



**Testimony of**

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“Comprehensive Immigration Reform in 2009,  
Can We Do It and How?”**

**Before the  
Committee on the Judiciary  
Subcommittee on Immigration, Border Security and Citizenship  
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Mister Chairman and Members of the Subcommittee,

Thank you for inviting me to testify at this hearing on “Comprehensive Immigration Reform in 2009: Can We Do It and How?” My name is Doris Meissner and I am a Senior Fellow and Director of the U.S. Immigration Policy Program at the Migration Policy Institute (MPI) in Washington, D.C. MPI is a non-partisan, non-governmental think tank that studies migration and the management of migration systems worldwide. One of our primary areas of research, analysis and policy recommendations is U.S. immigration policy.

## Introduction

To answer questions about the “when” and “how” of immigration reform, it is important to have clear understandings about the “what.” What we know regarding immigration in the life of the nation today is important in informing how we move forward. In that connection, my statement will posit answers to four pressing questions:

- What is the relationship between the current recession and immigration?
- What must be key drivers of the nation’s longer-term immigration policy interests?
- What security, law enforcement and administrative considerations are relevant to comprehensive immigration reform?
- What makes legalization during a recession central to longer-term solutions?

My statement draws heavily on three important MPI publications. First is an analysis of the relationship between the current economic crisis and immigration, published in January 2009.<sup>1</sup> Next is a February 2009 report that looks at the Department of Homeland Security (DHS) and how it is carrying out its immigration mission and mandates.<sup>2</sup> Finally, I refer to work of the Independent Task Force on Immigration and America’s Future whose 2006 report, *Immigration and America’s Future: A New Chapter*, proposes policy ideas that I hope will be of particular interest to the committee at this time.<sup>3</sup> The Task Force was convened by MPI and co-chaired by former U.S. Senator Spencer Abraham (R-Mich.) and former Congressman Lee Hamilton, (D-Ind.). Its report provides an excellent overview of the failings of today’s immigration system and how they might best be addressed. In addition, MPI produces a wealth of resource material and information that inform my statement and bear on issues associated with today’s inquiry.

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<sup>1</sup> Demetrios G. Papademetriou and Aaron Terrazas, *Immigrants and the Current Economic Crisis* (Washington, D.C.: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/lmi\\_recessionJan09.pdf](http://www.migrationpolicy.org/pubs/lmi_recessionJan09.pdf).

<sup>2</sup> Doris Meissner and Donald Kerwin, *DHS and Immigration: Taking Stock and Correcting Course* (Washington, D.C.: Migration Policy Institute, 2009), [www.migrationpolicy.org/pubs/DHS\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf).

<sup>3</sup> Independent Task Force on Immigration and America’s Future, *Immigration and America's Future: A New Chapter* (Washington, D.C.: Migration Policy Institute, 2006), [www.migrationpolicy.org/ITFIAF/index.php](http://www.migrationpolicy.org/ITFIAF/index.php).

## **I. What Is the Relationship Between the Current Recession and Immigration?**

Issues about the economy loom above all others at this time. On December 1, 2008 the National Bureau of Economic Research (NBER) officially declared the United States in recession, and estimated that it began in December 2007.<sup>4</sup> This makes the current U.S. recession already longer than all but two since World War II. It is still unclear how deep, wide and long this recession will be. But one thing seems certain: the recent period of unparalleled economic growth and prosperity has come to an end, both in the United States and in most of the world, a fact that massive governmental interventions might mitigate but are not likely to reverse — at least not in the next year.

Before 2007, the U.S. economy had grown in 23 of the past 25 years. During this period of sustained economic growth the United States attracted record numbers of new immigrants.<sup>5</sup> The U.S. foreign-born population quadrupled from 9.6 million in 1970 to about 38.1 million in 2007. For much of the past decade, more than 1 million immigrants have entered the United States legally each year, and about another half a million have settled illegally.

The economic crisis raises fundamental questions about how immigrants will fare and how they might respond to the economic downturn. No one can answer the full range of questions that arise from the complex relationship between immigration flows and business-cycle fluctuations. However, a) careful analysis of the most recent data; b) evidence about prior recessions and their effects on immigration; and c) an understanding of America's immigration history and the motivations and behavior of immigrants make it possible to make some informed judgments.

The key judgments about the impacts of economic crises on immigration flows and immigrants in the labor market are as follows:

- The growth in the U.S. foreign-born population has slowed since the recession began. Several factors taken together — the growing anti-immigrant animus of the past few years; increasingly strict federal, state and local immigration enforcement policies; more robust border enforcement; improving economic and political conditions in some migrant-sending countries; and the worsening U.S. economic climate — have contributed to a measurable slowdown in the historic growth in overall immigration.
- Much of the slowdown can be attributed to the fact that there has been no significant growth in the unauthorized population since 2006. This is a meaningful shift because the size of the unauthorized population had been growing by up to 500,000 per year before 2006.

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<sup>4</sup> The National Bureau of Economic Research (NBER) is the official body responsible for deciding when the U.S. economy has entered a recession. NBER defines a recession as a “significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in real gross domestic product (GDP), real income, employment, industrial production and wholesale-retail sales.”

<sup>5</sup> We use the terms “immigrant” and “foreign born” interchangeably.

- Stalled growth in the size of the unauthorized population is not the same as return migration. Although anecdotal evidence suggests that return migration to some countries, including Mexico, appears to have increased in the last two years, data do not at this time substantiate such reports. There is no definitive trend so far of returns that can be tied to U.S. economic conditions. And apart from removals, which have averaged slightly over 250,000 a year for the last five years or barely 2 percent of the 11 to 12 million unauthorized immigrants living in the United States, it appears to be premature to tie immigrants' decisions to leave the United States to the substantial increases in interior immigration enforcement in recent years.
- In general, return migration is correlated more closely with economic, social and political developments in countries of origin — along with ease of circularity — than with economic conditions in receiving countries such as the United States. For example, sustained economic improvements in Eastern Europe — along with the guarantee of continued labor market access — are widely thought to have facilitated the large-scale return migration of Poles and certain other Eastern Europeans after the British and Irish economies began to slow in 2007. Thus, projected downturns in Mexico and Central America associated with the current economic crisis do not bode well for robust return migration of unauthorized immigrants within the United States.
- Legal immigration appears least tied to U.S. economic conditions because most legal immigrants arrive on family-based visas that, in many cases, took years to secure. Employment-based immigration accounts for a relatively small share of overall legal immigration and the pent-up demand that exists for employer-sponsored visas should continue to drive employment-based immigration, at least for the near term. Generally, all social and humanitarian legal flows (family unification, diversity, refugee and asylum flows) can be expected to behave without regard to the economic cycle for the foreseeable future. Illegal immigration flows appear to be most highly responsive to the U.S. economy.

The question then becomes one of how immigrants – legal and unauthorized – are faring and likely to be affected in the period ahead by the recession.

- On average, most immigrants share the demographic characteristics of the workers who are most vulnerable during recessions, including relative youth, lower levels of education and recent entry into the labor force.
- Immigrants are also highly overrepresented in many of the most vulnerable industries — including construction, many sectors in low value-added manufacturing, leisure and hospitality, and support and personal services — and in many of the most vulnerable jobs within those industries. Immigrants from Mexico and Central America are even more concentrated in many of these industries, and as a result, bear a disproportionate share of the downturn's consequences.
- At the same time, immigrants (and especially recent immigrants) are generally able to adjust more quickly to changing labor market conditions than native-born workers because they are more amenable to changing jobs and their places of residence for work-related reasons.

- Public policies — such as the lack of access to the social safety net for unauthorized immigrants and many recently arrived legal immigrants — may increase immigrants' vulnerability to severe poverty if they become long-term unemployed. Consequently, the probability that some immigrants may eventually choose to return to their countries of origin increases over time.
- Deeply felt family obligations (including the need to send remittances to relatives in the country of origin) and lack of access to the federal social safety net often lead immigrant workers to go to extraordinary lengths to remain employed or find new employment quickly. While such flexibility and determination are laudable at the individual level, they may have negative broader consequences, such as pushing immigrant workers into dangerous working conditions or informal work.

Thus, the picture is not rosy at either the individual or the broader social policy level. Moreover, even when recovery resumes, job growth has historically taken longer to return — by up to a year or more — than other positive economic activities.

At the same time, a period of pause in immigration increases — particularly in the levels of illegal immigration — offers policymakers an historic opportunity to address the chronic disconnect between the U.S. immigration system and its labor market. We should recognize that the crisis contains within it a wake-up call to make urgently needed reforms in our immigration laws and governance, so that when growth begins again, the nation can manage immigration in ways that contribute positively to the well-being of both the new economy and the nation overall.

## **II. What Must Be Key Drivers of the Nation's Longer-Term Immigration Policy Interests?**

It has become a cliché in the immigration policy debate to state that the “system is broken.” Cliché or not, analysts on all sides agree that the current system fails to align labor market immigration with actual U.S. economic needs. Perhaps the most dramatic manifestation of the misalignment is the large population — more than 11 million — of unauthorized immigrants.

Along with illegal immigration, non-immigrant (temporary) visa programs constitute the primary ways immigration has adapted to meet new conditions and labor market demands. So-called temporary visa programs, such as the H-1B program, have increasingly been used as a step to permanent immigration. Taken together, illegal immigration has been meeting the nation's low-skill demands, and temporary visa programs in the legal immigration system have been the vehicle for high-skilled immigration.

As a result, perhaps the most broken element of the nation's immigration system is its inability to anticipate, adjust to or meet future labor market needs so that the United States can continue to harness the comparative advantage immigration has historically represented for our economic and social well-being. This deficiency has many

explanations, but among the most salient for today's debates was the failure of the Immigration Reform and Control Act of 1986 (IRCA) to understand and address the need for future flows as an inherent piece of the solution to the problem of illegal immigration. We must remember and heed that lesson to avert history repeating itself.

### ***Meeting future labor market needs***

In fact, misalignment should not be surprising since the broad parameters of the current immigration system were defined over 40 years ago, and most of the detailed provisions that guide today's selection of immigrants date back almost 20 years to the Immigration Act of 1990. Despite dramatic changes in the economy, Congress historically has only infrequently modified the visa admissions system because the issues are complex and politically charged. Yet, the questions of whom and how many immigrants we should welcome define our national identity and demographic future.

However, in a period of rapid economic restructuring, demographic change and globalization, ongoing labor market evolutions place a premium on a flexible, responsive immigration system. MPI's Independent Task Force in its 2006 report, *Immigration and America's Future: A New Chapter*, proposed an institutional solution that addresses America's rigid and outdated immigrant selection system: a Standing Commission on Immigration and Labor Markets that would provide timely, evidence-based and impartial analysis to inform and make regular recommendations for adjusting levels of labor market immigration to the president and Congress

Establishing a Standing Commission on Immigration and Labor Markets should be treated as a key element of comprehensive immigration reform. Many people seek admission to the United States, and demand for visas exceeds supply in each of the four streams for selecting immigrants: refugee, family reunification, labor market and diversity.

As a result, how Congress allocates visas among and within these four streams fundamentally defines future American economic and demographic circumstances. The Standing Commission's focus would be on one of these streams — labor market immigration (both immigrant and non-immigrant labor market visas) — and on the effects of immigration on U.S. labor markets, bringing the immigration system into better sync with the U.S. economy.

a) *The need for flexibility:* The current economic crisis brings into stark relief the inflexibility of the U.S. immigration system in comparison with the highly dynamic and constantly evolving global economy. Now, more than ever, the United States needs an immigration system that better serves U.S. economic and social interests by being sensitive to economic fluctuations, both up and down. Immigration admissions levels should reflect labor market needs, employment and unemployment patterns, and shifting economic and demographic trends if immigration is to effectively contribute to the nation's longer-term growth and competitiveness needs.

b) *Labor market impacts*: Such effects are complex. On one hand, labor market immigration makes a contribution to the U.S. economy by permitting an inflow of high- and low-skilled workers. At the high-skilled end, foreign-born students, workers and entrepreneurs have been at the heart of American innovation and productivity for decades.

About a third of America's 20th century Nobel Prize winners, for example, were immigrants, a number which increases to almost half when the count includes the children of immigrants.<sup>6</sup> More recently, immigrants have been founders or co-founders of a quarter of all new engineering and technology companies formed in the United States between 1995 and 2005, and were also inventors or co-inventors of a quarter of America's patents in 2006 (up from 7 percent in 1998).<sup>7</sup> Seven out of 16 inductees in 2009 into the National Inventors Hall of Fame — reserved for U.S. patent holders — were also immigrants.<sup>8</sup>

Low-skilled migrants have also played an important role in fueling American productivity. Although the current recession makes any claims about labor market needs unwise in the short term, foreign-born workers as a group have been disproportionately concentrated in high-growth sectors of the economy.<sup>9</sup> More broadly, immigrants were responsible for 58 percent of population growth<sup>10</sup> over 25 years – 1980 to 2005 – a period during which slowing U.S. fertility levels have made immigration a key source of growth in the prime-age (25-55) labor force.<sup>11</sup> The looming retirement of the baby boom generation will only exacerbate this trend.

Yet immigration is not unambiguously beneficial. At a minimum, labor inflows have distributive consequences. While economists remain divided about the details, most agree that for at least some Americans, their relative wages fall as a result of immigration. In particular, low-skilled native-born workers (those without a high school degree), recent immigrants and workers with poor language skills are most likely to suffer wage losses from immigration.<sup>12</sup> And even college-educated immigrants may depress U.S. wages if

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<sup>6</sup> James P. Smith and Barry Edmonston, *The New Americans: Economic, Demographic and Fiscal Effects of Immigration*, (Washington, D.C.: National Academy Press, 1997).

<sup>7</sup> Vivek Wadwa, AnnaLee Saxenian, Ben Rissing and Gary Gereffi, *America's New Immigrant Entrepreneurs* (Berkeley, Calif.: University of California Berkeley School of Information, 2007).

<sup>8</sup> ImmigrationProf Blog, "Inventors Hall of Fame Inducts Seven Immigrants," Law Professor Blogs, LLC, April 3, 2009, <http://lawprofessors.typepad.com/immigration/2009/04/inventors-hall-of-fame-inducts-seven-immigrants.html>.

<sup>9</sup> Lindsey Lowell, Julia Gelatt and Jeanne Batalova, *Immigrants and Labor Force Trends: The Future, Past and Present*, Task Force Insight No. 17 (Washington, D.C.: Migration Policy Institute, 2006), [www.migrationpolicy.org/ITFIAF/TF17\\_Lowell.pdf](http://www.migrationpolicy.org/ITFIAF/TF17_Lowell.pdf).

<sup>10</sup> Jeffrey S. Passel and D'Vera Cohn, *U.S. Population Projections: 2005-2050* (Washington, D.C.: Pew Hispanic Center, 2008), <http://pewhispanic.org/files/reports/85.pdf>.

<sup>11</sup> Aspen Institute, *Grow Faster Together Or Grow Slowly Apart. How Will America Work in the 21<sup>st</sup> Century?* (Washington, D.C.: The Aspen Institute Domestic Strategy Group, 2002), <http://www.pwib.org/downloads/GrowFast.pdf>.

<sup>12</sup> George Borjas, "The Labor Demand Curve is Downward Sloping: Reexamining the Impact of Immigration on the Labor Market," *The Quarterly Journal of Economics*, 118, no. 4 (2003):1335-1374, <http://ksghome.harvard.edu/~GBorjas/Papers/QJE2003.pdf>; David Card, "How Immigration Affects U.S. Cities," Centre for Research and Analysis of Migration, (Discussion paper no. 11/07, Department of

employers use high-skilled immigration as an explicit strategy to reduce their payroll costs.

An immigration system that is unable to consider specific economic needs also risks admitting immigrants who will not fare well in the U.S. labor market, suffering long periods of unemployment and poor economic — and hence social — integration. As a rule, immigrants who fare best in the U.S. labor market work in areas of high labor demand or have the entrepreneurial skills to create successful businesses. Such immigrants are also likely to make the greatest economic contribution without creating negative impacts on native workers.

U.S. labor market immigration policies are poorly designed to resolve these tensions. Labor market immigration should be viewed as a strategic resource which supports economic growth and competitiveness and which must be carefully managed. Immigration policies should maximize opportunities to admit workers with needed or valued skills — those that best complement native workers — and should support growing and competitive sectors of the U.S. economy across the skills spectrum. At the same time, labor inflows must not come at the expense of native workers or allow employers to avoid wage increases they would otherwise provide.

### ***The Case for a Standing Commission on Immigration and Labor Markets***

Getting immigration policy right, therefore, has important implications for the economy. Three problems stand out:

- Reliable information about immigration and U.S. labor markets is not systematically gathered and produced;
- Immigration laws are inflexible and not designed to be responsive to shifts in labor market needs; and
- Congress does not have a process to regularly address labor market immigration trends and issues as the basis for updating visa allocations for the labor market immigration stream.

The impact of different types and levels of immigration on U.S. labor markets is complex and disputed, even among professional economists. Creating a Standing Commission would establish a body charged with carrying out research and analysis that is not now available and that is vital for informed policymaking.

Data on immigration and wages are tracked by separate government agencies (DHS and the Bureau of Labor Statistics, for example); and data to measure directly the effects of

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Economics, University College London, London, 2007), [http://www.econ.ucl.ac.uk/cream/pages/CDP/CDP\\_11\\_07.pdf](http://www.econ.ucl.ac.uk/cream/pages/CDP/CDP_11_07.pdf); Pia M. Orrenius and Madeline Zavodny, “Does Immigration Affect Wages? A Look at Occupation-Level Evidence” (discussion paper No. 2481, Institute for the Study of Labor, Bonn, 2006); and Gianmarco Ottaviano and Giovanni Peri, “Immigration and National Wages: Clarifying the Empirics” (Centre for Economic Policy Research Discussion Paper 6916, London, 2008), [http://www.econ.ucdavis.edu/faculty/gperi/Papers/OP\\_redux\\_july\\_2008.pdf](http://www.econ.ucdavis.edu/faculty/gperi/Papers/OP_redux_july_2008.pdf).



immigration on U.S. labor markets do not exist at this time. Such data must be collected over time across a wide range of sectors and regions in cooperation with government agencies. Such a project requires a government mandate to accomplish.

In contrast with one-time “blue ribbon panels” like the Hesburgh and Jordan Commissions, an expert commission would constitute a resource and mechanism for periodic and ongoing review by Congress of labor market immigration. In this way, greater flexibility could be introduced into the system. A Standing Commission is likely also to raise the level of discourse and knowledge within Congress and the executive branch, as well as among the range of stakeholders engaged in immigration policy debates, as has been observed in other countries that have established similar bodies (e.g. the United Kingdom).

#### ***What Would a Standing Commission Do (and Not Do)?***

Congress would retain the responsibility to decide U.S. immigration policy, including setting overall immigration levels; allocating visas among non-immigrant and immigrant employment-, family- and refugee-admission categories; and establishing preference and non-immigrant visa criteria.

Immigration is not, and never will be, a purely technical issue. Thus, even if our knowledge of its economic impacts were greatly improved, there would still be critical policy choices to make. Nonetheless, while decisions about immigration policy will inevitably transcend economic costs and benefits and touch upon deeper questions of how immigration defines us as a nation, many issues *can* be quantified.

The mandate of a Standing Commission should be to analyze the labor market impacts of immigration and propose adjustments in immigration levels that *promote America’s economic growth and competitiveness while maintaining low unemployment and preventing wage depression*. Judgments can be made about immigrants’ overall contributions, their progress in the labor market and the impacts on native workers.

### **III. What Security, Enforcement and Administrative Considerations Are Relevant to Comprehensive Immigration Reform?**

The imperatives of a post 9/11 world and the need for an immigration regime that serves the nation’s longer-term economic interests demand immigration enforcement and administrative capabilities that cannot be properly established absent comprehensive new immigration legislation. The failure of reform legislation in 2006 and 2007 has ushered in a period of federal enforcement-only policies and unprecedented state and local measures that illustrate the limitations of current laws and administrative actions to adequately address the problems in the immigration system.

Although no one has the right to break the law, in our global economy, the mismatch between 21<sup>st</sup> century immigration dynamics and the outdated laws that purport to govern

them cannot be reconciled by more walls, prosecutions, removals and lengthy backlogs alone. The central goal must be to restore the rule of law by creating a system that serves the nation's economic, security and humanitarian interests and values.

### ***Security***

Securing the borders of the United States, preventing terrorists and terrorist weapons from entering the country and facilitating legal trade and travel are fundamental mandates for government immigration and security agencies. Despite the billions of dollars Congress has allocated for strengthened border controls, such efforts are compromised as long as immigration reform is delayed.

The crisis of narco-violence in Mexico illustrates a dramatic case in point. Border enforcement and cooperation between the United States and Mexico are essential to thwart such threats, but tough enforcement is hampered as long as there are inadequate legal pathways for people to come to the United States. The resulting illegal immigration at and between ports of entry complicates the ability of border control personnel to focus their resources and expertise on true threats, such as narcotics and illegal trafficking of firearms.

In addition to greater opportunities for legal entry for those whom the economy demands, border security would be substantially strengthened by a complementary interior enforcement regime that provides for true accountability for exploitive employers and others who profit from the employment of unauthorized workers. Although DHS agencies have made aggressive efforts in recent years to ramp up such enforcement, employer and worksite enforcement will never achieve their promise without new laws.

That is because the existing employer sanctions laws enacted in IRCA in 1986 are weak and difficult to enforce. Without a legislative mandate requiring universal electronic verification and secure identification documents to verify new hires, the ability of employers to comply with the law can have only limited success. By addressing supply-side problems and establishing effective electronic eligibility verification, border enforcement and security would be strengthened.

### ***Worksite Enforcement***

The goal of effective worksite enforcement should be to create the conditions for good-faith employers to meaningfully comply with the country's immigration laws, and to deter criminality and the exploitation of immigrants by bad-faith employers. Achieving that goal requires legislation.

Most employers will comply with immigration laws, just as they customarily comply with tax, minimum wage and workplace safety laws, on two conditions:

- Employers must be able to verify the identity of prospective employees and their eligibility to work. This requires fraud-resistant identification and work-eligibility cards or some other system of identification covering all foreign- and native-born Americans, and a reliable, simple way for employers to validate work eligibility.

- Employers must understand the legal requirements and know that the law will be enforced. The first requires training and compliance-review mechanisms. The second requires U.S. Immigration and Customs Enforcement (ICE) to use employer sanctions and worksite actions (raids) strategically.

*a) Employer verification:* Of all the forms of immigration enforcement, employer verification has the potential to be the most effective and humane. A sound verification system mitigates the more dangerous, restrictive and expensive types of enforcement at the borders and through detention and removals. Verification enlists employers as a force multiplier in the effort to reduce and combat illegal immigration. No government agency will be able to police all of the nation's 7.6 million business establishments, nor remove all unauthorized workers.<sup>13</sup>

Were customary compliance with the law to be established, ICE would be able to direct its resources squarely at the criminal infrastructure that facilitates illegal hiring and employment, and at employers whose business model depends on the exploitation of unauthorized employment to the detriment of hiring U.S. workers. A reliable universal electronic verification system is the most pressing enforcement challenge in immigration policymaking at this time. Without it, other reforms — including border enforcement — cannot succeed.

*b) The IRCA experience:* The verification process initiated by IRCA requires employers to review employee documents from a list establishing identity or work eligibility, or both. Employers must attest that they have examined the appropriate documents and that they appear, on their face, to be genuine.<sup>14</sup> Employers who make a good-faith attempt to complete the I-9 verification form are deemed to have complied with the law.<sup>15</sup>

To fortify the I-9 process, Congress directed DHS in 1996 to develop a voluntary electronic verification program that would allow employers to match information from an employee's I-9 form with DHS and Social Security Administration (SSA) databases.<sup>16</sup> Congress subsequently reauthorized that program, known as Basic Pilot and renamed it E-Verify in August 2007.<sup>17</sup> As of January 2009, more than 100,000 employers had enrolled in the E-Verify pilot.

*c) Identification documents and reliable verification databases:* E-Verify is vulnerable to identity fraud or the use by unauthorized immigrants of identity data belonging to other work-authorized individuals. As a result, the system has not solved the significant problem of “false positives” (persons who appear work-eligible but who are not), as has been illustrated by worksite enforcement actions at businesses participating in the program. The system also continues to wrongly non-confirm too many U.S. citizens and

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<sup>13</sup> United States Census Bureau, *Number of Firms, Number of Establishments, Employment and Annual Payroll by Employment Size of the Enterprise for the United States and States, Totals-2006* (Washington, D.C.: U.S. Census Bureau, 2006), <http://www2.census.gov/csd/susb/2006/usst06.xls>.

<sup>14</sup> Immigration and Nationality Act (INA) § 274A(b)(1) [US Code 8 § 1324a].

<sup>15</sup> INA § 274A(a)(3) [US Code 8 § 1324a].

<sup>16</sup> P.L. No. 104-208.

<sup>17</sup> P.L. No. 108-156.

legal immigrants, a problem of “false negatives” which is costly to American businesses and workers. The success of electronic verification, therefore, depends on establishing a reliable system of employee identification, and a simple and accurate way for employers to verify the eligibility of new workers.

In the absence of a secure system to match workers with their identity data, E-Verify confronts the same systemic challenges as the I-9 system: employers must make judgment calls about workers’ identity, leaving workers vulnerable to discrimination and exploitation where employers misuse or abuse the system, and threatening DHS’s ability to obtain convictions for the *knowing* employment of unauthorized immigrants.

Thus, new legislation should include due-process protections and other measures to address E-Verify’s known shortcomings and should require the development of a more reliable identification system, including continued exploration to determine the best approach and platform for electronic verification. Both require legislation and both are essential for enforcement agencies to truly enforce immigration laws in ways that are effective but also humane.

#### ***Administrative adjudications processes***

Many qualified immigrants must wait years or even decades for a green card — a clear sign of a deeply troubled system and a disservice to families and employers who play by the rules. There are broad, pressing policy reasons that make it imperative that Congress take steps that would enable U.S. Immigration and Citizenship Services (USCIS) in DHS to be better able to administer its legal immigration mandates.

- Legal immigration processes merit greater support so that those who seek to play by the rules can do so. The vast majority of applications that USCIS adjudicates are filed by U.S. citizens, lawful permanent residents and U.S. institutions and employers seeking benefits for which they are eligible under the nation’s immigration laws. Collectively, their applications represent flows of family members, skilled and unskilled workers, and various other categories of immigrants and non-immigrants whose admission to the country has been deemed by Congress to be in the national interest. The agency’s failings frustrate not only individuals but seriously hamper legitimate, lawful immigration. Incentivizing legal immigration when avenues are in place for it is especially important in the face of widespread illegal immigration, some of which occurs because individuals and employers will not wait for, or cannot gauge, the time or steps required to play by the rules.
- USCIS must also aggressively combat benefit fraud. Applicants who misuse the immigration system by filing fraudulent applications can pose dangers to their communities or to the nation. As immigration enforcement becomes more effective at the borders and in the workplace, misuse of legal immigration processes is likely to intensify.
- Most immigration reform proposals have included variants of four principal ideas: strong border control; employer accountability through mandatory verification of new hires; provisions for future flows of needed workers; and legal status

eligibility for the unauthorized population residing in the United States. Three of the four (border control is the exception) would be the responsibility of USCIS to implement. Reform legislation would entail sweeping new mandates that would generate volumes of work far larger than any the agency — or the immigration system — has handled before. Thus, it is essential that USCIS be supported in modernizing and building capacity if it is to be equipped to implement ambitious new policies.

### ***The “Why” of Backlogs***

The reasons underlying backlogs are both statutory and administrative. Backlogs are generated by statutory limits on the number of visas which can be issued in a given year within particular categories and to immigrants from particular source countries. Administrative reasons for backlogs are a function of resources, productivity and the volume of applications.

Backlogs have posed an intractable problem that not only hampers USCIS operations, effectiveness, and image, but also represent personal hardships for countless immigrants and non-immigrants, their family members and employers. Beyond their human and institutional consequences, backlogs and uneven levels of processing also impede legal immigration overall. Legal immigration levels have varied by as much as 400,000 to 500,000 annually because of administrative delays.

In a period of peak immigration flows and public anger over high levels of illegal immigration, the national interest is poorly served by a system and practices that fail to allow legal immigration to the full extent permitted by immigration laws, and that result in such a high level of year-to-year variation in legal immigration independent of statutory limits set by Congress.

### ***The Fee Model***

In 1988, Congress mandated that immigration applicant fee revenues be returned to the Immigration and Naturalization Service (INS) budget to support its immigration services mission. An improvement at the time, fee funding for immigration services has proven in practice to have some serious limitations.

Because of large numbers of pending cases, backlogs, extended processing times, unpredictable variations in caseload volumes and lags in calculating and collecting fee increases, fee receipts will always be imperfectly aligned with actual processing costs. So underfunding is systemic.

The deeper problem is that fees have been calculated on the basis of processing costs, but have been required to also fund infrastructure investment. INS and USCIS have suffered for many years from outdated technology and practices. When vital infrastructure investments have been made, they have been funded with monies that would otherwise support processing.

As a result, processing has perpetually been shortchanged because only a portion of the fees applicants pay actually supports processing. Similarly, infrastructure investment is also consistently shortchanged because the fee-revenue model has not generated sufficient capital to build a modern, robust technology infrastructure for delivering immigration services.

The USCIS funding model must be redesigned to direct applicant fees to legitimate application processing costs and to develop additional revenue sources to support critical infrastructure investments. The effective, timely management of the nation's legal immigration processes and system is an important governmental and national interest. A funding model that enables a sound, modern USCIS infrastructure constitutes a public good that can best be realized by immigration reform legislation.

#### **IV. What Makes Legalization During a Recession Central to Longer-Term Solutions?**

Survey after survey shows that most Americans want those who have entered the country illegally penalized, but that they also recognize it is inhumane and impractical to remove millions of people from the country. Bringing the unauthorized out of the shadows without condoning illegal entry necessitates a practical program that requires those lacking legal status to register with the government, pay fines and undergo thorough criminal background checks. Those with serious criminal records or who represent security threats must be identified and removed. Others should be granted provisional legal status and go to the back of the line for the chance to earn their way to a green card and U.S. citizenship.

The case for and against legalization is emotional and deeply felt. It is instructive to step back, however, and examine legalization in light of the nation's longer-term, post-recession interests.

##### ***Legalization and economic recovery***

The benefits of immigration decrease markedly when immigrants lack legal status. Unauthorized immigrants earn lower wages, placing downward pressure on native wages, and are more likely to work off the books. These negative effects compound over time. Legalization would contribute to stimulating the economy by raising wages and increasing immigrant spending, both short- and long-term. And legalization would also increase immigrants' payments to the tax base.

*a) Higher wages:* In general, immigration raises U.S. wages because immigrant skill profiles complement those of natives. Ninety percent of U.S. workers experience wage increases as a result of immigration, with wage increases of \$30-80 billion a year (or 0.7 – 3.4 percent) for native workers with at least a high school degree. Only natives without a high school degree, about 10 percent of the workforce, experience wage declines, and

they are more modest (about 1.1 percent).<sup>18</sup> Other studies indicate that migration has not caused a decline in low-skilled native wages relative to skilled natives.<sup>19</sup>

The wage benefits of immigration are minimized — and the harmful wage effects of migration on low-skilled workers increase — when workers are unauthorized. Although IRCA’s employer sanctions have failed to deter illegal employment, employers have internalized the risk of workplace fines by lowering wages. On average, unauthorized immigrants are paid 10 to 55 percent less than legal workers with similar skills and experience, depending on the industry and the study.<sup>20</sup>

Because employers are uncertain about workers’ status, the unauthorized wage penalty also affects legal immigrant and native-born Latinos, whose wages fell 6 to 7 percent relative to non-Latino wages as a result of “defensive hiring” after 1986.

Legalization of unauthorized immigrants would result in wage increases to reduce or eliminate the existing unauthorized wage penalty. Wages increased by 11 to 20 percent for legalized workers in the years after IRCA.<sup>21</sup>

A new legalization program could be expected to produce wage gains of at least this magnitude, because the wage penalty is higher today than it was prior to IRCA, and because legalization likely would be combined with an expanded and improved electronic eligibility verification system, minimizing defensive hiring. Evidence suggests that IRCA did not result in a significant flow of newly legalized workers into different jobs or result in the displacement of native workers, though it is possible that IRCA’s agricultural worker program contributed to additional illegal immigration.<sup>22</sup>

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<sup>18</sup> Gianmarco I.P. Ottaviano and Giovanni Peri, “Rethinking the Effect of Immigration on Wages” (National Bureau of Economic Research Working Paper # 12497, 2006); White House Council of Economic Advisors, *Economic Report of the President*, Chapter 9, “Immigration,” (Washington D.C.: U.S. Government Printing Office, 2007) <http://www.whitehouse.gov/cea/ch9-erp07.pdf>.

<sup>19</sup> David Card, “Is the New Immigration Really So Bad?” (National Bureau of Economic Research Working Paper 11547, 2005) <http://www.nber.org/papers/w11547>.

<sup>20</sup> Julie A. Philips and Douglas S. Massey, “The New Labor Market: Immigrants and Wages after IRCA,” *Demography* 36, no. 2 (May 1999): 233-246; Cynthia Bansak and Steven Raphael, “Immigration Reform and Earnings of Latino Workers: Do Employer Sanctions Cause Discrimination?,” *Industrial and Labor Relations Review*, 54, no. 2 (January 2001): 275-295; Jorge Durand, Douglas S. Massey and Emilio A. Parrado, “The New Era of Mexican Migration to the United States,” *Journal of American History* 86, no. 2 (September 1999), Chirag Mehta, Nik Theodore, Iliana Mora and Jennifer Wade, “Chicago’s Undocumented Immigrants: An Analysis of Wages, Working Conditions and Economic Contributions,” (Chicago: University of Illinois at Chicago Center for Urban Economic Development, February, 2002) [http://www.uic.edu/cuppa/uicued/npublications/recent/undoc\\_full.pdf](http://www.uic.edu/cuppa/uicued/npublications/recent/undoc_full.pdf); Francisco L. Rivera-Batiz, “Undocumented Workers in the Labor Market: An Analysis of the Earnings of Legal and Illegal Mexican Immigrants in the United States,” *Journal of Population Economics* 12, no. 1 Special Issue on Illegal Migration (Feb 1999): pp. 91-116; Sherrie A. Kossoudji and Deborah A. Cobb-Clark, “Coming out of the Shadows: Learning about Legal Status and Wages from the Legalized Population,” *Journal of Labor Economics* 20, no. 3 (July 2002): pp. 598-628.

<sup>21</sup> Rivera-Batiz. 1999; S. Ise and J.M. Perloff, “Legal Status and Earnings of Agricultural Workers,” *American Journal of Agricultural Economics* 77 (May 1995): pp. 375-386; Kossoudji and Cobb-Clark, 2002.

<sup>22</sup> Lien H. Tran and M. Perloff, “Turnover in U.S. Agricultural Labor Markets,” *American Journal of Agricultural Economics* 84, no. 2 (May 2002): pp. 427-437; J. Edward Taylor and D. Thilmany. Turnover,

Legalization would also boost wages by making it possible for unauthorized workers to meet their full economic potential. About a quarter of college-educated immigrants (1.3 million workers) are unemployed or under-employed in low-skilled jobs. Lack of legal status is one of several factors (along with limited English language skills and the absence of reciprocity in credentialing) which limits the earning power and economic contribution of these workers.<sup>23</sup>

Illegal status is a major barrier to obtaining higher education. Illegal status also limits workers' incentives to obtain education and job skills by blocking traditional paths for career advancement.<sup>24</sup> Lack of legal status is the primary barrier to higher education for over 360,000 existing high school graduates and looms as a barrier for over 700,000 additional unauthorized school-aged youth.<sup>25</sup> While quantifying the effect of legalization on migrants' educational and career trajectories is difficult, over time these effects would be large, with broad social and cultural implications far beyond the economic balance sheet.<sup>26</sup>

b) *Tax contributions*: Immigrants pay \$20,000 to \$80,000 more in taxes than they consume in government services over the course of their lifetimes, some earlier research has concluded.<sup>27</sup> The estimates of lifetime net fiscal effects of migration are out of date, but no newer definite study exists. Fiscal benefits of migration have likely increased since the study's completion as migrants have been excluded from most federal welfare spending since 1996. Unauthorized immigrants also pay taxes, including through payroll tax and Social Security deductions (about \$8.5 billion a year), property taxes (directly, or

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farm labour contractors, and IRCA's Impact on the California Farm Labour Market," *American Journal of Agricultural Economics* 75, no. 2 (1993): pp. 350-360; Kossoudji and Cobb-Clark 2002.

<sup>23</sup> Jeanne Batalova and Michael Fix, *Uneven Progress: The Employment Pathways of Skilled Immigrants in the United States* (Washington, D.C.: Migration Policy Institute, National Center on Immigrant Integration Policy, 2008), [www.migrationpolicy.org/pubs/BrainWasteOct08.pdf](http://www.migrationpolicy.org/pubs/BrainWasteOct08.pdf); also see Aaditya Mattoo and Deepak Mishra, "Foreign Professionals and Domestic Regulation," The World Bank Development Research Group (Policy Research Working Paper 4782, 2008).

<sup>24</sup> Durand et al. 1999; Gordon Hanson, Kenneth Scheve, Matthew Slaughter and Antonio Spilimbergo, "Immigration and the U.S. Economy: Labor Market Impacts, Illegal Entry and Policy Choices" (Report to Fondazione Rodolfo De Benedetti, 2001).

<sup>25</sup> MPI Background, *New Estimates of Unauthorized Youth Eligible for Legal Status Under the DREAM Act*, (Washington, D.C.: Migration Policy Institute, 2006), [www.migrationpolicy.org/pubs/Backgrounder1\\_Dream\\_Act.pdf](http://www.migrationpolicy.org/pubs/Backgrounder1_Dream_Act.pdf).

<sup>26</sup> Earnings for college graduates were twice as high as for those with just a high school degree in 2006; and the unemployment rate for college graduates was one third that for high school graduates; see Roberto G. Gonzalez, "Wasted Talent and Broken Dreams: The Lost Potential of Undocumented Students," *Immigration Policy in Focus* 5, no. 12 (October 2007). Legal immigrants would also have greater access to health insurance and health care, further boosting productivity; see Robert J. Mills and Shailesh Bhandari, "Health Coverage in the United States: 2002," U.S. Census Bureau Consumer Income Report (Census Bureau, 2003): pp. 60-223.

<sup>27</sup> James P. Smith and Barry Edmonston, eds, *The New Americans: Economic, Demographic and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997).



as part of rental payments) and sales taxes. The Internal Revenue Service estimates that unauthorized immigrants paid almost \$50 billion in federal taxes 1996-2003.<sup>28</sup>

Nonetheless, about 40 percent of unauthorized immigrants work off the books, compared to fewer than 10 percent of legal immigrants. Immigrants going through the legalization process would also be required to pay processing fees, and would likely be fined, with those revenues going into an immigration service account or the U.S. general fund. For these reasons, even when taking account of increased benefits spending (mostly Social Security and Medicare), legalizing most unauthorized immigrants in the United States would increase net federal revenues by about \$65 billion dollars in the first 10 years of a legalization program.<sup>29</sup>

*c) Increased spending:* Immigrants already make a significant contribution to the U.S. economy as producers and consumers. Immigrants earned about \$530 billion dollars in 2003, about 5 percent of U.S. GDP.<sup>30</sup> Because immigrants are younger and earn lower incomes than natives, they also spend a higher proportion of their incomes. Altogether, Latino and Asian buying power in 2008 (including native-born) exceeded \$1.46 trillion.<sup>31</sup> And 84 percent of unauthorized immigrants are in their prime spending years (18 to 44 years old), as compared with 60 percent of legal residents.<sup>32</sup>

Legalization would boost spending by migrants and their families in two ways:

- Unauthorized immigrants are likely to make purchases which have been deferred as a function of their illegal status. Short-term travel to Mexico and other countries of origin, for example, would likely be at the top of this list, along with spending for durable goods (cars, appliances), education and other big-ticket items.
- Legalization would give unauthorized immigrants greater access to credit, further encouraging major purchases, business investment and home ownership, by improving access to credit and resolving identification problems associated with unauthorized status (inability to document employment, incomplete rental records, etc.)

Unauthorized immigrants are active participants in the U.S. economy. They and their typically mixed-status families are responsible for hundreds of billions of dollars of annual spending that would only increase with legalization. Along with other more well-known reasons that argue for legalization as an essential element of comprehensive

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<sup>28</sup> Testimony of Mark W. Everson, Commissioner of the Internal Revenue Service, before the U.S. House Committee on Ways and Means, July 26, 2006, <http://waysandmeans.house.gov/hearings.asp?formmode=printfriendly&id=5171>.

<sup>29</sup> Congressional Budget Office, *Cost Estimate: S. 2611, Comprehensive Immigration Reform Act of 2006* (Washington, D.C.: Congressional Budget Office, 2006), [www.cbo.gov/ftpdocs/72xx/doc7208/s2611.pdf](http://www.cbo.gov/ftpdocs/72xx/doc7208/s2611.pdf).

<sup>30</sup> White House Council of Economic Advisors, 2007.

<sup>31</sup> Jeffrey Humphreys "The Multicultural Economy 2008," University of Georgia Terry College of Business Selig Center for Economic Growth," 2008. [http://media.terry.uga.edu/documents/selig/buying\\_power\\_2008.pdf](http://media.terry.uga.edu/documents/selig/buying_power_2008.pdf).

<sup>32</sup> *Business Week*, "Embracing Illegals: Companies Are Getting Hooked on the Buying Power of 11 Million Undocumented Immigrants," July 18, 2005.

immigration reform, legalization would also generate increased wage and spending effects that would contribute positively to economic recovery.

## **V. Conclusion**

For the reasons I have outlined and many more, comprehensive immigration reform is urgent. Because increases in immigration overall have slowed, and rising levels of illegal immigration have abated, the recession offers an historic opportunity to craft reform legislation that would make it possible to manage the nation's immigration system effectively during both the economic recovery and the longer-term future. Immigration is the oldest and newest story of the American experience. However, only with true reform of the nation's immigration laws and system will we be able to harness the considerable advantages immigration provides for the nation's economic and social well-being.

Thank you.