrink the illegal population through consistent, across-the-board enforcement of the immigration law. By deterring the settlement of new illegals, by increasing deportations to the extent possible, and, most importantly, by increasing the number of illegals already here who give up and deport themselves, the United States can bring about an annual decrease in the illegal-alien population, rather than allowing it to continually increase. The point, in other words, is not merely to curtail illegal immigration, but rather to bring about a steady reduction in the total number of illegal immigrants who are living in the United States. The result would be a shrinking of the illegal population to a manageable nuisance, rather than today's looming crisis.

This is analogous to the approach a corporation might take to downsizing a bloated workforce: a hiring freeze, some layoffs, plus new incentives to encourage excess workers to leave on their own.

It is worth noting that such a strategy of attrition is implicit in many proposals for improved enforcement of the immigration law, such as the recently passed Real ID Act (which, among other things, sought to bars illegals from getting driver's licenses) and the Clear Act (a bill which, if passed, would systematize the interaction of federal immigration authorities with state and local law enforcement). But however important such specific measures are, they are merely tactics, pieces of a larger puzzle. An overall blueprint for success also needs to be articulated, in order to place such tactics in strategic context for the public, for lawmakers, and for the enforcement personnel assigned to do the job.

A Realistic Goal

This strategy of attrition is not a pipe dream, or the idle imaginings of a policy wonk. The central insight is that there is already significant churn in the illegal population, which can be used to speed the decline in overall numbers. According to a 2003 report from the Immigration and Naturalization Service[1], thousands of people are subtracted from the illegal population each year. From 1995 to 1999, an average of 165,000 a year went back home on their own after residing here for at least a year; the same number got some kind of legal status, about 50,000 were deported, and 25,000 died, for a total of more than 400,000 people each year subtracted from the resident illegal population. The problem is that the average annual inflow of new illegal aliens over that

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same period was nearly 800,000, swamping the outflow and creating an average annual increase of close to 400,000.

A strategy of attrition would seek to reverse this relationship, so that the outflow from the illegal population is much larger than the number of new illegal settlers from abroad. This would be a measured approach to the problem, one that doesn't aspire to an immediate, magical solution to a long-brewing crisis, but also does not simply declare surrender, as the Bush and McCain/Kennedy amnesty proposals do.

But why not mass deportations? If our goal is to reduce the size of the illegal population, why not stage a reprise of the ill-named "Operation Wetback," the 1954 effort that used neighborhood sweeps to arrest and deport a large portion of the illegal Mexican population, in an attempt to prevent the huge Bracero temporary worker program from resulting in permanent settlement.

It's true that random raids at workplaces and elsewhere will always be needed as an enforcement tool (like speed traps or random tax audits, in other contexts), because every illegal alien must understand that he may be detained at any time. But mass roundups aren't going to happen for three reasons: First, we simply don't have the capacity to find, detain, and deport 10-12 million people in a short period of time. And this isn't simply a matter of needing more officers, buses, and detention beds; the invention of new rights for illegal aliens over the past 30 years, and the growth of a cadre of activist attorneys whose mission is to obstruct enforcement of the immigration law by any and all means, makes it much more difficult to remove illegals than in the past. Congress can do much to improve our capacity to deport illegal aliens, by increasing resources and radically streamlining the appeals process, but Washington has permitted the

illegal population to grow so large that simply arresting them all really is not possible.

Secondly, even if we had the capacity to magically relocate the millions of illegals, the economic disruption from such an abrupt change would make the transition more painful than it needs to be for those businesses that have become addicted to illegal labor. There are 6 or 7 million illegal aliens in the American workforce, concentrated in farm work, construction, hotels, and restaurants; their presence was not, and is not, economically necessary. Our remarkably flexible and responsive market economy can easily adjust to the absence of these illegal workers, but it won't happen overnight. Of course, any new commitment to enforcement is going to result in short-term difficulties for some employers, but phasing in the new enforcement regime, so long as the goal is still achieved, will likely be necessary.

And finally, political support for a new commitment to enforcement might well be undermined if an exodus of biblical proportions were to be televised in every American living room. As it is, the media and anti-enforcement political figures would pounce on every misstep by the government, every heart-wrenching story, every inconvenienced employer; mass roundups would provide such a superabundance of these anecdotes (while media coverage of those benefiting from the new enforcement environment would be almost completely lacking), that it would almost certainly undermine whatever political consensus developed in favor of immigration law enforcement.

None of this means that a new strategy of attrition wouldn't include a significant increase in deportations. But the numbers of deportations are quite low to begin with, so even a big increase couldn't address the whole problem. In Fiscal Year 2004, only 47,842 aliens were actually deported from the United States, a decrease of 5 percent from the previous year.[2] The number of "removals" reported in the media is much larger (197,792 in FY 04), but that is only because the immigration statistics aggregate actual deportations with findings of "inadmissibility," which is to say, aliens who are not let through immigration checkpoints at airports or land crossings, and so were never living in the United States to begin with. Thus,

if there are 10 million illegal aliens and we actually deport only about 50,000 a year, deportations would have to be increased by a factor of 200 in order to solve the illegal-alien problem in this way alone. A more realistic goal of doubling or tripling the number of deportations, as important and as beneficial as that would be, would by itself have only a small numerical effect on the total illegal population. This means that self-deportation is essential.

Tough Laws, Unenforced

But, one might reasonably ask, aren't we already enforcing the law? Aren't we already doing most of what would be needed to downsize the illegal population? And if not, as a *Wall Street Journal* editorial asked last year, "Then what is it we've been doing for 20 years now?" The answer lies in the old Soviet joke: "We pretend to work and they pretend to pay us." The immigration law is designed to look tough but not be enforced.

This has been the case since at least 1986, when Congress enacted the Immigration Reform and Control Act (IRCA), which traded an illegal-alien amnesty for a first-ever ban on the employment of illegal aliens. The point was to turn off the magnet of jobs that is the main reason illegals come here in the first place.

More than 2.7 million illegals got legalized up front, with promises of future enforcement. But the law itself was hobbled such that it became unworkable. Only if employers had a means of verifying the legal status of new hires against Social Security or INS databases could the new system succeed – but Congress refused to require the INS to start developing such a verification system. Instead, employers were expected to do the verifying themselves, by examining a bewildering array of easily forged documents, and then they were threatened with discrimination lawsuits by the Justice Department if they looked too hard. It would be hard to imagine a system more obviously intended to fail.

Eventually, even this flawed setup was sabotaged. After being criticized for workplace raids, the INS in 1998 decided to try a new approach to enforcing the hiring ban. Instead of raiding individual employers, Operation Vanguard sought to identify illegal workers at all the meatpacking plants in Nebraska through audits of personnel records. The INS then asked to interview those employees who appeared to be unauthorized – and the illegals ran off. The procedure was remarkably successful, and was meant to be repeated every two or three months until the whole industry was weaned from dependence on illegal labor.

But employers and politicians vociferously criticized the very idea of enforcing the immigration law. Nebraska's governor at the time, Mike Johanns, organized a task force to oppose the operation; the meat packers and the ranchers hired his predecessor, Ben Nelson, to lobby on their behalf; and, in Washington, Sen. Chuck Hagel pressured the Justice Department to stop the operation. The INS took the hint, and all but gave up on enforcing the hiring ban nationwide.[3] This practice has continued despite 9/11, with worksite enforcement now limited to "critical infrastructure" – military bases, nuclear plants, refineries, etc. – with all other employers continuing to receive the green light from Washington to employ illegals.

Nor is this the only example of tough-looking laws that go unenforced. In 1996, Congress passed a large immigration bill, which included a provision that sought to punish long-term illegal residence by barring illegals from future re-entry for three or ten years, depending on the length of the initial unlawful stay. Its scope was limited in any case, since it applied only to people who actually left the country and then tried to return, but it was denounced at the time by the usual suspects as "radical" and "draconian." But an examination of the law's results shows that, in its first four years, the bar prevented fewer than 12,000 people from re-entering the United States.[4]

Even the expansion of border enforcement follows this pattern. The Border Patrol has doubled in size over the past decade, accounting for the lion's share of increased resources for enforcement. Its 10,000 agents are better equipped and doing a better job than ever before. But because, as any agent will point out, the Border Patrol alone can't control illegal immigration, there's little danger that such increased capacity will actually curtail the flow (and in any case,

one-third of the illegal population did not jump the border at all, instead entering legally and then never leaving). Again, a policy that appears tough, but isn't – a velvet fist in an iron glove.

This mismatch between the advertised policy and the real one is a result of the yawning gap between public and elite opinion on immigration.[5]

The laws need to look tough, with promises of robust enforcement, to satisfy public concerns. But immigration's relatively low political importance for most people ensures that the elite preference for loose enforcement will be satisfied in the end.

Not Inevitable

But isn't the elite right in this case? Isn't immigration inevitable, rendering moot any strategy of attrition? Hardly. No one wakes up in Paraguay and decides, "Today, I will move to Sheboygan!" Immigration can take place only if there are networks of relatives, friends, and countrymen directing immigrants to a particular place. And these networks are a creation of government policy, either through proactive measures, such as guestworker programs or visa lotteries, or through permitting such networks to grow through non-enforcement of the law.

As an example, look at the Philippines and Indonesia. Both are populous, poor countries on the other side of the world, and yet the 2000 Census found about 19 times more Filipino immigrants in the United States than Indonesians, 1.4 million versus 73,000. Why? Because we ruled the Philippines for 50 years as a colony and maintained a major military presence there for another 50 years, allowing extensive networks to develop, whereas we have historically had little to do with Indonesia.

Granted, interrupting such networks is harder than creating them, but it is not impossible – after all, the trans-Atlantic immigration networks from the turn of the last century were successfully interrupted, and atrophied completely. And, to move beyond theory, the few times we actually tried to enforce the immigration law, it worked – until we gave up for political reasons.

During the first several years after the passage of the IRCA, illegal crossings from Mexico fell precipitously, as prospective illegals waited to see if we were serious. Apprehensions of aliens by the Border Patrol – an imperfect measure but the only one available – fell from more than 1.7 million in FY 1986 to under a million in 1989. But then the flow began to increase again as the deterrent effect of the hiring ban dissipated, when word got back that we were not serious about enforcement and that the system could be easily evaded through the use of inexpensive phony documents.

That showed that reducing new illegal immigration is possible; but what about increasing the number of illegals already here who give up and leave? That, too, has already been demonstrated. After the 9/11 attacks, immigration authorities undertook a "Special Registration" program for visitors from Islamic countries. The affected nation with the largest illegal-alien population was Pakistan, with an estimated 26,000 illegals here in 2000. Once it became clear that the government was getting more serious about enforcing the immigration law – at least with regard to Middle Easterners – Pakistani illegals started leaving on their own in large numbers. The Pakistani embassy estimated that more than 15,000 of its illegal aliens left the United States, and the Washington Post reported the "disquieting" fact that in Brooklyn's Little Pakistan the mosque was one-third empty, business was down, there were fewer want ads in the local Urdu-language paper, and "For Rent" signs sprouted everywhere.[6]

And in an inadvertent enforcement initiative, the Social Security Administration in 2002 sent out almost a million "no-match" letters to employers who filed W-2s with information that was inconsistent with SSA's records.[7] The intention was to clear up misspellings, name changes, and other mistakes that had caused a large amount of money paid into the system to go uncredited. But, of course, most of the problem was caused by illegal aliens lying to their employers, and thousands of illegals quit or were fired when they were found out. The effort was so successful at denying work to illegals that business and immigrant-rights groups organized to stop it and won a 90 percent reduction in the number of letters to be sent out.[8]

Enforcement Plus Verification

What would a policy of attrition look like? It would combine an increase in conventional enforcement – arrests, prosecutions, deportations, asset seizures, etc. – with expanded use of verification of legal status at a variety of important points, to make it as difficult and unpleasant as possible to live here illegally.

As to the first, the authorities – from the White House on down – need to make an unambiguous commitment to immigration enforcement. There must be an end to the climate of impunity for border-jumping, and illegal employment, and fake documents, and immigration fraud. To use only one example of the longstanding lack of commitment, aliens who repeatedly sneak across the border are supposed to be prosecuted and jailed, and the Border Patrol unveiled a new digital fingerprint system in the mid '90s to make tracking of repeat crossers possible. The problem is that short-staffed U.S. attorneys' offices kept increasing the number of apprehensions needed before they would prosecute, to avoid actually having to prosecute at all.

It would be hard to exaggerate the demoralizing effect that such disregard for the law has on the Homeland Security Department's staff. Conversely, the morale of immigration workers would soar in the wake of a real commitment to law enforcement. We've already seen a real-world example of this, too; the "fugitive operations teams," set up across the country over the past few years to go after illegals who absconded after receiving deportation orders, are highly motivated precisely because the clear political commitment to their work communicates to them that they are genuinely valued by their superiors.

Among the other measures that would facilitate enforcement: hiring more U.S. Attorneys and judges in border areas, to allow for more prosecutions; passage of the CLEAR Act, which would enhance cooperation between federal immigration authorities and state and local police; and seizing the assets, however modest, of apprehended illegal aliens.

These and other enforcement measures would enable the government to detain more illegal aliens; additional measures would be needed to promote self-deportation. Unlike at the visa office or the border crossing, once aliens are inside the United States, there's no physical site to exercise control, no choke point at which to examine whether someone should be admitted. The solution is to create "virtual choke points" – events that are necessary for life in a modern society but are infrequent enough not to bog down everyone's daily business. Another analogy for this concept to firewalls in computer systems, that people could pass through only if their legal status is verified. The objective is not mainly to identify illegal aliens for arrest (though that will always be a possibility) but rather to make it as difficult as possible for illegal aliens to live a normal life here.

This is the rationale for the prohibition against employing illegal aliens – people have to work, so requiring proof of legal status upon starting a job would serve as a firewall. As discussed above, in the absence of a mandatory verification mechanism, such a system couldn't succeed. The immigration service has already developed experimental verification pilot programs and they've proven both workable and popular with business. Building on this fledgling system, we need to find other instances in which legal status might be verified, and thus illegals barred, such as getting a driver's license, registering an automobile, opening a bank account, applying for a car loan or a mortgage, getting a business or occupational license, and obtaining government services of any kind.

An important element in this firewall tactic is secure documentation. By enacting the Real ID Act, Congress has already taken a step toward establishing uniform standards for state driver's licenses, which serve as our nation's de facto national identification system. At least as important is to formally prohibit acceptance of consular registration cards, chiefly Mexico's "matricula consular" card, which functions as an illegal-alien ID; when accepted by U.S. jurisdictions and companies as a valid ID, it enables illegal aliens to pass through many firewalls.

An important point about using verification of legal status as a way downsize the illegal population is that its effects would be felt gradually, rather than all at once. A new, functional verification system for employment, for instance, would be applied mainly to new hires (though employers should have the

option of checking existing employees as well). The same is true for getting a driver's license or a mortgage – these are not things people do every day, so the effects of verifying legal status would unfold over a period of time.

Attrition requires not only implementing policies to force illegals to deport themselves, but also avoiding policies that would trigger more illegal immigration. This has two main policy implications: First, streamline the legal immigration system to make it less likely to promote illegal immigration, by eliminating the visa lottery and the preference category for adult siblings of U.S. citizens. And second, under no circumstances undertake any new guestworker programs, the inevitable result of which would be to stimulate even more illegal immigration.

And finally, legalization (i.e., amnesty) isn't even a legitimate topic for discussion until *after* the broken immigration system is fixed. Even then, there are strong arguments against it, but it would at least be appropriate to debate it as one possible way to deal with long-term illegal aliens. Until that time, however, even a discussion of legalization (or normalization, or earned regularization, or whatever this week's euphemism is for amnesty) is irresponsible and subversive of law enforcement.

An effective strategy of immigration law enforcement requires no booby traps, no tanks, no tattoos on arms – none of the cartoonish images invoked in the objections raised routinely by supporters of loose borders. The consistent application of ordinary law-enforcement tools is all we need. "Consistent," though, is the key word. Enforcement personnel – whether they are Border Patrol agents, airport inspectors, or plainclothes investigators – need to know that their work is valued, that their superiors actually want them to do the jobs they've been assigned, and that they will be backed up when the inevitable complaints roll in.

And, finally, this isn't bitter medicine the public must be persuaded to swallow for the greater good. Enforcement of the immigration law may not be popular among the elite, but actual voters across the political spectrum support it. As Alan Wolfe wrote in *One Nation, After All*, the difference between legal and illegal immigrants "is one of the most tenaciously held distinctions in middle-class America; the people with whom we spoke overwhelmingly support legal immigration and express disgust with the illegal variety."

Harnessing that sentiment can buttress a sober, considered policy of attrition through enforcement.

End Notes

1. "Estimates of the Unauthorized Immigrant Population Residing in the United States: 1990 to 2000," Office of Policy and Planning. U.S. Immigration and Naturalization Service, http://uscis.gov/graphics/shared/aboutus/statistics/Ill_Report_1211.pdf

2. This figure does not include the large number of Mexicans apprehended at the border and simply turned back; the total number of southwest border apprehensions in FY 04 was 1.14 million.

3. "I.N.S. Is Looking the Other Way as Illegal Immigrants Fill Jobs," by Louis Uchitelle, *The New York Times*, March 9, 2000.

4. "Bar None: An Evaluation of the 3/10-Year Bar," by Jessica Vaughan, Center for Immigration Studies *Backgrounder*, July 2003, http://www.cis.org/articles/2003/back1003.html

5. "Elite vs. Public Opinion: An Examination of Divergent Views on Immigration," by Roy Beck and Steven A. Camarota, Center for Immigration Studies *Backgrounder*, December 2002, http://www.cis.org/articles/2002/back1402.html

6. "An Exodus Grows in Brooklyn: 9/11 Still Rippling Through Pakistani Neighborhood," by Michael Powell, *The Washington Post*, May 29, 2003.

7. "Records Checks Displace Workers: Social Security Letters Cost Immigrants Jobs," by Mary Beth Sheridan, *The Washington Post*, August 6, 2002.

8. "Social Security Scales Back Worker Inquiries: Agency Contacted Employers When False Data Were Used but Got Little Response," by Mary Beth Sheridan, *The Washington Post*, June 18, 2003.

Backgrounder

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