

Illegal Immigration and Possible Solutions: 2016

By David Luxner

Because illegal immigration is currently the subject of a vigorous national conversation, one needs a basic history of our immigration system and laws. This essay by David Luxner was written in the fall of 2016, prior to the executive orders signed in early 2017 by the Trump administration, but his work provides a clear primer on the subject, including definitions of relevant terms (like “sanctuary cities”). Therefore, to better understand our U.S. immigration laws and their means of enforcement, it should be required reading for anyone seeking to take part in that national conversation, in order to find viable pathways to immigration reform.

--Para-Legal Studies Professor Marcy Delesandri

INTRODUCTION

“Illegal immigration” refers to the actions of people crossing the national border into the United States in a manner that violates the immigration laws or staying in the country past the parameters of a legal entry. Overall, immigration (legal and illegal) is usually an ascending move--that is, from a poorer to a richer living situation—but the number of illegal immigrants living in the U.S. (about 11 million) has not varied tremendously since 2005.¹

This term paper focuses on a few of the numerous contributing factors to illegal immigration in the U.S.: a clouded understanding of illegal immigration; a complicated immigration system (often with long waits); discord among American citizens, Congress, elected officials, federal and local governments, and law enforcement; and Sanctuary Cities. Economic factors and dreams of a new life are interwoven into these contributing factors and any possible solutions presented.

CONGRESS, NATIONAL GRASP AND DISCORD

According to the U.S. Constitution, Congress is granted the absolute exclusive right to legislate in the area of immigration. The majority of relevant laws, including the Immigration and Nationality Act (INA), are found in one federal, legal source—the United States Code.²

Congress, however, continues to fail to reach an agreement on broad immigration

reforms, including the possibility of giving work permits to as many as million undocumented immigrants and of delaying some deportations.

Many Americans are deeply worried that illegal immigration threatens the nation's beliefs, culture, customs and economy. Others are concerned that stricter laws and/or law enforcement may lead to unfair and unethical consequences (including deportation) for many good, hardworking people and their families. Despite White House and U.S. Chamber of Commerce arguments that illegal immigrants benefit businesses, many Americans still believe illegal immigrants place a burden on the economy.

Almost everyone has an opinion on illegal immigration, but when it comes to the facts, the number of people with a grasp on the situation drops. Unfortunately, the issues regarding the causes of illegal immigration enforcement of current laws and possible solutions has become a political election campaign tool—rather than a means of doing what is best for America based on the values America was founded on and an adherence to the U.S. Constitution. This further complicates Americans' understanding of illegal immigration facts.

COMPLICATED IMMIGRATION SYSTEM AND A LONG WAIT

In fact, the United States has a very active and complicated legal immigration system including all of the following moving parts:

- Many kinds of visas
- A visa lottery
- A series of special visa programs reserved for artists, international business executives, scientists, and others with special or needed skills
- Waiting times of up to several years with millions of people waiting
- An array of factors including the country where the visa is requested

Because of so many multiple tracks and factors, large numbers of individuals choose the illegal

option.

SANCTUARY CITIES

One of the hottest recent political topics, that not everyone understands, is that of Sanctuary Cities (which adopt a “hand off” policy towards illegal immigration enforcement). The protection these cities offer contributes to illegal choices and continues to divide America and its political polarization.

Guidelines issued by the Office of Justice Programs³ mandate that cities that refuse to honor Section 1373 of Title 8 of the United States Code⁴ are no longer eligible for the Edward Byrne Justice Assistance Grant Program (JAG) and the State Criminal Alien Assistance Program (SCAAP) grants. Section 1373 prohibits "government entities and officials from taking action to prohibit or in any way restrict the maintenance or intergovernmental exchange of [immigration status] information, including through written or unwritten policies or practices."

The Justice Department surprised many in July 2016 when it announced policies denying federal law enforcement grants to some sanctuary cities; however, in addition to Section 1373, the doctrine of pre-emption in the U.S. Constitution' clearly mandates that when there is a conflict between a state law and federal law, federal law prevails. The fact that the conflict exists is tangible evidence of citizen and government discord. Regardless of the right or wrong behind the sanctuary cities' policies, the fact is that they create disharmony, and therefore exacerbate the illegal immigration problem (or perceived problem).

Texas Rep. John Culbertson spurred the Justice Department's move, emphasizing “sanctuary policies” which prohibit local law enforcement agencies from providing certain information to federal immigration agencies. Additionally, his proposal stated that because of the billions in funding given to cities in the past five years, they must cease noncompliance.⁵

Quotations deleted from Culbertson—not documented in original text.

The Obama White House actively opposed the Stop Dangerous Sanctuary Cities Act⁶ which would cut federal economic development and community block grants to sanctuary jurisdictions – and has argued that the bill would unfairly deny funding to implement a wide range of infrastructure and housing activities as well as vital public services, including meals to the elderly and affordable child care for low-income, working families.

OPPORTUNITIES AND POSSIBLE LONG-TERM SOLUTIONS

Seemingly, there is no easy way to fix this long-standing issue; but, there are definite possible solutions. If we agree that the illegal immigration problem is a consequence of a combination of elements presented in this paper, then the following ideas, none of them easy and all with costs, are possible real long-term solutions.

1. Strengthen Border Security. In response to the events of 9/11 and the increasing population of illegal immigrants, our government has steadily increased efforts to enhance national security. A law⁷ signed into law by President Bush mandated the construction of 652 miles of fences along our Southern borders. As of February 2012, 651 miles were complete. On the other hand, President Obama claimed America has now "strengthened border security beyond what many believed was possible." However, with the continuously increasing number of illegal border crossings, national security remains porous.

The Mexico-United States border has a total length of nearly 2000 miles. As a solution to the never-ending illegal crossings, many people suggest constructing a fence for this entire length--which would cost America billions of dollars plus the cost of maintenance, additional reinforcement, and high-tech equipment. Some say it's not complicated and to "just build the damn fence."

2. Strengthen Interior Enforcement. Improving internal law enforcement may go a long way towards solving illegal immigration, but federal and local governments must be

united. The 287(g) provision of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 provides authority for state and local law enforcement agencies to investigate, detain, and arrest illegal aliens. However, it's a completely voluntary program that only encourages state and local law officials to participate if they want to be involved in immigration enforcement.

As part of this 1996 Act, only about 1,800 police officers have been trained by U.S. Immigration and Customs Enforcement (ICE)⁸. So, with millions of illegal immigrants currently residing in the U.S. today, these limited resources make it seem impossible to resolve the issue.

Perhaps one way to finally stop illegal immigration is to pressure the government to fully enforce immigration laws and expand the 287(g) program by obligating state and local law enforcement entities to enter into a partnership agreement with ICE and increase active law enforcement personnel.

3. Improve the Legal Immigration System. Not all illegal immigrants sneak or swim across the border. As many as half of them arrive with legal documents, including passports and/or visas, that permit them to enter the U.S. territory. When their visa expires, they simply do not leave the country and become illegal aliens by default.

The government should implement a better system that will effectively track down people who overstay their visas. Even if it means spending more funds and hiring more people, the government should push it in order to stop illegal immigration. Another component could be to implement stricter immigration rules, including interviews, background checks, verification of employment, etc. Without better visa programs, it appears impossible to eliminate this illegal immigration problem.

One of the goals of the United States Congress is to curtail future flows of unauthorized

immigration by correcting some of the flaws of the current legal immigration system. To that end, it establishes an updated system of legal immigration that, in principle, seeks to match the country's economic and labor needs while respecting principles of family unification.

4. Implement A Better Job Program. A better jobs program should also help. Many people believe that the United States is the land of opportunities – better jobs, better education, and better life in general. And that's the reason why so many people are migrating into the country. In fact, many of them even risk their lives just to get here and make a living to support themselves and their families.

Therefore, if the country could create a much more effective job program that will open opportunities to non- U.S. workers, so they would no longer have to enter the U.S. territory illegally, that may be good for people, business, the economy, and international relations.

5. Mandate E-Verify. E-verify is an effective internet-based program operated by two federal agencies (Homeland Security and Social Security Administration) to ensure that employers determine if employees are eligible to work in the country by comparing the information from the employee's I-9 to data from U.S. government records. The problem is that E-verify is not mandatory in all states. Companies are merely encouraged to participate, which more than 500,000 companies do ⁹.

If the government will require all employers to use E-verify, illegal immigrants will have it more difficult to find a job. This could become a major contributor to eliminate employment as a reason to immigrate illegally. Of course, employers who will not follow the rules would need to be given tough criminal penalties to make this solution more effective-- because, desperate and/or greedy employers are part of the reason why there are illegal immigrants.

6. Eliminate Illegal Immigration Rewards. The continuing practices of hiring illegal workers, granting automatic citizenship to babies of illegal aliens born within our borders, and providing them public benefits have become a magnet for illegal immigration. Large numbers of illegal immigrants believe that with all the benefits America will provide to them, coming in illegal is more immediate than legal entry and just as rewarding.

7. Legalize Them. President Obama made an announcement about allowing almost half of the 11 million illegal immigrants living in the United States to remain in the country, provided, of course, they pass a criminal background check and pay taxes. As expected, not everybody agrees. Many believe that it will only make the problem much worse by furthering motivation for illegal aliens to enter the country.

While this may be contradictory to some of the solutions mentioned, it could be a potential component by giving current illegal immigrants (especially those here a long time with no criminal record, a good work history, a productive tax paying record, and with families) a chance to live out of the shadow and have a better future. Legalization would allow these people to contribute to our economy through an increased work force, additional truces, and a mix of cultural benefits.

8. Authorize Armed Forces at the Border. Despite the large number of National Guard troops sent by Bush and Obama on the southern and northern borders, illegal immigrants continue to enter and live in the U.S. Because of this, many concerned individuals are urging the use of military to effectively secure our borders. A border barrier (wall) is almost meaningless if it is not monitored properly.

Some illegal immigrants enter America to become part of drug trafficking, document fraud, and other criminal activities including instances of kidnapping innocent victims for ransom. The use of armed forces to protect our borders needs to focus on criminals and

criminal activity including destruction of fences and gates, damage to water pipes, massive accumulations of trash, property defacement, and livestock theft.

This action may further serve to decrease civilians taking the matter into their own hands, which is also criminal.

9. Authorize Volunteer Civilian Groups. While most of the thousands of illegal immigrants who enter daily do so simply because of the search for a better life, their actions adversely affect the lives of others. Farmers and ranchers, who live along the borders, suffer daily almost daily due to illegal immigration. Dealing with such issues increases their stress and hardship, and that is the very reason why various civilian groups have emerged when the federal authorities have effectively failed.

While civilian patrol groups are not legally authorized to conduct their activities, increasing numbers of concerned citizens support them. We, as citizens, have the right to defend ourselves, protect our properties, and make an arrest in case of breaches of the peace.

10. Establish international agreements. The United States must also work with other countries by investing in real and lasting economic solutions to fundamental problems in order to help and protect both countries.

CONCLUSION

Alone, any one of the solutions above will not solve all the issues. Furthermore, some have overlapping elements and some are contradictory. Depending on perspective, these possible components may be viewed as strong or weak, positive or negative, and rewarding or punitive.

The ultimate long-term solution to immigration will be found in a combination of federal, state, and local unity; changing of economic conditions; revising of current policies; and opportunities created in the disadvantaged countries from where the illegal immigrants hail.

Some combination of the possible solutions is most likely the best choice to implement a plan that conforms to the Constitution and its intent, unify the government and a diversity of citizens-
-and be successful.

END NOTES

1. Population Estimates. "Estimates of the Unauthorized Immigrant Population," https://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2010.pdf [accessed November 1, 2016].
2. Government Printing Office. "United States Code." <https://www.gpo.gov/fdsys/browse/collectionUSCode.action?selectedYearFrom=2015&go=Go> [accessed November 5, 2016].
3. U.S. Department of Justice. "Memorandum to the Office of Justice Programs," <https://oig.justice.gov/reports/2016/1607.pdf> [accessed November 1, 2016].
4. Government Printing Office. Title 8. Section 1373. "United States Code." <https://www.gpo.gov/fdsys/browse/collectionUSCode.action?selectedYearFrom=2015&go=Go> [accessed October 21, 2016].
5. Culberson, John. <https://culberson.house.gov/news/documentsingle.aspx?DocumentID=398522> [accessed November 1, 2016].
6. Congress.gov. "S.87 - Stop Dangerous Sanctuary Cities Act," <https://www.congress.gov/bill/115th-congress/senate-bill/87> [accessed November 9, 2016].
7. Congress.gov. "HR 6061 - Secure Fence Act of 2006," <https://www.congress.gov/bill/109th-congress/house-bill/6061> [accessed November 1, 2016].
8. U.S. Immigration and Customs Enforcement. "Delegation of Immigration Authority Section 287 (g) Immigration and Nationality Act," <https://www.ice.gov/factsheets/287g> [accessed November 2, 2016].
9. U.S. Citizenship and Immigration Services. "Half a Million Companies Now Participate in E-Verify," <https://www.uscis.gov/news/news-releases/half-million-companies-now-participate-e-verify-0> [accessed November 1, 2016].