

SHORTFALLS OF THE 1986 IMMIGRATION REFORM LEGISLATION

HEARING

BEFORE THE
SUBCOMMITTEE ON IMMIGRATION,
CITIZENSHIP, REFUGEES, BORDER SECURITY,
AND INTERNATIONAL LAW
OF THE
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CONTENTS

APRIL 19, 2007

OPENING STATEMENT

	Page
The Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Chairwoman, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law	1
The Honorable Steve King, a Representative in Congress from the State of Iowa, and Ranking Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law	3
The Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary	5

WITNESSES

Mr. Stephen Pitti, Ph.D., Professor of History and American Studies, Director of the Program in Ethnicity, Race and Migration, Yale University	
Oral Testimony	9
Prepared Statement	11
Mr. Muzaffar Chishti, Director, Migration Policy Institute's Office, New York University School of Law	
Oral Testimony	30
Prepared Statement	33
Mr. Stephen Legomsky, D.Phil., John S. Lehmann University Professor, Washington University in St. Louis	
Oral Testimony	50
Prepared Statement	52
Ms. Rosemary Jenks, Director of Government Relations, NumbersUSA	
Oral Testimony	61
Prepared Statement	63

LETTERS, STATEMENTS, ETC., SUBMITTED FOR THE HEARING

Prepared Statement of the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Chairwoman, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law	2
Prepared Statement of the Honorable John Conyers, Jr., a Representative in Congress from the State of Michigan, and Chairman, Committee on the Judiciary	6
Prepared Statement of the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law	6
Prepared Statement of the Honorable Elton Gallegly, a Representative in Congress from the State of California, and Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law ...	7

IV

APPENDIX

Page

MATERIAL SUBMITTED FOR THE HEARING RECORD

Study entitled "The Underground Labor Force Is Rising To The Surface," by Robert Justich and Betty Ng, Bear Stearns, submitted by the Honorable Steve King, a Representative in Congress from the State of Iowa, and Ranking Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law	106
Study entitled "The Fiscal Cost of Low-Skill Households to the U.S. Tax- payer," by Robert Rector, Christine Kim, and Shanea Watkins, Ph.D., The Heritage Foundation, submitted by the Honorable Steve King, a Represent- ative in Congress from the State of Iowa, and Ranking Member, Sub- committee on Immigration, Citizenship, Refugees, Border Security, and International Law	120
Article entitled "Enacting Immigration Reform, Again," by the Honorable Romano L. Mazzoli and the Honorable Alan S. Simpson, former Members of the United States Senate, submitted by the Honorable Sheila Jackson Lee, a Representative in Congress from the State of Texas, and Member, Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law	176

SHORTFALLS OF THE 1986 IMMIGRATION REFORM LEGISLATION

THURSDAY, APRIL 19, 2007

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP,
REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Subcommittee met, pursuant to notice, at 3:06 p.m., in Room 2141, Rayburn House Office Building, the Honorable Zoe Lofgren (Chairwoman of the Subcommittee) presiding.

Present: Representatives Lofgren, Gutierrez, Berman, Delahunt, Ellison, King and Forbes.

Also Present: Representative Conyers.

Staff Present: Ur Mendoza Jaddou, Chief Counsel; R. Blake Chisam, Counsel; Benjamin Staub, Professional Staff Member; and George Fishman, Minority Counsel.

Ms. LOFGREN. This hearing on the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law will come to order.

I would like to welcome everyone to the second Immigration Subcommittee hearing on comprehensive immigration reform; and I especially welcome the Subcommittee's Ranking Member, Mr. King, the Members of the Subcommittee, our witnesses and the public and press who have joined us here today.

Our opening hearing on comprehensive immigration reform at Ellis Island provided us with an analysis of immigration in the United States in the past and present and with an eye to the future to help us better understand the need for comprehensive immigration reform.

At Ellis Island, in the shadow of the Statute of Liberty and amidst the Great Hall where 12 million immigrants were processed in a controlled, orderly and fair manner, we heard Border Patrol Chief David Aguilar tell us that we need comprehensive immigration reform because a policy that relies solely on enforcement is bound to fail.

We heard from a demographer, Professor Dowell Meyers, who told us that because of the declining birth rate and an aging population, future flows of new, young immigrants will be critical to sustain a strong economic future in the United States.

We heard from an economist, Professor Dan Siciliano, who taught us that the more we look at the roles immigrants play in our economy, the jobs they fill, the money they spend and the jobs

they create, the more we see immigration is good for the economy, good for jobs and a critical part of our Nation's future prosperity.

We also heard from a historian, Professor Daniel Tichenor, who stated that our rich immigration history provides us with important lessons for contemporary immigration reform. Our past reveals that each wave of new immigrants has been scorned by critics, only later to distinguish themselves among our most loyal and accomplished citizens, and that the times we have restricted immigration the most have only fueled future waves of illegal immigration.

This macro view of immigration in America through the lens of Ellis Island has set the stage for a series of hearings to discuss the specific issues that concern this Congress and the American public with regard to immigration reform. As we did with our first hearing, it is important for us to learn from the past in an effort to avoid mistakes in the future. This is why we are turning our attention today to the shortfalls of the 1986 immigration reform legislation, the Immigration Reform and Control Act, otherwise known as IRCA. Tomorrow, we will do the same with 1996 immigration legislation at a 10 a.m. Immigration Subcommittee hearing.

I very much look forward to the testimony of the expert witnesses here to help us as we develop the appropriate ingredients for comprehensive immigration reform. Although IRCA was certainly a well-intentioned attempt to resolve the problem of illegal immigration, we now have what many experts tell us is 12 million undocumented immigrants in the United States 21 years after IRCA was signed into law by President Reagan. It is clear that any attempt at immigration reform today should be informed by the actual results of past efforts and not resulting in an additional 12 million undocumented immigrants 20 years from now.

This hearing is to learn what went wrong and how we in Congress can fix our broken immigration system now and for the future. We hope with this and other hearings to learn what legislation is necessary to end illegal immigration once and for all. That is what comprehensive immigration reform is all about.

[The prepared statement of Ms. Lofgren follows:]

PREPARED STATEMENT OF THE HONORABLE ZOE LOFGREN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRWOMAN, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

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It is clear that any attempt at immigration reform today should be informed by the actual results of past efforts and not resulting in an additional 12 million undocumented immigrants 20 years from now. This hearing is to learn what went wrong and how we in Congress can fix our broken immigration system now and for the future. We hope with this and other hearings to learn what legislation is necessary to end illegal immigration once and for all. That is what comprehensive immigration reform is all about.

Ms. LOFGREN. I would now like to recognize our distinguished Ranking minority Member, Steve King.

Mr. KING. Thank you, Madam Chair; and I appreciate the witnesses coming forward to testify.

When President Ronald Reagan signed the '86 Immigration Reform and Control Act, which we will refer to here in this hearing probably as IRCA, into law, he said the legislation's goal was to establish a reasonable, fair and orderly and secure system of immigration into this country. Unfortunately, 20 years later, we have the exact opposite. There are an estimated 20 million illegal immigrants in the United States.

For many years, there has been virtually no interest in enforcing the employer sanctions instituted under IRCA. There are drug smugglers running 65 billion—that is billion with a B—dollars worth of illegal drugs across our southern border every year. American taxpayers are forced to pay the education, welfare, healthcare and other costs of lawbreakers who ignore the U.S. Immigration laws that are now demanding U.S. citizenship.

The blame for the current disastrous policy rests on several prongs, not the least of which is the '86 bill itself. For instance, the IRCA amnesty for special ag workers, and that is agricultural workers, or those illegal immigrants who have lived in the United States since 1982, acted as an incentive for new illegal immigrants to come to this country. The lesson was if they could get here they would eventually be granted amnesty. In fact, according to an INS report, the inflow of illegal aliens averaged an incredible 716,000 in each of the first five post-amnesty years; and the fact that

IRCA's employer sanctions were never enforced let employers know that they would never be held accountable for hiring illegal aliens.

IRCA was supposed to be an exception to the rule, an amnesty that would once and for all fix the Nation's illegal immigration problem so we could seriously and effectively control our borders. Senator Alan Simpson, who helped author the legislation, called IRCA a "one-time-only legislation program." It was supposed to be covered with tough enforcement, but that never happened.

Despite the IRCA promise of enforcing employer sanctions, few employers have been fined or prosecuted for hiring illegal immigrants. In fact, only 412 work-site enforcement cases were imposed in 2005; and only four notices of intent—only four notices of intent—to fine employers for violations were issued in 2005. Thankfully, ICE Director Julie Myers is now showing significant leadership in actually making concerted efforts to enforce the law.

Despite the IRCA promise to secure the borders, there are more people than ever before trying to enter our country illegally. Over 1 million were apprehended trying to do so last year. There was 1,188,000 by my memory. And it is estimated that for every one apprehended two or three successfully enter, according to testimony before this Committee just last year.

Despite the IRCA one-time-only amnesty promise, there have actually been six amnesties since that time, including the 1994 245(i) amnesty that rewarded 600,000 illegal immigrants for breaking U.S. laws and amnesties to Central America and Asian refugees. And this year we are faced with a possibility of another amnesty on this legislation of anywhere from 12 to 20 million illegal immigrants and maybe more than that. That policy is the biggest most destructive amnesty in U.S. history, Americans will pay dearly for it, and there is no rolling back once we make a decision.

The 1986 bill not only created amnesty but also a large market for fraudulent identity and employment eligibility documents. According to University of California Professor Philip Martin, up to two-thirds of the applications for the IRCA agricultural worker amnesty were fraudulent. Illegal immigrants submitted fraudulent affidavits and documents from employers who substantiate their claim that they had been engaged in the required prior agricultural employment, which was 90 days. They also routinely used fraudulent documents to obtain employment.

Even the 1986 Attorney General Ed Meese argues that IRCA did not do what was intended. In May of 2006, in a *New York Times* article, Mr. Meese noted: "The '86 Act did not solve our immigration problem." So, 20 years later, we are back to the same problem, a lack of respect for the rule of law which some things should be rewarded with amnesty, such as a pardon for breaking immigration law and a reward of the objective for their crime.

Without careful consideration, the issue before us is true commitment to security; border and interior.

A number of the witnesses before Ellis Island did answer some questions "I don't know" because they are not thinking for the long term, they are giving us testimony for the short term. I am looking for the long-term vision here in the witness's testimony.

I appreciate it, Madam Chair; and I yield back the balance of my time.

Ms. LOFGREN. Thank you, Mr. King.

We are pleased to be joined by the Chairman of the full Committee today. I will now recognize Chairman Conyers for any opening statement he may wish to make.

Mr. CONYERS. Thank you, Subcommittee Chair.

I am so happy to be here, and actually I better be here because this is probably one of the larger bills that we are going to handle in the Judiciary Committee. I must commend you on the way you thought about lifting up some of the issues for us to discuss in a frame of reference that doesn't have to work around bill A or bill B or bill C, and what I wanted to do was run through just a couple of things that occurred to me.

But Steve King, our Ranking Member, said that there were 20 million illegal immigrants living in our Nation. Now, mistakenly, I have been using the number 12 million for all too long, so after this hearing I am going to check with him and we are going to match our research to see what is happening here.

Now, what has made the system that our Ranking Member talked about so dysfunctional? Well, for one thing, we have been approaching this from an enforcement-only approach. And enforcement-only is wonderful, but what we are really talking about is driving hard-working people underground in an economy where they are even more subject to problems.

Second, the Mazzoli-Simpson Bill of 1986—and I all of our colleagues remember it very well—it imposed sanctions for the first time against employers for hiring unauthorized aliens.

Now, in the absence of enforcement of these sanctions, the flow of illegal immigrants illegal increased. So this is beginning to turn—we want to analyze the enforcement—illegal enforcement-only approach, but, at the same time, we want to have meaningful sanctions. They are like two ends of the same issue. And I hope, as Chair, that you go into that really carefully.

Now the next item that I lift up for your consideration is the use of subcontractor arrangements which hurt everybody. The laws document requirements and verification systems promoting a widespread use of subcontract arrangements; and I think that, with any examination, you will see that these were far less than transparent because they put the immigrant workers at risk by lessening employers' responsibilities to provide safe workplaces and fair wages.

Then we have to look beyond legalization provisions which amounted to amnesty. Now I know amnesty is going to be a big theme here; and I would recommend that we all take a deep breath, a couple of deep breaths, and try to put this amnesty concept into some perspective.

When I find the Southern Baptist Ethics and Religious Liberty Commission joining with Congress on rejecting the reflective label on amnesty, I think we are onto something big here, frankly. So what we need is an immigration system whose features are controlled and fair. I am looking for that, I want to work on it, I come with an open mind, and I congratulate the Chairwoman and the Ranking Member for the kind of approach that they are taking in this matter.

[The prepared statement of Mr. Conyers follows:]

PREPARED STATEMENT OF THE HONORABLE JOHN CONYERS, JR., A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF MICHIGAN, AND CHAIRMAN, COMMITTEE ON THE
JUDICIARY

America's immigration system is in disarray. Families coming to our shores looking for a better life are caught in a tangle of confusing requirements and traps for the unwary. The latest estimate is that 12 million illegal immigrants are living in our nation.

Employers risk serious business disruptions when law enforcement officials conduct an unannounced sweep of their premises to round-up their employees. Businesses that pay good wages to its employees must compete with disreputable companies that essentially pay slave wages and substandard working conditions.

Our immigration laws have created a dysfunctional system in dire need of reform. To begin the task of reform, we will first focus on the 1986 and 1996 laws, in particular—on what has worked and what has not—so we hopefully can get it right this time.

Here are a few themes that I think will surface from today's and tomorrow's hearings. *First*, an enforcement-only approach to illegal immigration does not work. In fact, it promotes more illegal immigration. It drives hardworking, otherwise law abiding individuals into an underground economy and encourages fraudulent activities, like identity theft.

Second, meaningful enforcement is absolutely essential. Although the 1986 Act, for the first time, imposed sanctions against employers for hiring unauthorized aliens, these sanctions have hardly ever been imposed. In the absence of their enforcement, the flow of illegal immigrants has surged given the availability of employment.

Third, the law's document requirements and verification systems have promoted the widespread use of subcontractor arrangements. These arrangements hurt both American citizens and immigrant workers. They force Americans to compete with below-market laborers. They put immigrant workers at risk by lessening employers' responsibilities to provide safe workplaces and fair wages, and by weakening the ability of these workers to organize.

When examining the 1986 law, we need to look beyond whether its legalization provisions amounted to amnesty. As Richard Land of the Southern Baptist Ethics & Religious Liberty Commission recently suggested, we should reject the reflexive labeling of any good-faith reform efforts as amnesty. That is a false argument, designed to distract and delay. That is not what comprehensive immigration reform is about.

What we do need is an immigration system that is *controlled, orderly, and fair*. We need a system that puts an end to worker exploitation and does not drive down wages. We need a system that helps to unite families. We need a system where border crossings are orderly and enforcement is vigorous, yet fair and humane.

It is my hope that as a result of today's hearing and others that the Subcommittee will hold in the upcoming months, we will be able to develop a workable package of immigration reforms.

So, let's roll up our sleeves and get to work solving these problems.

Ms. LOFGREN. Thank you very much, Mr. Conyers.

In the interest of proceeding to our witnesses and mindful of our need to go to votes shortly when they are called, I would ask that other Members submit their statements for the record within 5 legislative days. Without objection, all the witness's statements will be placed into the record; and, without objection, the Chair will be authorized to declare a recess of the hearing.

[The prepared statement of Ms. Jackson Lee follows:]

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE
IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Thank you Mr. Chairman for holding this important meeting. This hearing will examine the shortfalls of the Immigration Reform and Control Act of 1986, which is referred to as, "IRCA." It also is known as, the "Simpson-Mazzoli bill." The co-authors of IRCA expressed their opinion on IRCA's shortfalls in an op-ed last year. According to Senator Alan Simpson (R-Wyo., ret.) and Senator Romano Mazzoli (D-Ky., ret.), IRCA's shortcomings are not due to design failure; they are due to a failure to execute the law properly.

IRCA was referred to as a “three-legged stool.” The first leg was enforcement, improved border security and penalties against employers who knowingly hire undocumented workers. The second was a temporary worker program for agricultural workers which included built-in wage and workplace protections. Current legislation, such as the STRIVE Act of 2007, H.R. 1645, and my Save America Comprehensive Immigration Act of 2007, H.R. 750, would employ a similar framework.

IRCA’s key enforcement measure was to be employer sanctions. Work was and still is a magnet that draws people from all over the world who need jobs. The employer sanctions, however, were not enforced. Until recently, the enforcement of employer sanctions has been a low priority for the Bureau of Immigration and Customs Enforcement (ICE). This is reflected in its record of initiating fine proceedings. Between FY1999 and FY2004, the number of Notices of Intent to fine that ICE issued to employers decreased from 417 to only three.

One of the deterrents to vigorous enforcement of employer sanctions has been the fact that it is difficult for an American employer to determine whether a job applicant is an alien, and, if so, whether he has work authorization. Comprehensive immigration reform must address this problem. We are not likely to see effective enforcement of employer sanctions until a system is in place that permits employers to reliably and easily determine whether a prospective job applicant is an alien, and, if so, whether he has work authorization.

One of the main criticisms of IRCA is that its legalization program granted amnesty. “Amnesty” is defined by the American Heritage Dictionary as a general pardon granted by a government, especially for political offenses. It was derived from the Latin word “amnesti,” which means amnesia. The STRIVE Act and the Save America do not have any provisions that would forget or overlook immigration law violations.

Under IRCA, legalization eligibility depended on whether the applicant had entered the United States before January 1, 1982, and resided here continuously since that date. In contrast, the Strive Act and the Save America Act provide for earned access to legalization. The person seeking lawful status has to show that he or she has earned that privilege.

The most serious shortcoming of IRCA, however, is that it was not comprehensive. Although it had legalization programs and new enforcement measures, it did not address all of the essential issues. For instance, it failed to provide enough employment-based visas to meet future immigration needs. American employers need foreign workers to meet their labor needs.

Carlos M. Gutierrez, Secretary of Commerce, testified at a Senate hearing on July 12, 2006, that, “The reality is that our economy is growing faster than any other large, industrialized nation. Our unemployment rate is below the average of the past four decades. Our economy—like other major industrial economies—faces the challenge of an aging and increasingly educated workforce. The result is that we have jobs that American citizens either aren’t willing or aren’t available to do. I continually hear from industries that they are having difficulty finding workers.”

On account of IRCA’s failure to address this problem, the shortage of visas that contributed to undocumented immigration prior to IRCA’s enactment continued to do so afterwards. Consequently, American employers eventually returned to the practice of hiring undocumented foreign workers, and the availability of these jobs encouraged foreign workers who could not get visas to enter unlawfully.

We will not be able to secure our borders until enough visas are available to meet our country’s employment needs without having to resort to employing undocumented workers. People from around the world who need work will find some way of entering the United States without documents so long as there are jobs waiting for them in this country, and American employers will continue to hire them.

[The prepared statement of Mr. Gallegly follows:]

PREPARED STATEMENT OF THE HONORABLE ELTON GALLEGLY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

Madam Chairwoman, thank you for holding this hearing to explore the Shortfalls of the 1986 Immigration Reform and Control Act (IRCA).

IRCA attempted to discourage illegal immigration through a combination of increased border security, an employment verification system, and granting amnesty and a path to citizenship for 3 million people who had crossed our borders illegally.

Clearly, IRCA failed to deter illegal immigration. Twenty years after IRCA, we have as many as 20 million illegal immigrants.

IRCA failed to turn off the “job magnet.” Successive administrations have chosen to ignore worksite enforcement, as well as other anti-immigration laws Congress has passed in the years since 1986—including many provisions that I authored.

More importantly, rewarding people who break the law only encourages others to do the same.

Madame Speaker, until we demonstrate to the American people that we are serious about enforcing our immigration laws, we should not consider any provision that would reward law breakers. I look forward to hearing from our witnesses. I yield back the balance of my time.

Ms. LOFGREN. We have four distinguished witnesses here today to help us consider the important issue before us.

I am pleased to welcome Dr. Steven Pitti, a Professor of History and American Studies at Yale University and Director of the Program in Ethnicity, Race and Migration. Professor Pitti teaches an array of undergraduate and graduate courses at Yale, ranging from 20th century immigration to courses in Latino studies. Raised in Sacramento, California, Dr. Pitti received his Ph.D from Stanford University in 1988.

We will next hear testimony from Muzaffar Chishti, the Director of the Migration Policy Institute’s Office at the New York University School of Law. Mr. Chishti’s work is focused on the intersections between civil liberties immigrant integration, and immigration and labor law. Mr. Chishti worked as a labor organizer during the 1980’s and became intricately involved in the passage and implementation of the 1986 legislation.

I am also pleased to welcome Dr. Stephen Legomsky, the John S. Lehmann University Professor at Washington University in St. Louis. Professor Legomsky authored the standard tome in American law schools, *Immigration and Refugee Law and Policy*—thank you very much; we all use it—and has served as an advisor to President George H.W. Bush’s Commissioner of Immigration, former President Bill Clinton’s transition team, and immigration officials from Russia and Ukraine. He currently sits on the Board of Advisors for the United Nations Educational, Scientific and Cultural Organization chair in Migration and Human Rights.

Finally, we are pleased to have before us Rosemary Jenks, the Director of Government Relations at NumbersUSA. Prior to her tenure at NumbersUSA, Ms. Jenks worked as an independent immigration consultant and as Director of Policy Analysis at the Center for Immigration Studies. Ms. Jenks received her bachelors degree from Colorado College and her law degree from Harvard University School of Law.

Now, each of you have your written statements, and I have read them all. They are lengthy and very informative. They will all be made part of the record in their entirety. I would ask that each of you summarize your testimony in 5 minutes or less and stay within that time. There is a timing light at the table. When 1 minute remains, the light will switch from green to yellow; and then when it turns red it starts to blink.

Ms. LOFGREN. If we could begin with Professor Pitti. Again, thank you very much for being with us.

TESTIMONY OF STEPHEN PITTI, Ph.D., PROFESSOR OF HISTORY AND AMERICAN STUDIES, DIRECTOR OF THE PROGRAM IN ETHNICITY, RACE AND MIGRATION, YALE UNIVERSITY

Mr. PITTI. Thank you, Madam Chair, Members of the Subcommittee. Thank you for inviting me to provide historical perspective on IRCA.

My name is Stephen Pitti and I am Professor of History and American Studies at Yale, where I direct the undergraduate program in Ethnicity, Race and Immigration. I am here today to urge this Congress to face some difficult truths about our past and present in order to think differently about our future.

We have long lived in a migrant world, and today some 180 million people live outside of their home nation. Recent migrations are products of history: the near continuous movement of Latin Americans into the U.S. since the Gold Rush in the 1840's, our Nation's long-term reliance on low-wage immigrants in work forces in agriculture, forestry, food processing, meat packing, mining, fishing, construction and other industries during the 20th century, and the 20th century's global economic and political restructuring, often directed by the United States, which escalated in the late 20th century.

Recent migrations to the U.S. were prompted by our foreign policy in Central America in the 1970's and 1980's. They were also prompted by our economic policies abroad. Migrants left rural Mexico and other countries in massive numbers during those years as their elected officials established new austerity measures to service debts to U.S. banks.

With these fundamental facts in mind, we must think outside the logic of border control which IRCA embodied. In the face of massive global hemispheric and national development, that Act sought to control immigration through new border enforcement mechanisms—both a massive build-up of the Border Patrol and new enforcement technologies, and new employer sanctions which would deny undocumented residents jobs in the U.S.

If we are to avoid the growing animosity and spectacular violence which erupted recently between noncitizen migrants in Denmark, Germany, France and other European countries, we must talk far more about why migrants leave their homeland and how the U.S. might work in cooperative ways, new ways, with other nations to address emigration, not just immigration. In this spirit, we must remember that foreign debts and INS-dictated fiscal policies during the 1980's and 1990's, eliminated large segments of Mexico's middle class and made making a living far more difficult in that country. They assured that 40 percent of Mexico would live in poverty, some 25 percent in extreme poverty by the late 20th century.

We must also understand while IRCA had a mild deterrent effect on subsequent undocumented migration, its way of conceptualizing border control brought new difficulties for all of us. As unauthorized crossings from Mexico became far more dangerous in the aftermath of IRCA, IRCA paradoxically led to the dramatic rise in the power of militarized criminal syndicates trafficking in drugs and people near the border. It also led to the deaths of ever-larger numbers of border crossers in the late 20th century who moved into

more remote desert regions to cross into the United States. It divided families in Mexico and the United States and exposed a growing number of female migrants to rape and other forms of sexual exploitation at the border.

We must understand that IRCA had other unintended effects. As the border became more dangerous, migrants within the U.S. who had once hoped to return to Mexico felt trapped in the U.S., unable to move back and forth across the border.

We must understand IRCA as a labor bill that changed the nature of workplaces throughout the U.S. Sanctions helped drive down real wages, promoted discrimination on the basis of race or nationality in the workplace, and encouraged subcontracting arrangements in many industries, all of which hurt both immigrants and the U.S. born. What is more, employer sanctions put undocumented workers at greater risk of deportation or job loss if they complained about wages or working conditions, making them more vulnerable to mistreatment on the job and less inclined to stand up with U.S. workers to better everyone's circumstances.

We need also to remember that IRCA, in fact, established guest worker programs that have been, to echo one American, a shame of our Nation. Congressman Charles Rangel has called these IRCA programs, quote, the closest thing I have seen to slavery. These H2A guest worker systems imported 125,000 guest workers to the U.S. in 2005, 32,000 of them in agriculture and 89,000 in forestry, seafood processing, landscaping, construction and other non-agricultural industries.

Like the Act's employer sanction provision, the H2 program encourages a growth of subcontracting and low pay. We must investigate the past and present circumstances of guest workers in advance of formulating new policies and control. H2A and 2B deserve far greater governmental scrutiny and far greater media attention.

Human rights groups have documented some of these abuses in North Carolina. The *New York Times* recently brought greater attention to Guatemala H2A workers imported by Imperial Nurseries to North Carolina and Connecticut.

I urge all Members of the Committee to read the Southern Poverty Law Center's recent report, *Close to Slavery: Guest Worker Programs in the United States*.

Finally, we must understand why migrants have left their own countries to work in the United States. History provides a useful guide toward new policies responding to global dynamics and the basic human needs. Thank you.

Ms. LOFGREN. Thank you very much, Dr. Pitti.

[The prepared statement of Mr. Pitti follows:]

PREPARED STATEMENT OF STEPHEN PITTI

Testimony of Stephen Pitti

**Professor of History and American Studies, and Director of Ethnicity, Race, and Migration
Yale University, New Haven**

**Before the U.S. House of Representatives Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International
Law**

April 19, 2007

Madame Chairwoman, members of the subcommittee, thank you for inviting me to provide historical perspective on contemporary immigration reform. My name is Stephen Pitti, and I am Professor of History and American Studies at Yale University, where I also hold a courtesy appointment in the Council of Latin American and Iberian Studies, and where I direct the undergraduate program on Ethnicity, Race, and Migration. As my students know, and as every member of this committee knows, migration to and from the United States has a long and bumpy history that is both part of our national past and intricately connected to the rest of the world. This fact has been clear since at least World War II, and it has been even more clear since the 1970s. Policymakers and others active in debating immigration reform, naturalization, guest worker programs, labor standards, and a host of other related issues nearly always depend on historical understandings which orient us towards the future. I hope today to provide some historical context for considering one of the most important pieces of U.S. legislative policy of the late-20th century, and a law with important legacies for the twenty-first century, the Immigration Reform and Control Act (IRCA) of 1986.

Signed by President Ronald Reagan on November 6, 1986, the Immigration Reform and Control Act resulted from debates about how best to control undocumented migration, how to bring undocumented residents who had lived in the United States for years “out of the shadows,” and how to anticipate and control future migrant flows. Those debates in some ways foreshadowed our own discussions of immigration in 2006 and early-2007. And, as in the more recent past, national security concerns were commonly expressed during the 1970s and 1980s as Congress debated the bills that became IRCA. Former CIA Director William Colby declared in 1978, for example, that Mexico was a greater threat to the United States than the Soviet Union; syndicated columnist Georgie Anne Geyer warned that an uncontrolled U.S.-Mexico border would lead to “our very own Lebanon right here”; and President Ronald Reagan warned on national television in 1986 that “terrorists and subversives [from Central America] are just two days’ driving time from Harlingen, Texas.”¹ As I will show, that sort of prevailing rhetoric about security and border control has consistently failed since the 1980s to address the specific economic, social, and political ties between the U.S. and its southern neighbors that encourage migrant flows.

Immigration reform efforts have been consistently hampered by a limited understanding of the entrenched causes of human mobility, and they have been guided more by fear than by meaningful attempts to address – on both sides of the border – a viable design for regulating people’s movements. In the pages that follow, I discuss IRCA within its historical context. I

consider what that landmark legislation meant for past and future migrant flows, and what global, hemispheric, and national forces shaped migration to the U.S. in the years before and after 1986. I explore the extent to which the Act deterred migration from Latin America, and how both border enforcement and amnesty shaped newly-settled populations of Mexicans in the U.S. Finally, I investigate IRCA's labor provisions to show how federal policy changed the historical experiences of immigrants and other U.S. workers during the 1970s and 1980s. These pages build upon my own work on the history of Latinos in the United States from the eighteenth century to the present, and upon the work of hundreds of other scholars who have explored migration, border enforcement, patterns of immigrant settlement, and similar topics. In the final section I suggest what IRCA's history, and the history of other landmark efforts to control Mexican migration to the United States through new border policing, suggests about future immigration policy.

The historical record shows that a response to border control that depends solely on a militarized regularization of the boundary line is doomed to fail, and that the criminalization of undocumented migrants as migrants and workers remains dangerous policy. Such approaches in fact produce new social inequalities within the United States, they undo the promises of economic and military security, and they do little to curtail the movement of people into this country. Without solutions that address the human needs behind migration and the labor relationships that create dependency in the United States on undocumented workers, a cycle of failed reforms will likely continue.

1980s Migration to the U.S. in Hemispheric Context

Mexican residents of the United States were both the primary beneficiaries of IRCA's reforms, and the primary targets of its efforts to control the international border. Immigrants had been moving across the border into this country since the 1840s, forging connections with Mexico that had no parallel in any other immigrant community in the United States.² The number of migrants from Latin America increased dramatically throughout the twentieth century, assuring that many economies and communities within the United States would be inextricably connected to Mexico and other sending countries by the early years of the Carter administration.³ Although legal quotas for Mexicans remained very low after the Hart-Cellar Act of 1965, demand for those slots remained extraordinarily high among prospective Mexican immigrants. Government-sponsored guest worker programs had sealed the linked fate of the two nations for decades, assuring that undocumented migration from Mexico would increase steadily with the conclusion of the Bracero Program (1942-1965), which had imported roughly 4.6 million Mexican temporary workers over the course of its twenty-two year life. "When the program finally ended in 1964," three leading scholars have recently argued, "the United States did not stop employing Mexican workers; it simply shifted from a de jure policy of active labor recruitment to a de facto policy of passive labor acceptance, combining modest legal immigration with massive undocumented entry."⁴

Historical patterns of economic growth and political change had helped institutionalize migration from Latin America to the U.S. for decades, but new global and regional developments

accelerated migration processes during the 1970s and 1980s. Violence played one fundamental role. From the early-1900s forward, Latin American migrants had found their way to the United States thanks to revolutionary turmoil in their home countries, and U.S. military interventions abroad shaped significant refugee populations that moved from Mexico, the Dominican Republic, Vietnam, Cuba, and other countries during the twentieth century. Violent, and at times genocidal, wars in Guatemala, El Salvador, and other Central American nations displaced millions of local residents between 1974 and 1996. As Mexico became the home of 750,000 Central American refugees during the 1980s, more than a million others made their way to Canada and the United States.⁵

Just as important were changing economic dynamics in the hemisphere after World War II. Transformations within the U.S. labor market -- and above all cycles of economic restructuring which depended upon immigrant labor in agriculture, construction, domestic, health care, and service work for national growth -- had served as magnets for new immigration in the decades prior to the 1970s. Migration to the United States proved critical to the economic strategies of many Latin Americans and many Latin American policymakers throughout the twentieth century. By the 1970s and 1980s, wages earned in the United States which were sent to other parts of the hemisphere had become one of the leading producers of income in many parts of the Americas -- including Mexico and the Dominican Republic.⁶ The integration of economies throughout this hemisphere, and throughout the Pacific Rim, assured that governments, neighborhoods, and households abroad would depend heavily on remittance dollars sent from the U.S. during the 1970s and 1980s.

New models of industrial growth changed the character and volume of global migrations during those same years, and the U.S.-Mexico border region captured the transformations of the era. In response to a debt crisis which plunged Mexico into a challenging period of neoliberal restructuring, creating deep economic hardships throughout that country, Mexican officials were forced by the IMF to adopt policies of austerity in the years leading up to IRCA's passage, with little thought of the consequences on international emigration. Financial institutions that dictated austerity programs have severely undercut the social welfare of Latin American polities. As a result, new migrants arriving in the U.S. during the 1990s and early-twenty first century have been less educated, and poorer, and they have come from a much broader range of countries. Given that some nations in Latin America pay as much as 50% of GDP in their debt service, the immiseration of their populations will continue to produce mass exoduses. This humanitarian crisis resulted directly from trade and financial policies designed by U.S. officials who had limited views of their long-term consequences. Income inequality within the Americas is now as high as it has ever been, making many societies inherently unstable. In this context, with the help of business leaders in Mexico and the United States, officials in both countries developed new export-processing zones which attracted capital-intensive industries devoted to "just-in-time delivery, flexible accumulation, out-sourcing, and continuous flow manufacturing." In massive industrial parks built in Tijuana, Ciudad Juárez, and other parts of Northern Mexico, companies were able to "import unfinished inputs into Mexico, assemble them into final goods, and then re-export them back to the United States paying tax only on the value added (that is, the relatively small cost of labor inputs)."⁷

Thanks to this Border Industrialization Program, the new *maquilas* (factories) which sprang up throughout the region to produce cheap consumer goods for U.S. households paid low wages to the tens of thousands of Mexican women, men, and children who were then migrating to the border region. The number of *maquiladoras* rose from 120 in 1970 to 680 in 1984, with the number of employees rising from 20,327 to 184,400 during that same period. According to one historian of the region, "In early 1985, *maquiladora* workers made about \$1.03 an hour, a sum, according to industry reports, representing a savings of \$14,520 a year per employee over hiring U.S. workers."⁸ The expansion of export-led development -- which culminated in the North American Free Trade Agreement on January 1, 1994 -- accelerated the hardships which border Mexicans faced, even as it drew more Latin Americans to cities such as Ciudad Juárez and Tijuana in search of work. As wars raged in Central American countries to the South, poverty deepened in Mexico during this era of neoliberal reforms, assuring that "millions of Mexicans" would experience "joblessness, hardship, neglect, and growing economic marginalization" in the years leading up to IRCA's passage.⁹

Those hardships -- often in U.S.-owned factories in Northern Mexico -- prompted growing numbers of Mexicans to search for stable employment in the United States during the 1970s and 1980s. During an era which also saw many Central Americans uprooted by war heading north, residents of the U.S. began to express growing concern about border enforcement. Cold War rhetoric about the spread of communism in Latin America bolstered calls for greater national security, and new attention to Latin American drug smuggling operations shaped new efforts to police the U.S.-Mexico boundary line. But increased border vigilance also reflected new material hardships in the United States, where many believed that immigrants threatened their own economic security. Like their neighbors in Mexico, residents of the United States faced many new labor market challenges after 1973. Unemployment rates soared and wages stagnated during these years, bringing new pressures to blue-collar workers. Government programs that had provided resources and insurance to working-class Americans were cut back considerably. "With wages falling and the government actively seeking to slow down (and eventually to reduce) some income grants to poor people," two analysts have argued, "the negative effect of a worsening distribution of family income" was clear by 1979.¹⁰ The number of U.S. residents who fell below the poverty line soared from 23 million in 1973 to 35 million in 1983, with African American workers suffering disproportionately.¹¹ By the early-1990s, corporate downsizing, the end of the Cold War, and new computer technologies also hurt many more white collar employees in the U.S. Southwest. When, from 1990 to 1993, California lost more than 830,000 jobs, most of them related to the defense sector, economic uncertainty prompted new efforts -- particularly in the form of Proposition 187 in 1994 -- to control unauthorized border crossing and limit opportunities for undocumented residents already in the United States.¹²

The Immigration Reform and Control Act

For nearly two decades prior to IRCA's signing, officials in the United States and Mexico had debated the economic and social problems associated with migration within these changing hemispheric, regional, and national contexts. Nine years before IRCA was signed into law, President Jimmy Carter had proposed to Congress the Alien Adjustment and Employment Act of

1977 (S.2252/HR 9531) in which the White House laid out “a set of actions to help markedly reduce the increasing flow of undocumented aliens in this country and to regulate the presence of the millions of undocumented aliens already here.”¹³ Carter’s proposal, which became the basis for IRCA in 1986, emphasized new border enforcement, sanctions that would target employers who hired illegal workers, a restructured foreign worker (H-2) visa program to import temporary agricultural laborers, and an adjustment of legal status (“amnesty”) for undocumented residents who had long lived and worked in the United States. In March 1982 Senators Simpson (R-WY) and Mazzoli (D-KY) proposed legislation that built on the Carter Plan. While the Senate passed a version of that bill in August 1982 and again in May 1983, Hispanic Congressional Representatives such as Edward Roybal (D-NY), along with members of the Congressional Black Caucus and other legislators, blocked its passage in the House. The bill was successfully reintroduced by Senators Simpson and Rodino in 1985 in anticipation of midterm elections, and President Reagan signed it as the Immigration Reform and Control Act in November 1986.

IRCA included four major provisions. First, it allocated new resources for enforcement along the U.S.-Mexico border. Second, it offered amnesty to undocumented residents who had lived in the United States since 1982. Third, it created a Special Agricultural Worker Program (SAW) which legalized undocumented residents who had worked ninety days in U.S. agriculture. Finally, it imposed sanctions against employers who “knowingly” hired undocumented workers.

Because control of the U.S.-Mexico border was a key policy imperative during the Reagan years, IRCA allocated \$400 million in 1987 and 1988 to hire additional Border Patrol officers.¹⁴ These efforts to “control” the border built upon longstanding attempts to limit Mexican transborder migration during economic hard times. As historians have recently shown, mounted troops had patrolled the U.S.-Mexico line to prevent Chinese migrants from arriving during the early-twentieth century; tens of thousands of national guard troops were subsequently stationed along the border during the Mexican Revolution of the 1910s; U.S. Bureau of Health officials doused hundreds of thousands of Mexican border crossers in kerosene throughout the 1920s and 1930s in the name of controlling typhus and other communicable diseases; and the U.S. Border Patrol, created by Congress in 1924, deported millions of undocumented immigrants during the era of “Operation Wetback” in the early-1950s. All the while, historians now recognize, U.S. immigration agents, together with many elected officials, business leaders, and other local residents, helped to recruit undocumented Mexican workers into the United States from the 1920s forward to work in California agriculture, Chicago steel mills, Pennsylvania foundries, Mississippi cotton, and other leading industries nationwide. Cycles of repatriation and border enforcement overlapped with periodic demands by U.S. employers for ever greater number of Mexican immigrant workers throughout the twentieth century.¹⁵

The decade prior to IRCA’s passage had already witnessed many attempts to stop unauthorized border crossings. From 1978 to 1988, the number of Border Patrol officers doubled from 2580 to 5531 as federal agencies responded to new concerns about the Drug War.¹⁶ The figure for migrants apprehended had climbed dramatically from some 30,000 in 1964 to 1.7 million in 1986.¹⁷ As the enforcement budget of the INS grew by nearly two hundred percent dur-

ing the years of the Reagan Administration, the number of Border Patrol helicopters increased from two to twenty-two from 1980 to 1988; the number of INS fixed-wing airplanes patrolling the U.S.-Mexican border jumped from 28 to 46; the number of night-vision scopes used to detect border crossers increased from 59 to 344; and the INS worked closely with the U.S. Army and the U.S. Air Force to develop other new surveillance equipment. According to one scholar, “some 22 Border Patrol stations and four traffic-inspection checkpoints in the border region were either constructed, scheduled and fully funded, or at least planned and awaiting action” from 1980 to 1988.¹⁸

Efforts to “secure” the U.S.-Mexico border brought consequences in the years prior to IRCA’s passage which few U.S. policymakers seemed to anticipate. Calls to build a “Tortilla Curtain” in the late-1970s -- a high wire fence with metal blades that would discourage climbing -- brought protests among Mexican residents and among Mexican Americans in the United States. René Mascareñas, a former mayor of Ciudad Juárez, spoke for many when he declared that “I don’t like the idea of fences. We don’t live between East and West Germany. The communist wall that is there is a slap in the face to any nation that boasts of being democratic. We want greater fluidity and communication between us. We don’t want barriers; we don’t want barbed wire fence. We brag we are two neighborly countries, two friendly nations, and that this is the longest border in the world where one does not see a single soldier, a single rifle, a single bayonet, or a single affronting or discriminatory sign.”¹⁹ Perhaps most important, new efforts to enforce the boundary line during the 1970s had already proven themselves unable to stop Latin Americans from crossing into the United States without documents. Border residents soon cut holes in the “Tortilla Curtain” near San Diego and El Paso, and some 2.1 million undocumented migrants passed successfully into the United States in 1986 alone.

Most scholars not surprisingly agree that IRCA’s efforts to bolster border enforcement exerted at best a “mild deterrent effect” on undocumented migration after 1986. Political scientist Rosanna Perotti asserts that “IRCA does not appear to have impeded the flow of undocumented immigrants to the United States” and sociologist Susan González Baker concludes that “contemporary evidence suggests that, over the long haul, undocumented immigration persists virtually undaunted.”²⁰ But while the 1986 Act did little to deter undocumented migration, it did make subsequent unauthorized crossing far more difficult and dangerous for U.S.-bound migrants. The 1980s and 1990s in fact witnessed startling new human rights violations in the border region, and soaring death rates among prospective border crossers, as stricter enforcement of the international line changed migration patterns. Mexicans, Central Americans, and others who attempted to elude government agents during this period increasingly moved away from traditional crossing points around urban Tijuana and Ciudad Juárez into more difficult and remote regions -- particularly the harsh, desert landscapes which threatened migrants with death by dehydration, exposure, or snake bite. In response to these changes, new smuggling operations based in Mexico that promised safe passage into the U.S. became billion dollar industries in the years after IRCA, and many of the migrants who paid large sums to *coyotes* faced abandonment, sexual exploitation, and other forms of violence within that informal economy.²¹

Following IRCA's logic, new enforcement policies developed during the Clinton Administration after 1992 continued to force prospective migrants into the deserts of Arizona and New Mexico, and away from traditional crossing points. They have also bolstered the power of traffickers in the border region, and encouraged smugglers and others to respond in newly violent ways. Criminal activities have exploded in the border region as a consequence of recent border blockades. According to one leading scholar of Mexican migration, "the theory underlying the strategy was that raising the cost, the physical risk, and the probability of apprehension on each entry attempt would eventually discourage the migrant and cause him (or her) to return to the location of origin. Better yet, the prospective unauthorized U.S.-bound migrant would be deterred from leaving his home community in the first place." The dangers of border crossing increased in the 1990s beyond what the 1980s had seen, with Mexican consuls reporting approximately 1700 migrant deaths from 1994 to 2001.²² During those years, Border Patrol agents have complained that Operation Gatekeeper and similar policy initiatives have made policing the border a far more deadly and dangerous assignment.

Circular Migration and Settlement

Although the threat of capture by Border Patrol agents, of violence at the hands of smugglers, and of death in the deserts did little to slow migration to the United States after 1986, IRCA did challenge Mexican migration in numerous ways, shaping what scholars have recently labeled "the great transformation" in recent immigration history. "Rather than slowing down the rate of undocumented entry," they write, "IRCA seems only to have succeeded in transforming a seasonal flow of temporary workers into a more permanent population of settled legal immigrants."²³ Reflecting on this transformation of the 1980s and 1990s, another social scientist concurs that, "By making it more costly and difficult to gain entry illegally, the US government has strengthened the incentives for permanent settlement in the United States. Thus it is entirely possible that the current strategy of border enforcement is keeping more unauthorized migrants *in* the United States than it is keeping out."²⁴

Prior to IRCA, most Mexicans who had arrived as undocumented workers in the United States during the 1970s and 1980s likely maintained hopes of returning permanently to Mexico. These hopes in fact stretched back into the mid- and late-19th century, as Mexican communities had sent temporary wage-earners into the United States since the California Gold Rush. Money earned in the United States was commonly wired to communities abroad and used to build homes, start businesses, or support family members. Those who traveled north from Mexico were often men, and many of them returned frequently to Mexico in a pattern of "circular migration" through which they remained tied to spouses, children, and other kin. Those patterns of back-and-forth movement had been solidified and strengthened by the government-sponsored guest worker programs linking the two countries during World War I, and from 1942-1964. Throughout the twentieth century these transborder connections shaped cultural developments in both Mexico and the United States.²⁵

But IRCA helped create new conditions after 1986 under which circular migrants more commonly settled permanently within the United States. Desires to do so took hold as the buildup of border surveillance equipment and Border Patrol personnel, combined with the ever

more dangerous unsanctioned crossings through deserts, in effect “trapped” many Mexicans on the U.S. side of the border. Moreover, charges of human rights violations by government agents, individual U.S. citizens, and Mexican *coyotes* received new attention among Latin American migrants and in the international press. At a 1980 Congressional hearing in which Acting INS Commissioner David Crosland discussed the discovery of an “organized brutality ring” of Border Patrol agents, he announced that “We are not satisfied that this was an isolated incident and do not believe that this one case will serve as an adequate deterrent to others whose activities are less than professional.”²⁶ “Because migrants are at greatest risk while crossing the border,” three leading scholars made clear in 1999, “a buildup of enforcement resources there perversely creates strong incentives for undocumented migrants to stay put. Rather than returning home to face another risky crossing later on, migrants rationally chose to hang onto their jobs and settle into the expatriate Mexican community.”²⁷

Amnesty

New processes of Mexican settlement during the 1980s that changed earlier patterns of circular migration of course also resulted from IRCA’s legalization (or amnesty) provisions. In 1986, many experts estimated, roughly 3.5 million undocumented Latin Americans lived in the United States. (Press reports in the mid-1970s had in fact speculated with alarm that the number might have climbed past ten million.) By 1990, some 1.7 million immigrants of many national backgrounds had taken on a new status as LAWs (Legally Authorized Workers) by demonstrating that they had lived in the United States continuously since 1982. By that same year, 1.3 million other immigrants had legalized under the SAW (Special Agricultural Workers) provisions of the 1986 Act. Both numbers, and in particular the number of SAW applicants, exceeded demographers’ earlier predictions. Of the roughly 3 million immigrants who filed successfully for amnesty in the three years following IRCA’s implementation, 2.3 million were Mexicans. Most lived in urban areas -- including 800,000 in Los Angeles County, and at least 100,000 in the metropolitan areas of Anaheim, Chicago, Houston, New York, Riverside and San Diego -- although rural California and rural Texas each saw roughly 150,000 successful applicants.²⁸

Many undocumented immigrants who received amnesty in the late-1980s subsequently worked to bring their families to the United States. But in part because most were not able to bring spouses and children through formal, legal routes, undocumented migration increased dramatically by the early-1990s. Family members in Mexico of newly-legalized U.S. residents risked the dangerous international border to join kin in the United States. These new migrants were more often women, and they were more often young. In the aftermath of IRCA, many families struggled to reunite their children and teenagers still living in Mexico with parents and grandparents who had moved to the United States in search of work during the 1970s and 1980s.²⁹

Such efforts at family reunification during the late-1980s and throughout the 1990s not only testified to the love that connected migrants to family members still resident in home countries, they also carried with them certain logics of regional history. In the nineteenth century, Mexican families living on either side of the Rio Grande River had crossed back and forth regularly between Mexico and the United States to attend church, social gatherings, weddings, and

funerals. Throughout the twentieth century, friends and family members sought kin who already resided in distant places -- New York, South Dakota, Minnesota, Iowa, Georgia, North Carolina - where they had found work and established prior residency. That "chain migration" had formed the basis for emerging Mexican and other Latino neighborhoods throughout the United States by the 1960s and 1970s, and it had bolstered many regional economies in the United States for decades. Letters, telegrams, postcards, telephone calls, and other forms of communication had allowed Mexicans in those places to remain active in the lives of friends and family members who remained in their home country. By the 1970s and 1980s, many female migrants were becoming "transnational mothers" -- continuing at a distance to care for their own children who remained with grandparents or aunts in Mexico, even as they served as domestic workers or nannies in U.S. households in growing numbers.³⁰

Efforts to settle permanently in the United States after 1986 also continued other long-term trends among Mexican immigrants. Those who pursued amnesty joined a growing and diverse U.S. Latino population that had long expressed commitments to U.S. citizenship, and that already included a significant middle and upper class. The Congressional Representatives who supported the legalization of undocumented residents no doubt understood that Mexican Americans -- both those born in the United States and those naturalized in the twentieth century -- had long proven their commitment to Americanizing in the United States, and to enriching U.S. society by their presence. Many Latinos had fought in the U.S. Armed Forces throughout the twentieth century -- including more than 500,000 in World War II -- and Latino military personnel who were U.S. citizens commonly claimed immigrant parents, and often immigrant siblings. In the aftermath of World War II, many politicians in the late-twentieth century understood, Latino political movements in favor of active civic participation became far more vibrant. New generations of activists -- some of them veterans, many of them not -- pushed new immigrants during the 1950s and 1960s to apply for full membership in the United States. These efforts shaped numerous organizing campaigns in states like New York, Arizona, Texas, New Mexico, California, and Illinois during the postwar period that forced local registrars to enroll Latino voters, that demanded citizenship exams in Spanish as required by law, and that enabled residents to become first-class members of U.S. society.³¹

Work

Postwar civil rights efforts which aimed at full U.S. citizenship shaped Mexican American voters by the 1960s and 1970s, and they helped launch a number of prominent Mexican Americans into elected national and state positions by the early-1980s, some of whom proved critical to IRCA and its aftermath. The ten members of the Congressional Hispanic Caucus who held House seats from 1980 to 1988 revealed varying opinions on Mexican immigration and other topics, but most pushed hard for liberal amnesty provisions that would assist undocumented residents as workers, and most opposed the employer sanction provisions of those bills as potentially discriminatory in American workplaces. In doing so, they joined allies in the Congressional Black Caucus and other Representatives to critique IRCA's potentially negative effects on working people throughout the United States.

These Congressional representatives and others understood that the 1986 Act was as much a labor bill as an immigration reform. The Immigration Reform and Control Act passed in an era that saw many apparent attacks on collective bargaining rights, and growing concerns among labor leaders that the National Labor Relations Board and other federal labor protections had been turned against them. Scholars have recently noted that IRCA “included two tools to combat national origin and citizenship discrimination against the foreign born. First, IRCA required employers to verify every worker’s employment eligibility, limiting the possibility that employers would ask only foreign-looking or foreign-sounding applicants for documents. Second, IRCA created within the Justice Department an Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) to investigate charges of national origin and citizenship status discrimination.” Employer sanctions were, along with border enforcement, the critical “control” features of the Immigration Reform and Control Act, and the policymakers who supported this provision stressed that IRCA would protect U.S. jobs for U.S. legal residents while deterring further undocumented labor migration from Mexico.³²

Critics of the Simpson-Rodino, Simpson-Mazzoli, and IRCA bills countered that employer sanctions would in fact do little to deter migration, that they would fail to protect local jobs for U.S. citizens, and that they would instead prove discriminatory to many U.S. workers, particularly those perceived to be “foreigners.” When Representative Peter Rodino had first introduced employer sanction legislation in the early-1970s, Edward I. Koch (D-NY) rose on the House floor to speak out against the bill: “I am thinking of my 78-year old father who is working in a department store in midtown Manhattan at this moment,” he told his colleagues. “He came here when he was 14 years old. He is a citizen. He still retains his accent from the old country. I would not want him singled out from the other employees in his department, most of them probably American born, and asked to sign a special form. He and others like him should not be made to feel they are second class citizens.”³³ By the early-1980s, Los Angeles Democratic Mexican American Congressman Henry Roybal, who had founded the Hispanic Congress, helped lead the Congressional opposition, while New Mexico’s newly-elected Representative Bill Richardson more optimistically pushed for anti-discriminatory safeguards that would provide some protection to Latino workers. Groups such as the American Friends Service Committee (AFSC), the National Council of Churches, and the American Jewish Committee also went on record opposing employer sanctions out of concern for workplace rights. Members of the Reagan Administration expressed private concerns prior to the passage of IRCA that employer sanctions would lead to discrimination against “foreign-looking or -sounding Americans.”³⁴

As those groups predicted, IRCA indeed brought many negative consequences for workers in the United States -- both documented and undocumented, both immigrant and native-born. Discrimination in employment proved a serious problem in the early years of the Act’s implementation. Despite the threat of harsh penalties against employers, and new money allocated to the U.S. Department of Labor to expand workplace inspections, the Government Accounting Office (GAO) reported in 1990 that 19% of employers interviewed had admitted to engaging in some form of discriminatory treatment on the basis of national origin or citizenship since 1986.³⁵ New criminal activities also developed in response to IRCA, as undocumented immigrants seeking work who did not qualify for amnesty created a booming market for fake identity cards. In September 1991, agents of the Immigration and Naturalization Service broke a Los Angeles

counterfeiting ring that may have supplied fake documents to one million residents.³⁶ Concern about document fraud inevitably led to new calls in the late-1980s and early-1990s for a national ID system -- calls which even the administration of Ronald Reagan had worried in advance would imperil civil liberties.³⁷

As evidence of workplace discrimination against Latinos and other non-white workers mounted after 1986, Congressional Representatives such as Edward Roybal, Edward Kennedy (D-MA), and Orrin Hatch (R-UT) joined community groups in calling for a repeal of IRCA's employer sanctions provisions. While those Congressional critics understandably focused on the ways in which IRCA had shaped new patterns of discriminatory hiring in agriculture, construction, and other industries, subsequent historical and social scientific research has shown additional ways in which IRCA's employer sanctions provisions in fact changed the work experience for many U.S. residents after 1986.

Above all, IRCA's threat of employer sanctions led many industries -- particularly agriculture, textiles, and construction -- to create new subcontracting arrangements by which employers took less direct responsibility for hiring. "Under subcontracting arrangements," a researcher explains, "a U.S. citizen or resident alien contractually agrees to provide an employer with a specific number of workers for a certain period to undertake a defined task at a fixed rate of pay per worker. Neither the subcontractor nor the workers are technically employees of the firm or person entering the contract, so the employer avoids IRCA's burdensome paperwork requirements and escapes liability under the law." As employers sidestepped IRCA regulations in this way, both immigrant and native-born workers in sectors dominated by immigrants experienced declines in real wages after 1986. Subcontractors received a portion of each payroll, and employees in turn saw their paychecks shrink after 1986. Subcontracting arrangements became more common for many workers -- including the U.S.-born -- throughout the U.S. economy following the passage of IRCA, a development which "contributed to the creation of an underground labor market that has put new downward pressure on the wages of Mexican immigrants and the native-born Americans who compete with them."³⁸

Future historians may see only one fundamental labor benefit emerging from IRCA. While employer sanctions had no detectable effect on deterring subsequent undocumented migration from Latin America, and while IRCA provisions created new difficulties for many American workers and made border crossing far more deadly, the Act's conferral of amnesty did improve working conditions for some. Those who established their legal residency at times felt emboldened to lobby on their own behalf with employers and other groups in the U.S. without fear of deportation. Bringing undocumented immigrants "out of the shadows," to use a phrase now common in the twenty-first century, enabled them to bargain more freely with their employers without fear of deportation. According to one researcher, "IRCA-legalized aliens evinced changes in awareness regarding their rights in the workplace. An immigration program director in San Jose noted that legalized aliens were making inquiries about union jobs.... As one respondent noted, 'They're no longer looking over their shoulders for the INS van.'³⁹

Summary and Conclusions

The preceding discussion of the history of IRCA, of Mexican immigration before and after its passage, and of the effects of that Act on border safety and U.S. working conditions suggests the following conclusions:

- First, policymakers and others who discuss immigration reform in the twenty-first century must carefully consider the long and institutionalized history of back-and-forth migration between the United States and Mexico since the mid-nineteenth century.
- Second, policymakers who stress the fundamental importance of border enforcement must reckon with the fact that past enforcement policies have rarely, if ever, stopped undocumented migration. In fact, military rhetoric about controlling the international boundary line has far more often substituted for real discussion of the causes and consequences of immigration, and it has allowed policymakers to escape a difficult reckoning with the labor exploitation and new social conflicts that have emerged since the 1980s.
- Third, elected officials must consider the effects of employer sanctions and other immigration policies on the broader American workforce, not just on immigrant workers. Efforts to limit undocumented immigrants' access to U.S. jobs through employer sanctions in the past contributed to the downward trend in U.S. earnings during the 1980s and 1990s. Employer sanctions also led to new subcontracting arrangements between employers and employees in many sectors, arrangements that deteriorated both wages and working conditions for immigrants and the U.S. born.
- Fourth, policymakers who draft immigration policies must be concerned about human rights at the U.S.-Mexico border, above all for the sake of migrants and other residents of that region, but also out of concern for the reputation of the United States in the world.
- Fifth, elected officials who consider new approaches to immigration must actively recall past immigrants' positive contributions to the United States -- particularly the contributions which Latino immigrants and their children have made to the national and international economy, to the Armed Forces, to schools and universities, and to the arts. Latino immigrants, like other immigrant groups in the past and present, have contributed in many fundamental ways to this nation as first-class citizens for more than a hundred years.

In considering these points, I suggest, the history of Latin American migration to the United States makes clear that problems related to international migration require international

approaches that go far beyond military solutions. Policymakers must wrestle hard with the fact that both circular migration and permanent settlement have long connected our two neighboring countries; that Mexico and the United States share deep histories of back-and-forth movement, and of economic development, dating to the nineteenth century; that labor conditions in the United States have often depended upon protecting the rights of immigrant workers; and that immigrants from Latin America have set down permanent roots in the U.S. for more than a century in order to contribute to American society. Above all, perhaps, policymakers in the United States need now to engage in meaningful hemispheric dialogue about the causes and consequences of regional migrations in the recent past.

With this history in mind, it seems abundantly clear that enforcement-only approaches to migration in the twenty-first century will fail to stop Latin Americans from moving into the United States; they will instead run the risk of creating new and more horrifying human rights tragedies in the U.S.-Mexico border region. This history also teaches us that, just as past U.S. immigration policies such as IRCA transformed the nature of work in the United States, policymakers must now take great care in anticipating how immigration reforms will transform jobs, workplaces, and economies throughout the hemisphere. As in the past, failure to do so will likely deteriorate conditions for large numbers of workers on both sides of the U.S.-Mexico border, and they may prove disastrous to both immigrant and U.S.-born employees in the United States.

On this final point let me warn this subcommittee about the consistent – overwhelmingly consistent – failures of past guest worker programs in the United States and most other countries of the world to protect workers' rights. If we are in fact committed to finding present-day lessons in the past, we must pay attention to this: The last large-scale guest worker program signed between the U.S. and Mexico between 1942 and 1964 was deeply flawed. Many of the “braceros” who arrived under that international agreement experienced tremendous hardships and became known by the years of the John F. Kennedy administration as “the slaves we rent.” Churches, citizens groups, labor organizations, and politicians from both political parties came then to understand that guest workers had driven down wages for domestic workers in the United States, and that they had lived with low wages and deteriorating working conditions of their own that could not be tolerated within American society.

With this history in mind, I remain convinced that any future guest worker program signed with Mexico must allow migrants to join organizations in the United States without risk of penalty; it must allow migrants to leave employers who do not comply with the terms of the program without great difficulty; and it must require both close governmental and non-governmental monitoring of working conditions – by private organizations, unions, churches, and other groups – to investigate the operations of the program. Finally, because North America's last large-scale contract labor program led to massive layoffs of U.S. domestic workers and a documented decline in the fortunes of the native-born, new efforts to import temporary guest workers must be informed by past abuses, and they must be committed to workers' rights and high labor standards in the United States and Mexico.

Thank you for the opportunity to speak before this subcommittee.

Notes

- ¹William Langewiesche, "The Border," *Atlantic Monthly*, May 1992, 68.
- ²Sister M. Colette Standart, "The Sonora Migration to California, 1848–1856: A Study in Prejudice," *Southern California Quarterly* 58 (1976): 337–57; Stephen J. Pitti, *The Devil in Silicon Valley: Northern California, Race, and Mexican Americans* (Princeton, N.J.: Princeton University Press, 2003).
- ³Lawrence A. Cardoso, *Mexican Emigration to the United States, 1897–1931* (Tucson: University of Arizona Press, 1980); George J. Sánchez, *Becoming Mexican American: Ethnicity, Culture, and Identity in Chicano Los Angeles, 1900–1945* (New York: Oxford University Press, 1993).
- ⁴Christine Marie Sierra, "In Search of National Power: Chicanos Working the System on Immigration Reform, 1976–1986," in *Chicano Politics and Society in the Late-Twentieth Century*, ed. David Montejano (Austin: University of Texas Press, 1999), 132.
- ⁵María Cristina García, *Seeking Refuge: Central American Migration to Mexico, the United States, and Canada* (Berkeley: University of California Press, 2006), 9.
- ⁶Ramona Hernández, *The Mobility of Workers Under Advanced Capitalism: Dominican Migration to the United States* (New York: Columbia University Press, 2002).
- ⁷Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, "The New Era of Mexican Migration to the United States," *Journal of American History*, September 1999, 520.
- ⁸Oscar J. Martínez, *Troublesome Border* (Tucson: University of Arizona Press, 1988), 128.
- ⁹Jorge Durand, Douglas S. Massey, and Emilio A. Parrado, "The New Era of Mexican Migration to the United States," *Journal of American History*, September 1999, 520.
- ¹⁰Benet Harrison and Barry Bluestone, *The Great U-Turn: Corporate Restructuring and the Polarizing of America* (New York: Basic Books, 1988), 135.
- ¹¹William Julius Wilson, *The Truly Disadvantaged: The Inner City, the Underclass, and Public Policy* (Chicago: University of Chicago Press, 1987).
- ¹²Mike Davis, "The Social Origins of the Referendum," *NACLA Report on the Americas* 29, no. 3 (1995): 24–28.
- ¹³Sierra, "In Search of National Power," 132.
- ¹⁴Julie A. Phillips and Douglas S. Massey, "The New Labor Market: Immigrants and Wages After IRCA," *Demography* 36, no. 2 (May 1999): 234.
- ¹⁵Alexandra Minna Stern, *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America* (Berkeley: University of California Press, 2005); David Montejano, *Anglos and Mexicans in the Making of Texas, 1836–1986* (Austin: University of Texas Press, 1987); Paul S. Taylor, *Mexican Labor in the United States: Valley of the North Platte, Colorado* (Berkeley: University of California Press, 1929); Paul S. Taylor, *A Spanish-Mexican Peasant Community, Arandas in Jalisco, Mexico* (Berkeley: University of California Press, 1933); Francisco Balderrama, *In Defense of La Raza: The Los Angeles Mexican Consulate and the Mexican Community* (Tucson: University of Arizona Press, 1982); Kitty Calavita, *Inside the State: The Bracero Program, Immigration, and the I.N.S.* (New York: Routledge Press, 1992); Mac M. Ngai, *Impossible Subjects: Illegal Aliens and the Making of Modern America* (Princeton: Princeton University Press, 2004).
- ¹⁶David Montejano, "On the Future of Anglo-Mexican Relations in the United States," in *Chicano Politics and Society in the Late Twentieth Century*, ed. David Montejano (Austin: University of Texas Press, 1999), 248.

- ¹⁷Douglas S. Massey, Singer, and Audrey, "New Estimates of Undocumented Mexican Migration and the Probability of Apprehension," *Demography* 32 (1995): 203–11.
- ¹⁸Timothy J. Dunn, *The Militarization of the U.S.-Mexico Border, 1978–1992: Low-Intensity Conflict Doctrine Comes Home* (Austin: CMAS Books, Center for Mexican American Studies, 1996), 43–45.
- ¹⁹Martínez, *Troublesome Border*, 134.
- ²⁰Rosanna Perotti, "Employer Sanctions and the Limits of Negotiation," *Annals of the American Academy of Political and Social Science* 534 (July 1994): 34–35; Susan González Baker, "The 'Amnesty' Aftermath: Current Policy Issues Stemming from the Legalization Programs of the 1986 Immigration Reform and Control Act," *International Migration Review* 31, no. 1 (Spring 1997): 6.
- ²¹For a discussion of human smuggling see Philip Martin and Mark Miller, "Smuggling and Trafficking: A Conference Report," *International Migration Review* 34, no. 3 (Fall 2000): 969–75.
- ²²Wayne A. Cornelius, "Death at the Border: Efficacy and Unintended Consequences of US Immigration Control Policy," *Population and Development Review* 27, no. 4 (December 2001): 668.
- ²³Durand, Massey, and Parrado, "The New Era of Mexican Migration to the United States," 522.
- ²⁴Cornelius, "Death at the Border," 669.
- ²⁵David R. Maciel and María Herrera-Sobek, eds., *Culture Across Borders: Mexican Immigration and Popular Culture* (Tucson: University of Arizona Press, 1998).
- ²⁶Dunn, *Militarization of the U.S.-Mexico Border*, 40.
- ²⁷Durand, Massey, and Parrado, "The New Era of Mexican Migration to the United States," 524.
- ²⁸Phillips and Massey, "New Labor Market," 233.
- ²⁹Durand, Massey, and Parrado, "The New Era of Mexican Migration to the United States," 527.
- ³⁰Picrette Hondagnu-Sotelo and Ernestine Avila, "'I'm Here, but I'm There': The Meanings of Latina Transnational Motherhood," *Gender and Society* 11, no. 5 (October 1997): 548–57.
- ³¹Stephen J. Pitti, *The Devil in Silicon Valley: Northern California, Race, and Mexican Americans* (Princeton, N.J.: Princeton University Press, 2003).
- ³²Katherine M. Donato, Jorge Durand, and Douglas S. Massey, "Stemming the Tide? Assessing the Deterrent Effects of the Immigration Reform and Control Act," *Demography* 29, no. 2 (May 1992): 36.
- ³³Perotti, "Employer Sanctions and the Limits of Negotiation," 732.
- ³⁴Nicholas Laham, *Ronald Reagan and the Politics of Immigration Reform* (Westport, CT: Praeger, 2000), 116.
- ³⁵Phillips and Massey, "New Labor Market," 233–34.
- ³⁶Donato, Durand, and Massey, "Stemming the Tide?" 36.
- ³⁷Laham, *Ronald Reagan and the Politics of Immigration Reform*.
- ³⁸Phillips and Massey, "New Labor Market."
- ³⁹González Baker, "The 'Amnesty' Aftermath," 21.

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Ms. LOFGREN. Mr. Chishti.

**TESTIMONY OF MUZAFFAR CHISHTI, DIRECTOR, MIGRATION
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Mr. CHISHTI. Thank you very much, Madam Chair and distinguished Members of the Subcommittee. I am so glad to be back at the Subcommittee.

My name is Muzaffar Chishti. I am a lawyer. I direct the Migration Policy Institute's office at NYU Law School. Before that, I ran the Immigration Project of UNITE, and in 1986 I helped implement the illegalization program of this union. So I bring that perspective as I discuss the shortfalls of IRCA, and I will make my comments in three groups, very quickly.

The first is one good failure about IRCA in terms of predicting future labor needs of the country. Ultimately, I think the big failure of IRCA was it was a narrow piece of legislation, focused exclusively, almost exclusively, on the issue of undocumented immigration.

The backdrop of this is that IRCA's informative background came from the Select Commission on Immigration and Refugee Policy. It showed the demographic picture of the 1980's. By the time the Judiciary Committee here was looking at the needs of the labor market, it was based on the assumption of 1981. It was actually in 1987 that we had a major study by the Department of Labor called the Workforce 2000 Report which started establishing the long-term demographic needs of the labor market trends across the country. So, in 1986, we were actually looking at assumptions that were 5 years old about the needs of the labor market.

What everyone failed to look at was at how we are going to be increasingly dependent on the immigrant labor force in our labor market, especially in the low-wage sector of the labor market. And today the evidence is compelling. If you look at the growth of the labor market between 2000 and 2005, about 60 percent of that is due to new immigrants.

What is more important is to look at the aging of our society and, also, the educational levels of our society. We have fewer and fewer workers available to fill the jobs that are going to be generated in our economy.

We all know baby boomers are retiring in big numbers in 2012. The Bureau of Labor Statistics has stated that we will have about 56 million jobs created in this country by 2014. About more than half of them require less than a high school diploma. So who is going to fill the jobs? Obviously, immigrants. But we don't have any legal channels for them to come. In fact, after IRCA, we have actually reduced the legal channels for immigrants to come to fill these jobs. There are only about 5,000 visas available to fill these jobs in the low-wage sector of the economy.

So the laws of supply and demand are actually working very well, except that illegal channels are being used to fill that demand instead of legal channels. We obviously need to have a new channel for illegal workers to come. And, as I propose in my testimony, we have a program which is of a different form, a temporary and permanent worker program for people who would come to work for

employers but they would have mobility to move between employers. Both U.S. workers and immigrant workers would have protections. People would have the ability to go back to their counties if they choose to or they have the right to remain in our society.

Let me just quickly do the lessons of sanctions. There is a huge legacy here. Sanctions had a compelling dual promise. They were going to reduce illegal immigration and help change and improve the wages and working conditions of U.S. workers. Neither happened.

We heard today how illegal immigration has grown, and we also know that employers will circumvent the letter of the law by putting people off the books, by using independent contractors, by using employment agencies and by a huge use of fraudulent documents.

We also know by various studies since 1986 that IRCA has led to significant discrimination in the work place, and it has been used systematically by many employers to circumvent the labor laws and employment laws of our country. I think evidence of that has been compelling since the 1980's.

Now we all know the verification system now that has been in practice since 1997 called the Basic Pilot. It is a small program, but evaluation of it by independent evaluators show that it is fraught with problems, both with respect to accuracy of the data in the database of the Social Security Administration and the DHS; and that it has been abused by employers in a variety of ways, from looking at accessing the records before people actually are hired and other forms of abuse, which I have highlighted in my testimony.

We obviously need an expanded verification program because we need new ideas to control the level of immigration; but we have to do it in a very thoughtful and gradual way.

Today, there are about 15,000 employers in the Basic Pilot system. If we want to make it universal and mandatory, we are looking at 8 million employers and 144 million workers; and 50 million hiring decisions made every year. To scale it up to the level that, obviously, is a huge, massive amount of commitment; and I think we should do it in a very systematic time line, where we first sort out data inaccuracies and look at the validation in terms of the abuses of the Basic Pilot.

Let me just go, lastly, to the legalization program, of which I know a little bit. It was actually one of the most successful components of IRCA. A large number of people did get legalized, but it had some important lessons for us to teach, and I will just quickly outline two or three of them.

This legalization program should be as inclusive as possible and should invite as little fraud as possible. Which means if you have various tiers of people who qualify, it only increases the tendency of people to get into a better tier and use the fraudulent documents to do that.

And, second, the regulations that are going to be implemented should be extremely unambiguous and clear. Regarding those fees, litigation would result often to immigration in America; and they should be avoided. Family members of people who get legalized should be included. Otherwise, we split families. And I think there

is a huge role here for the private sector. The private sector played a very critical role in 1986 in both the outreach to the communities, and it actually helped the INS.

Lastly, the States where people are going to be immigrated should be compensated for their costs.

Thank you.

Ms. LOFGREN. Thank you very much.

[The prepared statement of Mr. Chishti follows:]

PREPARED STATEMENT OF MUZAFFAR A. CHISHTI



Testimony of

Muzaffar A. Chishti
Director, Migration Policy Institute's office at
New York University School of Law

Oversight Hearing on the
Shortfalls of the 1986 Immigration Reform Legislation

Before the
Subcommittee on Immigration, Citizenship, Refugees, Border Security, and
International Law
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C.

April 19, 2007

Madam Chairwoman and Distinguished Members of the Subcommittee:

My name is Muzaffar Chishti, and I am Director of the Migration Policy Institute's office at New York University School of Law. Thank you for inviting me to testify before your committee on the "shortfalls of the 1986 immigration reform legislation."

Introduction

As Congress tries to grapple with today's immigration policy challenges, the lessons learned from the Immigration Reform and Control Act of 1986 (IRCA)¹ provide an extremely useful backdrop.

IRCA was an important milestone in our nation's immigration law and policy. It was the first major attempt by Congress to address the problems of unauthorized migration. Its passage was several years in the making. The recommendations of a high-profile congressionally appointed Select Commission on Immigration and Refugee Policy (SCIRP) provided the broad parameters for the legislation. Though various versions of IRCA were passed by the Senate in 1982, 1983, and 1985, legislation materialized only in 1986. Even in 1986, the legislation only won final approval in the closing days of the congressional session.

IRCA was clearly a product of a number of political compromises, which diluted its effectiveness. Thus, though IRCA deserves its rightful place as a historic piece of legislation, it suffered from a number of drawbacks in its design and implementation. Many of those shortfalls have contributed to the present dilemma in our immigration policy.

IRCA sought to counter illegal immigration through a "three-legged stool" of increased border security, sanctions for employers who hired unauthorized workers, and a legalization program for unauthorized immigrants living in the country for certain number of years. The program aimed to "wipe the slate clean" on the illegal immigration problem. However, 21 years after the law's passage, the population of unauthorized immigrants in the United States has grown three-fold from an estimated 4 million in 1986 to an estimated 12 million today. The country has poured ever-increasing dollars into border enforcement, but roughly 400,000 unauthorized immigrants cross our border undetected each year. And evidence suggests that many employers continue to hire unauthorized immigrants either unknowingly, or willfully, with impunity.

In this testimony, I will focus on three areas related to the design and implementation of IRCA. In the first part, I will highlight the failure of the law to provide for the future economic and labor market needs of the country. In the second part, I will examine the critical drawbacks of the employer sanctions component of the law. And in the third part, I will outline the lessons — both positive and negative — that can be drawn from the legalization program of the law.

¹ Immigration Reform and Control Act of 1986, Pub. L. No. 99-639, 100 Stat. 3359 (IRCA).

I. IRCA's Failure to Provide for Future Labor Needs

The major failure of IRCA, ultimately, was its narrow focus. By dealing almost exclusively with issues related to unauthorized immigration, it failed to anticipate or make provisions for the continuing demand for workers in the United States, especially in the low-skill labor market. Without a plan for managing the labor market needs, and the supply of foreign workers to fill those needs, the “three-legged” solution to illegal migration collapsed under the weight of economic and demographic forces.

Low-Skill Immigrants in Strong Demand, and Supply

According to the best available estimates, the unauthorized immigrant population dropped to 2.5 million by 1989 following the IRCA legalization, but then grew by an average of 360,000 a year until 1996, and by roughly over 500,000 a year since then.² Illegal immigration was and is primarily a response to laws of supply and demand — workers filling workforce openings — that have proven more powerful than immigration enforcement. Two-thirds of today's total unauthorized population is working, accounting for slightly less than five percent of the labor force nationwide. Almost three out of five unauthorized women and 94 percent of unauthorized men are in the labor force.³ The unauthorized population is overrepresented in a growing number of occupations. Unauthorized workers make up 24 percent of workers in farming occupations, 17 percent in cleaning services, 14 percent in construction, and 12 percent in food preparation.⁴

The country has depended heavily on immigrant workers, both legal and illegal, for labor force growth in recent decades. About 50 percent of the growth in the U.S. labor force between 1990 and 2000 was due to new immigrants, a share that increased to 60 percent between 2000 and 2004.⁵ The United States has also depended on immigrant workers to maintain a balance of skill levels in the workforce. As the educational level of native-born workers has steadily increased, this has left fewer native-born workers available for low-skilled jobs.⁶ While about one-quarter of the foreign born in the United States have a bachelor's degree or more, one-third have not completed high school, and have thus become a vital labor pool for the hundreds of thousands of essential jobs that require relatively few skills.⁷

The country's dependence on foreign labor over the past few decades will be eclipsed by the importance of foreign labor in our country's future. A large increase in native-born 25- to 54-year-old workers, particularly women and baby boomers, came into the workforce during the last 35 years. This age group accounted for the majority of labor force growth between 1980 and

² Jeffrey S. Passel, “The Size and Characteristics of the Unauthorized Migrant Population in the U.S.” (Washington, D.C.: Pew Hispanic Center, 2006).

³ Ibid.

⁴ While unauthorized workers make up only less than 5 percent of the total U.S. workforce, they make up a significantly greater share of the workforce in a growing number of occupations. Ibid.

⁵ Andrew Sum, et al., “New Foreign Immigrants and the Labor Market in the U.S.” (Boston, MA: Center for Labor Market Studies, Northeastern University, January 2005).

⁶ David Ellwood, “How We Got Here,” in *Grow Faster Together. Or Grow Slowly Apart* (Washington, D.C.: The Aspen Institute Domestic Strategy Group, 2002).

⁷ B. Lindsay 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, July 2006).

2000. However, the baby boom generation is now aging into retirement. By 2020, all 78 million baby boomers will be above the age of 55, and the oldest baby boomers will be 74. The number of new native-born workers entering the workforce may be high enough to maintain the size of the U.S. labor force, but with so many baby boomers retiring, they will not be able to contribute to the growth of the labor force. Any increase in the labor force over the next 15 or so years will come from only two sources — baby boomers working into traditional retirement years and immigrants.⁸

Between 2004 and 2014, about 54.7 million jobs will open up, due either to new jobs being created or to workers retiring or leaving the labor force.⁹ Of these jobs, over half (58.6 percent) will require only a high school degree or perhaps some vocational training or college.¹⁰ Given that the trend of rising educational attainment among native-born workers is likely only to accelerate, the country will increasingly rely on immigrant workers to fill the low-skill jobs of the future. Immigrants are already overrepresented in many of the, mainly low-skill, occupations projected to create the most new jobs by 2014.¹¹ And, immigrants are employed at high rates in jobs, such as home-care aides and medical support workers, which will be important in serving tomorrow's aging population.¹²

Not only labor market trends, but also demographic trends suggest a strong need for immigrant labor in coming years. The aging of the baby boom generation will greatly shift the age profile of the population in the United States. By 2030, a full 31 percent of the U.S. population will be age 55 or older. The aging population will raise the elderly dependency ratio — the number of retired dependents relative to economically active workers — leaving a greater number of elderly to be supported by each worker. Immigration alone cannot forestall looming strains on social assistance programs for the elderly, as it would take millions of young immigrants over a long period to change the age structure of the population. However, infusions of young, tax-paying immigrants are an important part of addressing the shortfalls that lie ahead in terms of numbers of high- and low-skilled workers and in social insurance programs.¹³

Lack of Legal Channels for Low-Skill Workers

While the need for low-skill immigrant workers has become increasingly evident, legal channels for their entry are almost nonexistent. The current employment-based immigration selection system makes 5,000 permanent visas available each year for low-skill workers.¹⁴ The temporary

⁸ Ellwood, "How We Got Here" (see n. 6).

⁹ Daniel E. Heckler, "Occupational Employment Projections to 2014," *Monthly Labor Review* 128, No. 11 (November 2005): 70-101.

¹⁰ *Ibid.*

¹¹ The 15 occupations forecast to create the largest number of new jobs between 2004 and 2014 include 10 requiring only short- or moderate-term on-the-job training, suggesting low-skilled immigrant could contribute to meeting the demand for these types of jobs. According to 2000 Census data, immigrants were already overrepresented in five of these occupations. Daniel E. Heckler, "Occupational Employment Projections to 2014" (see n. 9); Lowell, Gelatt, and Batalova, "Immigrants and Labor Force Trends" (see n. 7).

¹² *Ibid.*

¹³ Richard Jackson, "The Global Retirement Crisis" (Washington, D.C.: Center for Strategic and International Studies, April 2002).

¹⁴ Although the Immigration and Nationality Act (INA) provides 10,000 visas for low-skilled workers, this number has been temporarily reduced to 5,000 to make visas available under the Nicaraguan and Central American Relief Act of 1997 (NACARA). The reduction will last as long as is necessary to offset adjustments under the NACARA

workers programs in the current law (like the H-2A and H-2B programs) are designed for seasonal or short-term jobs, not for more permanent jobs.

With very few options for entering legally through employment-based visa categories, intending immigrants could try to enter through the family-based categories. But to be eligible for the family-based visas, they need to have a sponsoring relative. Even if they do have a qualified sponsoring relative, the wait lists for many of these categories are prohibitively long. For example, U.S. citizens trying to sponsor unmarried adult children from abroad have to wait about six years for a visa to free up, while those sponsoring unmarried adult children from Mexico and Philippines have to wait over 15 years. Spouses and minor children of lawful permanent residents have to wait over five years. For U.S. citizens sponsoring siblings from the Philippines, the wait extends to 22 years.¹⁵

Thus, in the absence of legal channels, immigrants entering our labor market have come to rely on illegal channels.

Managing Future Flows through New Legal Channels

To accommodate the labor needs of our economy and to manage the future flow of workers from abroad, a new category of visas should be created. Many proposals for future flows of immigrants have been offered in the current immigration debate. The one I propose is to create a provisional worker category for jobs that are not seasonal or temporary. Creating a provisional worker category is part of a set of recommendations made recently by the Independent Task Force on Immigration and America's Future, convened by the Migration Policy Institute.¹⁶

The provisional worker category would bridge the false divide that now exists between certain forms of temporary and permanent immigration, and create an integrated system that organizes immigration around the ways immigrant flows and labor markets work in practice. The provisional visa category would be carefully structured to assure that it does not inherit the mistakes of the Bracero-type work programs of the past. The Bracero-type programs have a troubling legacy of abuse and exploitation. Such programs tie workers to their sponsoring employers, circumscribe the labor rights of foreign workers, and, in turn, undermine the interests of U.S. workers. Such programs also explicitly foreclose the integration of workers in the host society. The experience of those programs should not be repeated.

Provisional visas would allow workers of all skill levels to enter the country for up to two periods of three years each. Workers would be sponsored by employers, but workers would have the freedom to change employers after an initial period of employment in the United States. Provisional workers would have the same labor protections as similarly employed U.S. workers,

program. U.S. Department of State, "Visa Bulletin for July 2006," http://travel.state.gov/visa/frvi/bulletin/bulletin_2943.html.

¹⁵ U.S. Department of State, "Visa Bulletin for May 2007," http://travel.state.gov/visa/frvi/bulletin/bulletin_3219.html.

¹⁶ Doris Meissner, Deborah W. Meyers, Demetrios G. Papademetriou, and Michael Fix, *America's Future: A New Chapter*, Report of the Independent Task Force on Immigration and America's Future (Washington, D.C.: Migration Policy Institute, September 2006).

including the right to bring action against employers in court. Provisional workers would be able to bring their family members with them.

Provisional visas would allow employers and workers the flexibility to exercise choices before committing to permanent immigration. Workers would have the flexibility of working for a period before returning home, if they choose, or of adjusting to permanent resident status. Permanent residence would be contingent on proof of employment opportunity in an occupation relevant to their education and training, ability to speak English, and passage of security and background checks.

Employers of most provisional workers would be required to participate in a highly regulated labor attestation process or become pre-certified sponsors of provisional workers. The initial penalty for noncompliance with attestation or pre-certification requirements would be to forfeit the ability to hire foreign workers for a designated time period. Employers would pay significant fees, and the revenue generated from them would be used to meet a wide range of immigration capacity-building needs.

The number of provisional visas would initially be set to approximate current flows of such workers who enter both legally and illegally. The numbers would then be adjusted according to recommendations made by a Standing Commission on Immigration and Labor Markets. This Standing Commission would be responsible for making recommendations to Congress every two years for adjusting immigration levels, based on analyses of labor market needs, unemployment patterns, and changing economic and demographic trends.

II. The Shortfalls of the Employer Sanctions Provisions of IRCA

Experience with Employer Sanctions

IRCA was the first legislation ever to sanction employers for hiring unauthorized immigrants. The “employer sanctions” provisions were a critical element of the long-debated IRCA legislation. They came with the compelling dual promise that they would reduce illegal immigration and improve the wages and labor standards of U.S. workers. Twenty years of experience with employer sanctions, however, suggest that the promise has not been met. Thus there is good reason to be skeptical about their effectiveness.

As mentioned earlier, illegal immigration has grown almost three-fold since 1986. It has grown dramatically in the last ten years, with over half a million immigrants added to the unauthorized population every year. Furthermore, wages and working conditions in the low-wage sector of the labor market have shown no signs of improvement. In 2004 for example, 7.8 million of U.S. workers were classified as “working poor,” i.e., earning below the federal poverty level.¹⁷ Government studies have found that 100 percent of poultry industry employers, 60 percent of nursing homes, and between 26 to 65 percent of employers in the garment industry (depending

¹⁷ U.S. Bureau of Labor Statistics, *A Profile of the Working Poor* (May 2004)

on the geographical location) were in violation of basic minimum wage and overtime protections.¹⁸

Not only have employer sanctions failed to fulfill their promise of reducing illegal immigration and improving wages and working conditions, they have also raised some important collateral concerns. Foremost among these concerns is discrimination in the workplace. The congressionally mandated study by the General Accounting Office (GAO) concluded that employer sanctions have resulted in discrimination against “foreign appearing” or “foreign sounding” workers.¹⁹ Concerned about possible penalties, some employers have used national origin and ethnic background as a proxy for unlawful status. Some have implemented “citizens-only” hiring policies. The GAO report found that the “widespread” pattern of discrimination was attributable “solely” to IRCA.²⁰ This was a strong claim to make, but one for which the GAO found substantial evidence: Nineteen percent of U.S. employers began national origin or citizenship discrimination as a result of the law, with higher numbers in areas with significant Hispanic and Asian populations.²¹

Another collateral concern is the emergence of a growth industry in fraudulent documents. IRCA requires employers to fill out and retain an I-9 form for the workers they hire. On the I-9 form, employers attest that they have examined documents that establish the workers’ identity and eligibility to work lawfully. However, there is no requirement that the employers verify the authenticity of the documents presented. Without verification, employers find it easy to comply with the letter of the law, and unauthorized workers procure the documents they need to be hired. Thus, there is a high degree of compliance on paper alongside rampant use of fraudulent documents. The highly publicized December 2006 raids by the Immigration and Customs Enforcement (ICE) at various plants of the Swift meatpacking company targeting the use of fraudulent documents have brought to attention the prevalence of such documents.²²

Lastly, some employers have used employer sanctions as an effective tool to retaliate against workers who assert their rights under various labor protection statutes.²³ Some employers choose to verify or re-verify a worker’s status only when the worker asserts rights such as those related to wage, hour, health, and safety standards or to joining a union.²⁴

In this regard, a 2002 Supreme Court decision represents an important reversal in the ability of unauthorized workers to pursue claims against their employers. In *Hoffman Plastic Compounds Inc. v. NLRB*, the court held that a worker unlawfully terminated in retaliation for his labor

¹⁸ U.S. Department of Labor, Employment Standards Administration, “FY 2000 Annual Performance Report Summary,” March 31, 2001; U.S. Department of Labor, Wage and Hour Division, “Nursing Home 2000 Compliance Survey Fact Sheet” (2000); U.S. Department of Labor, Wage and Hour Division, Garment Compliance Surveys for New York City, Los Angeles, and San Francisco, various years.

¹⁹ U.S. General Accounting Office, Report to the Congress, “Immigration Reform: Employer Sanctions and the Question of Discrimination” GAO/GGD-90-62 (March 1990), <http://archive.gao.gov/d24t8/140974.pdf>.

²⁰ *Ibid.*

²¹ *Ibid.*

²² Julia Preston, “U.S. Raids 6 Meat Plants in ID Case,” *The New York Times*, December 13, 2006.

²³ Muzaffar Chishti, “Employer Sanctions Against Immigrant Workers,” *WorkingUSA, The Journal of Labor and Society*, March-April 2000.

²⁴ *Ibid.*

organizing activities is not eligible for back pay under the National Labor Relations Act, if the worker is unauthorized.²⁵ The Supreme Court ruled that the employer sanctions provisions of the immigration law prevail over a conflicting labor protection statute like the National Labor Relations Act. Thus, certain labor protections — historically guaranteed to all workers in the United States — may not apply to unauthorized workers because of the employer sanctions provisions of ICRA. Although the *Hoffman Plastic* case related to the eligibility for back pay, the decision has been cited to justify denial of other worker benefits such as workers' compensation.²⁶ If it was not already the case pre-*Hoffman Plastic*, certainly post-*Hoffman Plastic*, employers have a new, perverse incentive to hire unauthorized workers.

The ineffectiveness (and low priority to the federal government) of employer sanctions is also reflected in federal spending patterns. Immigration enforcement spending in general has increased five-fold since 1986, from \$1 billion to almost \$5 billion.²⁷ However, less than 10 percent of that has flowed to employer enforcement activity.²⁸ An average of 6,600 worksite enforcement cases per year were completed by the Immigration and Naturalization Service (INS) between 1991 and 1998, or less than 10 percent of the interior enforcement activity.²⁹ Between 2000 and 2003, the number of cases the INS and the Immigration and Customs Enforcement (ICE) completed fell to fewer than 2,200 annually, or less than 3 percent of the enforcement activity.³⁰ Only three notices of intent to fine were issued against employers in fiscal year 2004.³¹ For noncompliant employers, the cost savings from employing illegal labor can outweigh the possible cost of sanctions. Fines range from \$100 to \$1,000 per unauthorized immigrant for paperwork errors, and from \$250 to \$10,000 for substantive violations. The range has not changed since 1986.³²

In sum, the employer sanctions policy has been notoriously ineffective. It has yielded few benefits and extracted significant costs. It has been ineffective in reducing unauthorized immigration, but has helped encourage widespread use of fraudulent documents, and has undermined some important rules of the workplace.

²⁵ *Hoffman Plastic Compounds Inc. v NLRB*, 535 U.S. 137 (2002).

²⁶ Anne Marie O'Donovan, "Workers' Compensation for Immigrants after Hoffman Plastics," *N.Y.U. Review of Law and Social Change* (2005).

²⁷ David Dixon and Julia Gelatt, "Immigration Enforcement Spending since IRCA," Task Force Fact Sheet No. 10 (Washington, D.C.: Migration Policy Institute, November 2005), http://www.migrationpolicy.org/pubs/FactSheet_Spending.pdf.

²⁸ U.S. Department of Justice, *Statistical Yearbook of the Immigration and Naturalization Service, 1991-1998*. (Washington, D.C.: Department of Justice, Immigration and Naturalization Service, 1993-2000).

²⁹ *Ibid.*

³⁰ U.S. Department of Homeland Security, *Yearbook of Immigration Statistics: 2004* (Washington, D.C.: Department of Homeland Security, Office of Immigration Statistics, 2006).

³¹ U.S. General Accounting Office, "Immigration Enforcement: Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts" GAO-05-813 (August 2005).

³² Marc R. Rosenblum, "Immigration Enforcement at the Worksite: Making it Work," Task Force Policy Brief No. 6 (Washington, D.C.: Migration Policy Institute, November 2005), <http://www.migrationpolicy.org/ITFIAF/PolicyBrief-6-Rosenblum.pdf>.

Experience with the Verification System

The proponents of employer sanctions have, with some merit, argued that a major reason for the failure of sanctions is the plethora of documents that workers can use to establish their eligibility to work, and the ease with which such documents can be fraudulently obtained. In response, Congress created an electronic employment eligibility pilot program as part of the 1996 Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA).³³ The program, known as the Basic Pilot, allows employers to directly access Social Security and immigration databases and verify the employment eligibility of a worker. If the eligibility of the worker is not verified, the employer receives a secondary verification response, and the worker is given eight days to verify his/her eligibility with the Social Security Administration (SSA) or Citizenship and Immigration Services (USCIS). If the agencies are unable to verify the worker's employment eligibility, the employer must terminate the worker.

In 1997, the Basic Pilot started operating in five states, and in 2003, Congress extended it to all 50 states.³⁴ The pilot program is primarily voluntary, although some employers found to have violated immigration laws may be required to participate in the program. Somewhat over 15,000 employers have registered to use the pilot program, though not all participating employers actively use the system.³⁵

As part of a congressionally mandated study, the Institute of Survey Research at Temple University and Westat evaluated the Basic Pilot. Their 2002 evaluation report found critical problems with the program, mostly related to database inaccuracies and misuse of the system by participating employers.³⁶

The evaluators found that the Basic Pilot generates a high level of "tentative non-confirmation" notices, i.e., notices that fail to verify an authorized worker's eligibility to work.³⁷ Although both the SSA and USCIS databases suffer from inaccuracies, the USCIS database is less reliable because it fails to efficiently update the information on immigrants' status. Thus, non-citizens are more likely to be affected by data inaccuracies than citizens. Twenty percent of non-citizens and 13 percent of citizens are not verified for employment at the initial stage.³⁸ They can only be verified if they contact the SSA or USCIS offices to resolve discrepancies in their information, which needs to be done manually by the agencies.³⁹ Ninety percent of tentatively non-confirmed

³³ Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA), Pub. L. No. 104-208, 110 Stat. 3009.

³⁴ Basic Pilot Program Extension and Expansion Act of 2003, Pub. L. No. 108-156, 117 Stat. 1944-1946.

³⁵ Emilio T. Gonzalez, Director, U.S. Citizenship and Immigration Services (USCIS), Testimony before the House Subcommittee on Homeland Security, Hearing on Immigration Reform and the Temporary Worker Program, 110th Cong., 1st sess., March 27, 2007; Information obtained from the Office of Policy and Strategy, U.S. Citizenship and Immigration Services, July 21, 2006.

³⁶ Temple University Institute for Survey Research and Westat, "Findings of the Basic Pilot Program Evaluation" (June 2002). See also, National Immigration Law Center, "DHS Basic Pilot Program," Basic Information Brief (Washington, D.C.: NILC, October, 2006).

³⁷ *Ibid.*

³⁸ Kevin Jernegan, "Eligible to Work? Experiments in Verifying Work Authorization," Task Force Insight No. 8 (Washington, D.C.: Migration Policy Institute, November 2005).

³⁹ *Ibid.*

applicants fail to pursue their cases for a variety of reasons.⁴⁰ However, the 2002 evaluation studies found that less than one-tenth of 1 percent of all submissions were ultimately determined to be from persons unauthorized for employment, though it is unclear how many of those who failed to contest their tentative nonconfirmation findings may have also been unauthorized for employment.⁴¹

More recent examinations of the Basic Pilot continue to suggest that the data inaccuracies remain unresolved. The Department of Homeland Security (DHS) and GAO issued reports in 2004 and 2005, respectively, which identified the Basic Pilot program's unacceptably high tentative nonconfirmation rates for non-citizens.⁴²

In addition to the issue of data accuracy, evaluation of the Basic Pilot has also identified a disturbing trend of unlawful practices engaged in by a number of participating employers. For instance, some employers screen applicants for their employment eligibility before making an offer of employment.⁴³ Such practices not only deny the worker a job, but also the opportunity to contest database inaccuracies.

Because of the serious problems that they identified in the Basic Pilot, the independent evaluators concluded that the pilot was "not ready for a larger scale implementation."⁴⁴ The GAO in 2005 also cautioned against the expansion of the program.⁴⁵

Despite these notes of caution, recent immigration reform bills that passed the House and the Senate in the 109th Congress would mandate the use of the Basic Pilot for all employers. The House bill, the Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), required employers to use an expanded Basic Pilot system to verify the work eligibility of all new hires within two years of the bill's enactment, and to verify the eligibility of all workers within six years.⁴⁶ The Senate bill, the Comprehensive Immigration Reform Act of 2006 (S. 2611), required electronic verification of new hires within 18 months after an appropriation of \$400 million to upgrade the Basic Pilot database.⁴⁷

A massive expansion of the verification system that mandates all U.S. employers to participate is a major undertaking. As noted above, the current Basic Pilot has only 15,000 participating employers — less than half of 1 percent of all U.S. employers. A universal verification system will need to include more than 8 million employers and 144 million workers, and process more than 50 million hiring decisions each year.⁴⁸ To achieve this will require a qualitatively different commitment on the part of the government, employers, and representatives of workers.

⁴⁰ Ibid.

⁴¹ Ibid.

⁴² U.S. Citizenship and Immigration Services, "Report to the Congress on the Basic Pilot Program" (June 2004); GAO, "Weaknesses Hinder Employment Verification" (see n. 31).

⁴³ Temple University Institute for Survey Research and Westat, "Findings of the Basic Pilot Program Evaluation" (see n. 36).

⁴⁴ Ibid.

⁴⁵ Ibid; GAO, "Weaknesses Hinder Employment Verification" (see n. 31).

⁴⁶ Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005 (H.R. 4437), Title VII.

⁴⁷ The Comprehensive Immigration Reform Act of 2006 (S. 2611), Title III.

⁴⁸ Meissner et al. *Immigration and America's Future* (see n. 16).

Outline of a Workable Verification System

Despite the problems associated with employer sanctions enforcement and the Basic Pilot, the time for an electronic employment verification system has arrived. The bills passed by both the House and the Senate last year reflect the reality that such a system currently has strong political support. The organized business community now supports a verification system that offers employers predictability and access to a legal workforce, and the ability to hire individuals whose status can be verified in a simple, reliable way.⁴⁹ Changes in technology have made more people accustomed to accessing information electronically for many day-to-day chores. Finally, illegal immigration has increased at such an alarming rate that new measures need to be tested. Hiring unauthorized workers has become the new norm and an acceptable business practice today. In the absence of viable alternatives, key constituencies are now prepared to work with government agencies and Congress to build in appropriate safeguards instead of opposing verification measures altogether.⁵⁰

While the current immigration debate has acknowledged the need for a new employer verification system, the bills that passed the House and the Senate last year do not provide an adequate framework for a successful system. The following key elements must be met for a universal, mandatory verification system to be effective.

Improvements to Verification Databases: Legislation that does not address and correct the flaws identified in the Basic Pilot program will fail. The first task needed is to dramatically improve the accuracy and completeness of the databases used to verify worker eligibility. The USCIS immigration database needs special attention. It should reflect changes in a person's immigration status without delay. The system should allow individuals to access and correct recorded information such as the spelling of their names, changes in their married names, or the word order of uncommon foreign names. In addition, it would be helpful to integrate all visa issuance and admission databases with the existing databases in the Basic Pilot to achieve a more complete database.

Sufficient and sustained resources must be afforded to USCIS and SSA to upgrade their databases and improve the linkages among them. In particular, the Verification Division in the Citizenship and Immigration Services, charged with overseeing the verification program from the USCIS end, must be fully staffed.

Worker Protection Provisions: The statute and the implementing regulations should include worker protection provisions to prevent the abuses identified in the Basic Pilot program. For example, there should be meaningful penalties against employers who violate the security and privacy of workers or discriminate against them on the basis of race, national origin, or citizenship. Similarly, employers who submit an applicant's name for verification prior to an

⁴⁹ Angelo I. Amador, U.S. Chamber of Commerce, Testimony before the House Subcommittee on Workforce, Empowerment, and Government Programs, Hearing on Immigrant Employment Verification and Small Business, 109th Cong., 2nd sess., June 27, 2006.

⁵⁰ See, for example Cecilia Munoz, Vice President, National Council of La Raza, before the Senate Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Citizenship, Hearing on Immigration Enforcement at the Workplace: Learning from the Mistakes of 1986, 109th Cong., 2nd sess., June 19, 2006; Amador, Testimony (see n. 49).

offer of employment, submit a worker's name to the verification system in response to a union organizing campaign, or terminate a worker on the basis of unresolved nonconfirmations should be penalized. An administrative and judicial review process should be established by which a worker can appeal an adverse finding of eligibility.

Stakeholder Engagement: DHS should create a new Workplace Enforcement Advisory Board to respond to the political and policy challenges that accompany a universal electronic verification system. The advisory body should be comprised of representatives of the key constituencies whose cooperation, expertise, and support are vital for the system to succeed. It should include representatives from executive branch agencies; state governments; business, labor, and immigrant communities; as well as civil liberties, security, and privacy interests. Given the history of workplace enforcement and the reach of a universal, mandatory verification system, the new initiative will require the active engagement and long-term commitment of these important constituencies.

Secure Documents: In addition to confirming that job applicants are eligible to work, an effective verification system must also assure that individuals have valid, secure identification documents that tie the cardholder to the information on the card. It is time to develop a secure, biometric, machine-readable Social Security card that allows citizens to easily establish both their identity and eligibility to work⁵¹

A Realistic Timeline: Addressing the flaws of the Basic Pilot program and extending it to the full universe of U.S. employers will require an extraordinary amount of preparation. It is unrealistic to implement a program in the timelines prescribed in the bills passed by the last Congress and mentioned earlier. A rush to appear "tough" on workplace enforcement will harm innocent workers, disrupt hiring practices and productivity, encourage noncompliance, and further undermine the legitimacy of immigration enforcement.

The new verification program should be phased-in over a period of at least three years. In the first year, resources and staffing should be directed at improving the databases to be used in the program. Staff should be trained for implementing the program, including its evaluation and oversight. In addition, the Workplace Enforcement Advisory Board should be created.

In the second year, regulations should be issued to protect workers against employer and government agency abuses identified earlier. An aggressive outreach and education program regarding these rules and their enforcement should be launched. Upgrades of the databases and their coordination should continue.

In the third year, groups of employers should be designated for participation in a pilot akin to the Basic Pilot. The size and scope of the groups initially designated for mandatory participation should be decided by the Secretary of Homeland Security, in consultation with the Workplace Enforcement Advisory Board. The program should start with industries of particular sensitivity to terrorism concerns, such as chemical plants and transportation facilities. It should then be

⁵¹ For estimates of the cost of creating such a new card, see U.S. Government Accountability Office, "Social Security Administration: Improved Agency Coordination Needed for Social Security Card Enhancement Efforts." GAO-06-303 (March 2006), <http://www.gao.gov/new.items/d06303.pdf>.

extended to a larger group of employers based on an analysis of the system's error rates in the upgraded databases and the effectiveness of the privacy and worker protection provisions in the re-designed system. Wider (and eventually universal) participation should be phased-in gradually only upon the determination by the Secretary of DHS and the Advisory Board that mandatory participation has not imposed undue burdens on employers or authorized workers or led to serious violations of worker protections.

Employer Compliance with the System: However well designed the electronic verification system, its ultimate success requires a sustained and labor-intensive commitment to enforcement. An electronic verification system will be a useful tool to employers who are committed to hiring only authorized workers. It is ineffective against employers who actively seek unauthorized workers because they are exploitable. Such employers will simply hire these workers "off the books," without accessing the verification system. This would be particularly true in the informal sector of the labor market. The only way to discipline such employers is by physically inspecting the workplaces, and inspecting them on a sustained basis. Such strict and intensive enforcement requires significantly more manpower than has been committed in the past.

Restoring Labor Protections: The exploitative practices of habitual employers of unauthorized workers also need attention. Congress should clarify, by statute, that employers cannot use the immigration status of a worker as a defense against liability for violations of any labor and employment laws. In the absence of such a clear statement from Congress, the Supreme Court's decision in *Hoffman Plastic* provides employers an incentive to hire unauthorized workers.

Comprehensive Immigration Reform: Finally, a mandatory employment verification system will be successful only if it is a part of a comprehensive immigration reform package. The critical elements of the reform package must be a broad legalization program for the current pool of unauthorized workers, and a new expanded employment-based immigration stream that allows workers in the future to migrate to the United States through legal channels. These two measures will significantly decrease the number of unauthorized workers in the U.S. labor market, and are thus a necessary foundation for a successful immigration enforcement effort at the workplace.

III. Lessons from the IRCA Legalization Program

My views on the 1986 legalization program are significantly informed by the experience I had in the implementation of that program. In 1986, I directed the immigration project of the International Ladies' Garment Workers' Union, a predecessor union of UNITE-HERE. In that capacity, I oversaw the union's program to legalize the status of its unauthorized immigrant members. I also worked with the legacy Immigration and Naturalization Service (INS) and national immigrant defense organizations on various aspects of the legalization program more broadly.

The legalization program, in hindsight, was the most successful element of the IRCA legislation. It remains the largest legalization program conducted in history. Over 2.7 million people were legalized under its provisions. Over three-fourths of those who were eligible did apply for legalization, and close to 90 percent of them were approved. The special unit of the INS that implemented the program rose to the occasion, and made an extra effort to ensure the program

was successful. The agency showed its softer side. Many newly minted legalization offices became known as islands of civility, good cheer, and openness in a bureaucracy that had a reputation for being hostile to immigrants. Adjudication of applicants, especially in the general legalization program, was done in a fair and generous manner. A special unit was established to consider appeals from denials of applications. Collaborative efforts with community-based organizations were initiated for outreach and implementation of the program.

Despite the success of the 1986 legalization program, important lessons from that experience are relevant for any future legalization program. They are outlined here.

1. For any legalization to be successful, it must be as inclusive as possible, and invite as little fraud as possible. The law should not disqualify large sections of the unauthorized population, or create different tiers of eligibility for benefits. Such provisions create obvious incentive for fraud. The Special Agricultural Worker (SAW) legalization program in IRCA experienced significant fraud, because unauthorized immigrants who were ineligible under the general legalization program attempted to qualify for the more liberal SAW program.
2. The lessons of IRCA suggest that the legalization process should be simple, with an eligibility date as close to the date of enactment as possible. It should be a two-step process. The first step would involve registration of eligible applicants for grant of temporary legal status and work authorization, accompanied by a background security check and payment of a fine for unlawful presence in the United States. In subsequent years, registered immigrants would be required to demonstrate a knowledge of English, steady employment, payment of taxes, and good moral character in order to earn lawful permanent residence and, ultimately, citizenship. Those applying for legal status should be permitted to travel to and from the United States. Some proportion is likely to decide to return permanently to their countries of origin.
3. Immediate family members of qualifying applicants should receive derivative benefits, if these would-be family members would not themselves qualify. IRCA, for example, disqualified those who arrived in the United States after January 1, 1982. Thus, at the time of its implementation in 1987, there were many who had lived in the country for up to five years, but did not qualify for legalization. These included a large number of immediate family members of those who did qualify. This policy left a number of families in a mixed lawful-unlawful status. INS, through the "family fairness" program eventually granted "indefinite voluntary departure" to many such family members, allowing them to stay and work lawfully in the United States. Congress, through the Immigration Act of 1990, created the "family unity" program and extended the "semi-legal" status of these family members until they would receive permanent residence through the normal family preference categories.⁵² Thus, when the legalized population became permanent residents, they petitioned for their immediate relatives who were already in the United States in the "semi-legal" status. This led to the current multi-year

⁵² Pub. L. No. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

backlogs in the family second-preference category. This experience can only be avoided by granting derivative status to family members of those who qualify for legalization.

4. The regulations implementing the legalization provisions should be inclusive, clear, and unambiguous. That was generally true for the regulations implementing the IRCA legalization program. Indeed, in the rule-making process, the INS was initially quite receptive to the comments received from the advocates of immigrants. Later, there were divergent — and sometimes unfairly strict — interpretations of provisions like “continuous residence,” “known to the government,” or “brief, casual, and innocent departure,” that resulted in prolonged litigation.
5. The role of the community-based organizations that are in direct contact with immigrants is critical for a successful legalization program. That role should be recognized in the statute. In IRCA, Congress allowed for the designation of Qualified Designated Entities (QDEs) to be a buffer between INS and the legalization applicants. Coordination between the INS and the QDEs was quite successful. QDEs included not-for-profit organizations serving immigrants, church groups, and unions. They provided public education and outreach on the legalization program, encouraged those eligible to apply, assisted in the application process, provided expert legal representation in complex cases, and engaged in regular coordination with INS. A program similar to the QDE system should be repeated in a future legalization program. The IRCA experience, however, also demonstrated that regulating and monitoring such agencies is critical. Some QDEs proved to be “legalization entrepreneurs” who exploited the vulnerable applicants. In a future legalization program, organizations designated to assist applicants should either be accredited with the Board of Immigration Appeals or have an established track record of providing social services.

These designated organizations and other immigrant defense groups should be adequately funded, especially to conduct an effective outreach and public education program. Outreach in the 1986 legalization was not particularly successful. It was initiated too late in the application process, and not uniformly targeted. A sustained, widespread and multi-media outreach program is important to encourage eligible applicants to apply.

6. A separate, dedicated unit at the DHS should be established to implement the program. Creating such a unit at the INS during the IRCA program was a success. Having a specially trained and separate team of adjudicators is important. Equally important is the choice of the person to head the unit implementing the program. It should be someone who is committed to its success and who can communicate that mission to the staff. A large new legalization program will require dedicated expertise, focused attention, and an institutional culture that truly embraces the program.
7. Implementing a future legalization program will require serious commitment of funding. IRCA provides some important lessons in this regard. In 1986 there were no funds appropriated for the general legalization program. It was to be self-funded through the application fees. But there were very significant start-up costs to the program. INS paid for these by borrowing against its normal budget. Although the application fees

ultimately generated more revenue than was needed to administer the program, fewer applications were received than expected early in the program. This led the INS to scale down its legalization staff midway, only to be overwhelmed by a surge of applications at the end of the application period. In order to avoid such a situation in a future legalization program, Congress should appropriate funds for legalization that could later be repaid from application fee receipts.

8. States and localities should be adequately compensated for the costs of integrating the legalized population. It is critical to win the support of key states for a legalization program. IRCA created a \$4 billion State Legalization Impact Assistance Grant (SLIAG) to help defray anticipated costs that states would incur in terms of health care, public assistance, and English/civics classes for the legalized immigrants. But cumbersome federal reporting requirements led to significant delays for state reimbursement. This was further exacerbated by the fact that reimbursement was contingent on documentation of the number of applicants served. Since there was a surge of legalization applicants toward the end of the application period, it delayed the stream of money for the states. As a result, available funds were appropriated by Congress for other uses, which penalized states waiting to be reimbursed for expenditures.⁵³

In a future legalization program, the aid program should provide states with more flexibility to find solutions that fit their different needs, populations, and funding mechanisms than was the case with IRCA. Based on lessons learned from SLIAG and the contrasting 1996 welfare reform block grant model, it is more effective to cover the costs arising from a new legalization program through a block grant, rather than a reimbursement scheme.⁵⁴ A block grant encourages states to be innovative and allows them to target urgent needs. Such flexibility would have to be accompanied by clear guidelines for accountability against which states would plan expenditures and measure results.

Conclusion

IRCA was a bold attempt at dealing with a set of complex problems confronting the country in the 1980s. It had a profound impact on the lives of millions of Americans, both immigrant and native-born, and fundamentally altered the role of immigration law in the workplace. The country today faces a much larger scale of problems, but in many ways they are similar to the ones we confronted in 1986. We are therefore fortunate to have the experience of IRCA behind us to offer us guideposts for crafting a new immigration law. The lessons of 1986 — both positive and negative — should be well heeded in order to avoid the repetition of past mistakes or the creation of unintended consequences that past experience could have predicted.

⁵³ Deborah L. Garvey, "Designing an Impact Aid Program for Immigrant Settlement," in *Securing the Future: U.S. Immigrant Integration Policy*, ed. Michael Fix (Washington, D.C.: Migration Policy Institute, 2007).

⁵⁴ Under SLIAG, state and local governments were reimbursed — after the fact — for documented expenditures on services for the unauthorized immigrants who obtained legal status under IRCA's legalization program. Under The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA) Public Law 104-193, states are provided with block grants, and can allocate the funds as needed.

The stakes are high — failure to reform our current immigration policy can only bring the country to an even greater state of crisis and further polarize public opinion. However, the current political atmosphere, in which a bipartisan success story is sorely needed, offers a unique opportunity to thoughtfully address the immigration challenges of today. Legislation that this Congress passes would have impacts even greater than those of IRCA, with strong implications for America's future.

I applaud this subcommittee for its enthusiasm in tackling such deeply-entrenched issues and would be happy to answer your questions about my experience with the 1986 law as you begin the process of shaping legislation.

Julia Gelatt of the Migration Policy Institute assisted with the preparation of this testimony.

Ms. LOFGREN. Dr. Legomsky.

TESTIMONY OF STEPHEN LEGOMSKY, D.PHIL., JOHN S. LEHMANN UNIVERSITY PROFESSOR, WASHINGTON UNIVERSITY IN ST. LOUIS

Mr. LEGOMSKY. Madam Chair and Members of the Subcommittee, thank you very much for the privilege of appearing before you to talk about the shortfalls of IRCA.

In my view, the single largest gap in both IRCA and subsequent legislation is in the failure to update the criteria for legal immigration into the U.S. Families have to be reunited, and employers have to have practical ways in which to fill their labor needs. Until those goals can be achieved legally, illegal immigration will continue to be the path that we choose, whether we like it or not.

I would like to devote these few minutes to just one of the issues covered in my written testimony.

If you are a U.S. citizen, and you either marry a noncitizen or have a child overseas who is not a citizen, your new spouse or child would be classified as immediate relative. Immediate relatives are admitted as permanent residents without numerical limits and therefore may come in fairly quickly.

In contrast, if you are a lawful permanent resident—a green card holder—and you marry a noncitizen or have a child who is not a citizen, your new spouse or your newborn child will have to wait to join you. Currently, it is more than 5 or 6 years. These are the so-called 2As, and the current statute caps the number of these 2As who can be admitted in any one fiscal year.

These long waiting periods cause massive problems. The most obvious are the humanitarian ones. Husbands and wives are separated for the first 5 or 6 years of their marriages. Newborn children are separated from one or both of their parents for the first 5 or 6 years of the child's life. Whatever one's views on immigration preferences for extended families, prolonged separations of newlywed, husbands and wives and newborn children from their parents are heartbreaking. If we are going to talk about family values, then I think this is a problem we have to fix.

Humanitarian concerns aside, these long separations practically beg people to violate the immigration laws. Countries expect people to obey their laws. But human nature will have to be remade before husbands and wives willingly separate for the first 5 or 6 years of their marriages, and before parents willingly separate from their newborn children for the first 5 or 6 years of a child's life. For too many people, illegal immigration is an irresistible temptation.

In 1990, Congress did raise the 2A numerical ceilings, which was a very good step. For a while, the waiting periods for the 2As did drop sharply as a result. But, inevitably, they began to creep up again to the current level of 5 or 6 years.

Some of the current bills, including the STRIVE Act introduced by Representatives Gutierrez and Flake, would further raise the total ceiling on family sponsored immigrant visas generally and on 2As in particular. I very much applaud those steps, but I would respectfully urge Congress to go one step further. I submit it is not enough simply to increase the statutory ceiling, as was done in

1990, and just hope the new number proves to be optimal in the long run. Better, I would suggest, is to make these 2As immediate relatives, just like the spouses and the children of U.S. citizens. This would exempt them from the numerical ceilings and would finally end the prolonged waits that not only cause needless hardship but also encourage illegal immigration.

At first glance, I realize the proposal might seem like one to greatly increase total legal immigration, but in fact it shouldn't. Because every single person who would benefit from the proposal is somebody who is going to be admitted in a future year anyway. The total number of immigrants in the long term is unaffected. The only change is one of timing. Instead of making you wait overseas for several years while the rest of your family is here, we admit you now. There would be more 2As immediately after enactment but fewer later. And if Congress wished to minimize any short-term interruption, it could always phase in such a change over several years.

So, to be clear, this is not a proposal to increase legal immigration, although for independent reasons Congress might very well wish to do precisely that.

Anyway, this, however, is just a proposal to expedite the admission of those nuclear family members who eventually will be admitted in any case. It would solve the humanitarian problem and as a bonus, it would remove one of the most powerful incentives for illegal immigration.

I'm in the uncustomary position of having time left, so I will actually stop right here.

Ms. LOFGREN. Thank you, very much, Doctor.

[The prepared statement of Mr. Legomsky follows:]

PREPARED STATEMENT OF STEPHEN LEGOMSKY

Written Testimony of

Stephen H. Legomsky
John S. Lehmann University Professor
Washington University School of Law

Before the

United States House of Representatives
Committee on the Judiciary
Subcommittee on Immigration, Citizenship, Refugees,
Border Security, and International Law

Oversight Hearing on the Shortfalls of the 1986 Immigration Reform Legislation
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Oversight Hearing on the Shortfalls of the 1986 Immigration Reform Legislation
April 19, 2007

Madame Chairwoman and members of the subcommittee, I am grateful for the opportunity to appear before you today. My name is Stephen H. Legomsky. I am the John S. Lehmann University Professor at the Washington University School of Law. For more than thirty years I have devoted the majority of my professional life to the subject of immigration law and policy. I have taught U.S. immigration law to law students for approximately 25 years, am the author of the law school textbook "Immigration and Refugee Law and Policy" (now in its fourth edition), and have had the privilege of advising both Democratic and Republican administrations and several foreign governments on immigration policy.

America has two venerable traditions. One is to admit large numbers of immigrants. The other is to complain, vehemently, that today's immigrants are not of the same caliber as yesterday's. The irony is that today's immigrants invariably become the shining example to which tomorrow's immigrants suffer by comparison.

I have been asked to address the shortfalls of the 1986 Immigration Reform and Control Act (IRCA).¹ While that legislation covered a variety of subjects, its two main pillars were the provisions on employer sanctions and legalization. Today, of course, the volume of illegal immigration is several times as great as it was before the enactment of IRCA. It is common for opponents of either employer sanctions or legalization to infer from that observation that these strategies were unsuccessful. With respect, I do not believe that the success of either strategy can be gauged simply by noting that the undocumented population has increased. Immigration levels are influenced by so many variables that assumptions about cause and effect are hazardous. Although the size of the current undocumented population can be estimated (most

¹ Pub. L. 99-603, 100 Stat. 3359 (Nov. 5, 1986).

likely at about 12 million),² there is no way to know whether that number would have been higher or lower had the 1986 legislation not been enacted.

But we do know this: The 1986 legislation has not succeeded in resolving any of the major immigration challenges. The undocumented population is large and growing. Millions of qualified immigrants wait for years to be admitted, because of a combination of strict statutory numerical ceilings and lengthy administrative processing times. Nuclear families wait unbearably long periods to be reunited. Employers have labor needs that cannot be met entirely by the domestic workforce. And millions of refugees in temporary havens overseas have nowhere to go. In the meantime, in almost all 50 states and in hundreds of municipalities, serious anti-immigrant movements have spurred state and local legislation to address “the immigration problem.” On a subject that all three branches of the federal government have consistently pronounced to be exclusively federal – a subject on which it is vital for the nation to speak with a single voice – the chaos and foreign policy consequences of hundreds of different immigration policies operating simultaneously is troubling.

I do not suggest that any of these problems can fairly be attributed to the 1986 legislation. There is only so much that one statute can do. In this testimony, however, I would like to attempt two things. First, I note a few specific features of IRCA that, with the benefit of hindsight, might be approached differently today. Second, and more important, I try to highlight what I see as one of the major omissions from the 1986 legislation. That omission relates to one of the most important categories of legal immigration – the so-called family-sponsored 2A’s. It is that second section of the testimony to which I would respectfully direct the subcommittee’s primary attention.

I Specific Features of IRCA

My comments on the specific features of IRCA will be brief. The two pillars, as noted earlier, were employer sanctions and legalization. Concerns about both the concept of employer sanctions and its implementation have been aired frequently. Employer sanctions proponents believe that, if properly implemented, employer sanctions will dry up the job magnet that animates illegal immigration. The assumptions are that employer sanctions will induce employers to stop hiring unauthorized workers and that the resulting lack of employment opportunities in turn will diminish the incentive for illegal entry or overstaying. Proponents

² Leading immigration demographer Jeffrey Passel estimated the undocumented population at 10.3 million as of March 2004. He also estimated the annual growth rate of this population at 485,000. See *Estimates of the Size and Characteristics of the Undocumented Population* (Mar. 21, 2005), <http://pewhispanic.org/files/reports/44.pdf> (last visited April 14, 2007). On those assumptions, the undocumented population would be just under 12 million today.

point to the relatively lax enforcement of employer sanctions, the proliferation of false documents, the absence of a reliable centralized database of authorized workers, and the growing incidence of identity theft as the principal explanations for the failure of employer sanctions to achieve their stated goals to date.

Opponents of employer sanctions are skeptical of their effectiveness. They question whether the problems that have plagued employer sanctions since 1986 can be fixed at an acceptable social and economic cost. They also point to existing costs – the dangers that employer sanctions will produce increased levels of national origin job discrimination (as the GAO documented in a congressionally mandated series of studies shortly after enactment of IRCA), the burdensome paperwork requirements for employers, and the cost to taxpayers of the large government bureaucracy needed to administer employer sanctions.

The Basic Pilot Program (BPP) is an attempt to solve some of the problems that have confounded the successful implementation of employer sanctions. As this subcommittee is aware, the BPP involves employers verifying the employment status of job applicants by consulting an electronic database jointly developed and maintained by the Social Security Administration and the Department of Homeland Security. In theory, the database contains the names and social security numbers of all authorized workers in the United States, citizens and noncitizens alike. In practice, as numerous studies have shown, there are huge practical problems in keeping such a database accurate and up to date. If the error rate can be dramatically reduced through a combination of adequate funding and new technologies, then employer sanctions might well be effective in reducing illegal immigration. The question is one of costs and benefits. I express no opinion on how great the administrative costs would be or on how Congress should value the benefits that those costs are meant to bring. My only suggestion here is that the current combination of a law that punishes employers for hiring unauthorized workers and the absence of both reliable documents and a reliable electronic database is untenable. Congress should either repeal employer sanctions or invest the huge resources needed to raise the reliability level of the electronic database and the paper documents to an acceptable standard.

With respect to legalization, ambiguities in IRCA's eligibility requirements led to erroneously restrictive INS interpretations that were eventually struck down in court. The errors required courts to repeatedly extend the statutory application deadline, with the result that the legalization process dragged on for years. The language contained in the legalization provisions of the more recent bills seems clearer and therefore less susceptible to similar problems.

Perhaps the most significant gap in the IRCA legalization program was the lack of provision for the family members of the legalized individuals. Under the original statutory scheme, it was only after obtaining temporary resident status, and later permanent resident status, that one could even initiate the multi-year process of petitioning for the admission of his or her spouse and children. That was true for both preexisting and after-acquired spouses and children. An INS initiative and a subsequent "family fairness" statutory amendment eventually plugged much of the gap. If a new legalization program is enacted, the issue of how best to accommodate at least

the preexisting spouses and children, and ideally the after-acquired spouses and children as well, should be addressed.

Notably, the 1986 legalization imposed no penalty fees. Under those circumstances, the popular term “amnesty” seems perfectly appropriate. In contrast, the legalization programs proposed by the more recently introduced bills impose substantial monetary fines on the potential beneficiaries. To characterize such programs as “amnesty” therefore seems peculiar. When a driver is apprehended for speeding, forced to pay a fine, and then permitted to resume driving, the word “amnesty” is not used. The person has violated the law and has been punished. Since the same is true of the more recently introduced legalization programs, the term “amnesty” seems equally inapt. “Earned legalization” is accurate and appropriate. I note these semantics only because it has become commonplace for opponents of legalization to dub these proposals “amnesty” and to deride the term “legalization” as a politically correct euphemism. Given the apparent public resistance to the word “amnesty,” it seems paramount that the public understand that punishment for immigration violations, in the form of heavy fines, is a crucial component of these proposals and that they do not fit any commonly understood definitions of amnesty.

One clearly successful component of the 1986 legalization was the use of “qualified designated entities” – private organizations that assisted applicants for legalization and served as buffers between the applicants and the relevant immigration officials. These buffers were essential to encouraging eligible beneficiaries to come forward, as many in the local communities, rightly or wrongly, were fearful of appearing at INS offices. A similar process should be considered in connection with the recently introduced legalization plans.

II The Larger Omissions

Neither employer sanctions nor legalization – nor any combination of strategies – will put a serious dent in illegal immigration as long as the rules that govern legal immigration leave so many people with incentives to enter or remain in the United States illegally. In my view, the single largest gap in both the 1986 law and subsequent legislation has been the failure to update the criteria for legal immigration. Families need to be reunited, and employers need practical ways to fill their labor needs. Until those goals can be achieved through legal mechanisms, violation of the law will continue to be the route chosen by many. In this testimony, I leave to the labor economists and other labor market experts the analysis of how best to modernize the employment-related visas for both immigrants and nonimmigrants. The remainder of my testimony respectfully proposes a partial solution to the problems that beset family-related immigration.

As the subcommittee is aware, lawful permanent family-related immigration to the United States takes several different forms. The spouses and the under-age-21, unmarried children of United States citizens, and the parents of over-age-21 United States citizens, are classified as

“immediate relatives” and admitted to the United States without any numerical limits.³ “Family-sponsored” immigrants, in contrast, are given preferential treatment but are still subject to annual numerical limits that are established by statutory formulas. This group comprises certain people who do not fit any of the immediate relative categories but who either have other family relationships to U.S. citizens, or are the spouses or unmarried sons or daughters of lawfully admitted permanent resident aliens.⁴ In addition, if a person is admitted for permanent residence under any of the family, employment, or diversity immigrant programs, or if the person is admitted as a refugee or an asylee, the law grants the same status to his or her otherwise admissible spouse and unmarried, under-age-21 children who accompany or follow him or her. Importantly, however, the law grants “accompanying or following to join” status only in the case of pre-existing relationships – i.e. cases in which the spouses married, or the children were born, before the principal immigrant’s admission, not in cases of after-acquired spouses and children.⁵

Probably the greatest problem with the current criteria for family-related immigration relates to one subcategory of the family-sponsored immigrants – the so-called “2A’s.” These are the spouses and the unmarried, under-age-21 children of lawful permanent residents. The admission of the 2A’s is subject to an annual numerical limit that varies from year to year in accordance with a statutory formula.⁶ Because of those limits, the 2A’s must wait many years to be admitted. Those being admitted today had to wait more than five years to reunite with their lawful permanent resident U.S. family members. Moreover, because of additional annual limits on the number of immigrants who may be admitted from any one country, 2A’s from Mexico had to wait more than six years.⁷ Had these individuals been the spouses or children of U.S. citizens rather than of lawful permanent residents, then as noted above they would have been “immediate relatives” and admitted without any waiting period (other than for the administrative processing).

Why are these long waiting periods a problem? There are several reasons.

The most obvious reason is the humanitarian one – the inherent hardship that occurs when husbands and wives are separated for the first several years of their marriages, and when parents and newborn children are separated for the first several years of the child’s life. The 2A’s are not the only subcategory who are subject to long waits, but they are by any definition members of the nuclear family. Whatever one’s views on the waiting periods for extended family, the

³ INA § 201(b)(2)(A)(I). Under the INA, a “child” must be unmarried and under 21 and must meet various other conditions. INA § 101(b).

⁴ INA § 203(a).

⁵ See INA §§ 203(d), 207(c)(2), 208(b)(3).

⁶ The formula appears in INA § 201(c).

⁷ See INA § 202 and U.S. Dept. of State, Visa Bulletin for May 2007, at 2.

prolonged separations of newlywed husbands and wives, and parents from newborn children, are troubling. In a nation that rightly proclaims its fidelity to family values, the problem is one that requires fixing.

Humanitarian concerns aside, these long separations give rise to an assortment of other problems. They require lawful permanent residents to travel back and forth to their countries of origin, often located in distant reaches of the world, in order to maintain some semblance of family life. Perhaps more importantly, these separations virtually invite illegal immigration. Human nature will have to be remade before new spouses willingly separate for the first five or six years of their marriages or new parents willingly separate from their newborn children for the first five or six years of their children's lives. For too many people, illegal immigration will continue to be an irresistible temptation. Finally, although for convenience I have been referring to periods of five or six years, in actuality the period is unpredictable. The monthly Visa Bulletins issued by the State Department tell us how long those people who are receiving visas today had to wait. They do not tell us how long someone who applies today will have to wait. The statutory supply of visas changes from year to year according to the formula; in addition, the number of applicants fluctuates from year to year. As a result, the applicants have no way to predict how long it will take before they will be permitted to immigrate. Family and other planning becomes impossible.

Congress responded to the 2A problem in the Immigration Act of 1990.⁸ Among other things, that Act altered the statutory formulas in ways that significantly increased the 2A numerical ceiling. The changes were beneficial; in the years immediately following the 1990 Act, the waiting periods for 2A's dropped sharply. Ultimately, however, they began to creep up again, reaching the current level of five years (more than six years for Mexicans).

HR 1645 (the STRIVE Act), introduced by Representatives Gutierrez and Flake in the present Congress, takes a number of major steps aimed at easing the 2A problem. Among other things, this bill would both increase the total ceiling on family-sponsored immigrant visas and increase the proportion of that ceiling allocated to the 2A's. Both of these changes would be tremendously beneficial.

In the end, however, I recommend, with respect, that Congress go one step further. I submit that it is not enough simply to increase the statutory ceiling (as was done in 1990) and hope the new number proves to be optimal in the long run. Better, I would suggest, is to make the 2A's – the spouses and the unmarried, under-age-21 children of lawful permanent residents – immediate relatives, just like their counterpart spouses and children of U.S. citizens. The effect of that change would be that they, like those who currently qualify as immediate relatives, would no longer be subject to annual numerical limits and thus would not face the prolonged and excruciating waits that now give rise to such hardship and to such compelling incentives for illegal immigration. They would need to wait for administrative processing, as the current

⁸ Pub. L. 101-649, 104 Stat. 4978 (Nov. 29, 1990).

immediate relatives do, but once they are found qualified they would be admitted without further delay.

I would like to address first what I anticipate might be the greatest cause for concern with this proposal. At first glance, it might seem that repealing the numerical limits on 2A's would significantly increase total legal immigration. In fact, it would not. That is because every person who would benefit from this proposal is a person who would have been admitted in a future year anyway. The total number of immigrants in the long-term is unaffected; the only change is one of timing. Instead of asking the person to wait overseas for several years before being admitted, the person is admitted now. Thus, enactment of this proposal would have an upward effect on 2A immigration in the first few years after enactment and an offsetting downward effect in subsequent years. If the proposal is otherwise acceptable, but Congress is concerned that the short-term impact could be great enough to cause disruption, it could phase in the change over a period of years, as discussed separately below.

To be clear, then, this is *not* a proposal to increase legal immigration, though for independent reasons Congress might well wish to do precisely that. It is merely a proposal to expedite the admission of those nuclear family members who would eventually have been admitted in any event. There would be several tangible benefits:

First, and most obviously, it would solve the humanitarian problem noted above. It would put an end to the needless prolonged hardship of separating new spouses from one another and new parents from their children.

Second, while this proposal would not singlehandedly end all illegal immigration, it would at least remove one of the most powerful incentives for it.

Third, it would greatly reduce the wasteful back-and-forth international commuting to which so many lawful permanent residents now have to resort.

Fourth, by eliminating the current uncertainty that family members now face in trying to estimate the likely future waiting times, this proposal would enable them to formulate family and career plans vital to their futures.

Fifth, one of the concerns that opponents of legalization frequently voice is that legalization would be unfair to those who apply for immigration through legal channels and wait patiently for their turns to come up. By admitting 2A's sooner rather than later, Congress would be addressing this equity problem in a major way; the 2A's would not be made to continue waiting in line while those who are present unlawfully are permitted to stay.

Sixth and finally, this proposal would eliminate yet another anomaly that arises under current law. As noted earlier, the law gives immediate preference to the preexisting spouses and children of lawful permanent residents – i.e., those cases in which the relationships were formed before the admission of the permanent resident. But when a person is admitted as a permanent

resident and *then* marries or has children, the law imposes a waiting period of many years. There is no apparent reason to treat these two classes of family members differently. The importance of reuniting the nuclear family is equally compelling in the two cases. If anything, that need might be even more compelling in the case of the after-acquired spouse or children, since in those cases the delays occur for newlyweds and for newborn babies – i.e. during the fragile beginnings of the family relationship.

If Congress were to adopt this proposal, it would need to decide how quickly to put it into effect. As noted above, while the proposal would not increase total 2A immigration in the long term, it would clearly redistribute the numbers from year to year in the short-term. For that reason, Congress might wish to consider creating a transition period in which, each year, a fixed percentage of the 2A's who are either currently in the pipeline or who enter the pipeline during the transition, would be exempted from the annual numerical ceiling.

To decide how long that transition period should be, it will be crucial to estimate the total current backlog of 2A applicants. Unfortunately, that task is not as easy as it sounds, largely because the admission process for 2A's (like that for several other classes of prospective immigrants) involves a series of steps and multiple government agencies. Generally, the visa process begins with DHS and ends with the relevant U.S. embassies and consulates. In cases in which the family members are already lawfully present temporarily in the United States and otherwise qualify for "adjustment of status," the entire process can be completed in the U.S. On April 13, 2007, I spoke with Mr. Charles Oppenheim, of the State Department's Visa Office. Mr. Oppenheim was extremely helpful, and he would be able to provide a rough estimate of *that portion of the 2A backlog that has reached the State Department*. Only DHS, however, would be able to estimate the number of 2A petitions that are (i) not yet adjudicated; (ii) approved but not yet forwarded to the State Department; or (iii) adjustment of status cases (a much smaller number) for which final decisions are still pending at regional DHS offices. For all these reasons, I would respectfully urge this subcommittee to request the relevant DHS and State Department agencies to provide data on the number of pending 2A applicants.

The size of the backlog should not, however, affect Congress's decision whether to make 2A's immediate relatives and thereby exempt them from the annual numerical ceilings. Rather, it would seem relevant to the duration of any transition period that Congress feels it prudent to establish.

Thank you once more for the privilege of being heard. I would be delighted to try to answer any questions that you might have.

Ms. LOFGREN. Ms. Jenks, you are doing clean-up here.

**ROSEMARY JENKS, DIRECTOR OF GOVERNMENT RELATIONS,
NumbersUSA**

Ms. JENKS. Madam Chairwoman, Ranking Member King, Members of the Subcommittee, thank you for the opportunity to appear before you today to talk about the shortfalls of the 1986 IRCA. I commend you for holding this hearing to examine the lessons we can learn from past legislation so that we may avoid the same mistakes in future legislation. We inside the Beltway too rarely engage in this kind of exercise.

My organization, NumbersUSA, is a nonprofit, nonpartisan, grassroots immigration reduction organization representing close to 300,000 Americans from every State and congressional district in the country.

Not having read the provisions of IRCA for several years, I, like most people, had come to think of IRCA as being comprised of three main elements: employer sanctions, the general amnesty and the Special Agricultural Worker, or SAW, amnesty. In fact, though, IRCA had all the same basic elements as the comprehensive immigration reform proposals we have seen coming out of the Senate, the White House and even the House.

In addition to employer sanctions, IRCA included several enforcement provisions, including increased Border Patrol resources. It increased legal immigration by creating a visa lottery and adding a new category of special immigrants. It added a new guest-worker program for temporary agricultural workers, and then it had the two amnesties: those who had been illegally present since before January 1st of 1982 and one for illegal aliens who claim to have performed agricultural work during a specified period.

There seems to be almost universal agreement now on two key things: one, IRCA was in fact an amnesty; and, two, IRCA failed to accomplish its purpose, which was to wipe the illegal immigration slate clean and deter future immigration by removing the jobs magnet.

I think the American public understands intuitively something that seems elusive here in Washington and that is what constitutes amnesty. Amnesty is pardoning immigration lawbreakers and rewarding them with the objective of their crimes. Any legislation that rewards illegal aliens who came here for jobs by giving them a work permit is amnesty. It makes no difference whether they are granted temporary residence or green cards, whether they have to pay a fine or back taxes, whether they have to learn English or civics or whether they have to touch back across the border to launder their status. If the end result is that they get legal permission to work, it is amnesty.

One of the more interesting twists in the debate inside the Beltway is the fact that some elected officials hold out IRCA as the big, bad amnesty which they repeatedly insist they oppose. In the next minute, though, they have signed onto or introduced a bill that is just as much an amnesty as IRCA.

The White House's latest proposal is a good example of this. The very first page of the document states that one of the first prin-

ciples is to, quote, bring illegal workers out of the shadows, offering them what we call a Z visa, without amnesty.

First, I would point out that the public no longer buys the out-of-the-shadows argument, since they saw huge groups of self-identified illegal aliens marching in the streets last year. More importantly, though, offering illegal aliens a Z visa or any other kind of visa is, by definition, amnesty, rewarding the lawbreaker with the objective of his crime.

In the end, it is all about perceptions. If people outside the United States believe that Congress has changed the law in such a way that illegal aliens are legally permitted to stay and work, the message to all of those people is that we are not serious about our immigration laws. We have seen this play out in real life over and over again. The chart on page 5 of my written statement shows a significant spike in illegal immigration immediately following passage of IRCA.

Perhaps most noticeable in our post 9/11 world is the fact that the spike in other than Mexicans, or OTM, entries exceeded the spike for Mexico, even though Mexicans made up a majority of those actually legalized under IRCA. None of these illegal entrants would have qualified for either amnesty, and yet they perceived an advantage in entering illegally following its passage, and so they did.

In the past decade, we have seen sustained high levels of illegal immigration that have not only replaced the entire estimated illegal population of 1986 but have exceeded that population by more than two times over. During the same period, Congress enacted five additional amnesties. The message these actions send is clear. If we are to deter future illegal entries, we have to change the message so that people around the world perceive we are serious about our immigration laws and those who violate them will be penalized, not rewarded.

There are a number of specific reasons why IRCA failed, the most obvious being the Government's failure to enforce the employer sanctions system and the resulting growth of the fraudulent documents industry. Another was the fact that it suddenly and dramatically increased the workload of a Federal agency that was unprepared and ill-equipped to handle it.

The sheer numbers of applicants bogged down INS processing almost immediately. Pressure on the agency to speed up processing led to shortcuts being taken; and the shortcuts led to widespread fraud and national security breaches, including the legalization of terrorists like Mahmud Abouhalima, who was involved in the 1993 bombing of the World Trade Center.

Clearly, there are a number of reasons why IRCA failed to solve the illegal immigration problem that existed in 1986. Primarily, though, IRCA failed because it was an amnesty. We will never solve illegal immigration by rewarding illegal aliens.

The late Congresswoman Barbara Jordan had it right when she said the credibility of immigration policy can be measured by a simple yardstick. People who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave.

Thank you.

Ms. LOFGREN. Thank you very much.
[The prepared statement of Ms. Jenks follows:]

PREPARED STATEMENT OF ROSEMARY JENKS



Testimony of
Rosemary Jenks
Director of Government Relations
NumbersUSA

On
*Shortfalls of the 1986 Immigration Reform
Legislation*

Before
**The Subcommittee on Immigration, Citizenship,
Refugees, Border Security, and International Law**
JUDICIARY COMMITTEE
U.S. House of Representatives

April 19, 2007

Madame Chairwoman, Ranking Member King, Members of the Subcommittee, thank you for the opportunity to appear before you today to talk about the shortfalls of the 1986 Immigration Reform and Control Act (IRCA). I commend you for holding this hearing to examine the lessons we can learn from past legislation so that we may avoid the same mistakes in future legislation. We inside the beltway too rarely engage in this kind of exercise.

I have to admit that it had been several years since I last actually read the provisions of IRCA. Like most people involved in the immigration debate, I had come to think of IRCA as being comprised of three main elements: employer sanctions, the general amnesty, and the Special Agricultural Worker (SAW) amnesty. In fact, though, IRCA had all the same basic elements as the “comprehensive immigration reform” proposals we’ve seen coming out of the Senate, the White House, and even the House:

- **Enhanced enforcement**—In addition to employer sanctions, IRCA had several other enforcement provisions, including increased resources for the Border Patrol and for wage- and hour-law enforcement, restrictions on aliens’ eligibility for welfare, tougher penalties for alien smugglers, and a Sense of Congress that the President of the United States should consult with the president of Mexico on how best to implement IRCA.
- **Legal immigration increases**—IRCA included a new visa lottery for nationals of countries adversely affected by the 1965 Immigration Act, and it added a new category of Special Immigrants.

- **Guestworkers**—IRCA created the H-2A nonimmigrant designation for temporary agricultural workers.
- **Amnesties**—IRCA included two main amnesties: a general amnesty for those who had been illegally present since before January 1, 1982; and an industry-specific amnesty for those illegal aliens who claimed to have performed at least 90 “man days” of agricultural work during a specified period.

There seems to be almost universal agreement now on two key things: (1) IRCA was, in fact, an amnesty; and (2) IRCA failed to accomplish its purpose, which was to wipe the illegal immigration slate clean (through the amnesties) and deter future illegal immigration by removing the jobs magnet (through employer sanctions).

IRCA = Amnesty

Undoubtedly, the American public is more strongly opposed to amnesty for illegal aliens than it was in 1986 (though a majority opposed it even then). I imagine this is partly because more people today understand what amnesty entails and that the number of potential beneficiaries is now huge. I would suggest that the public also understands intuitively something that seems elusive here in Washington—what constitutes “amnesty.”

People understand that rewarding illegal behavior will inevitably produce more illegal behavior. If I were to steal a car, for example, and a highway patrol officer pulled me over and wrote me a \$2,000 ticket for stealing the car, but then told me I could keep the car, as long as I paid the ticket, there would be a lot more car thieves once the word got out about my good

fortune. The officer's actions would tell the public that the law against stealing cars is not taken seriously. The \$2,000 ticket is simply a cost of doing business that will be built into decisions to break the law in the future.

The most helpful definition of amnesty I've seen is: Pardoning immigration lawbreakers and rewarding them with the objective of their crimes. Thus, any legislation that rewards illegal aliens who came here for jobs by giving them a work permit is amnesty. It makes no difference whether they are granted temporary residence or green cards; whether they have to pay a fine or back taxes; whether they have to learn some English and civics; or whether they have to "touch back" across the border to launder their status. If the end result is that they get legal permission to work, it is amnesty.

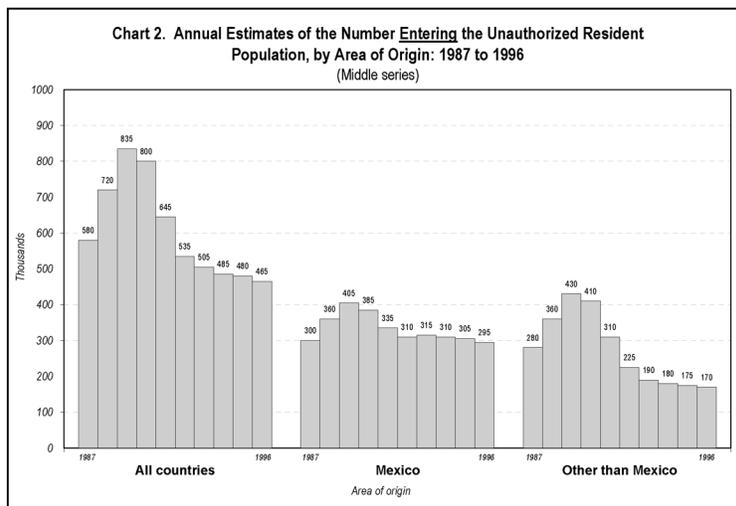
One of the more interesting twists in the debate inside the beltway is the fact that some elected officials hold out IRCA as the big, bad amnesty which they repeatedly insist that they oppose. In the next minute, though, they have signed onto or introduced a bill that is just as much an amnesty as IRCA. The White House's latest proposal is a good example of this.

The very first page of the document states that one of the "First Principles" is to "Bring illegal workers out of the shadows (offering them what we call a "Z visa") without amnesty." First, I would point out that the public no longer buys the "out of the shadows" argument since they saw huge groups of self-identified illegal aliens marching in the streets last year. More importantly, though, offering illegal aliens a "Z visa" or any other kind of visa is, by definition, amnesty – rewarding the lawbreaker with the objective of his crime -- and the American people know it.

In the end, it is all about perceptions. And it doesn't matter whether the law is called an "amnesty" or something else. If people outside the United States believe that Congress has changed the law in such a way that illegal aliens are legally permitted to stay—even if the stay is temporary—and work (or do whatever else they may have come here to do), the message to all of those people is that we are not serious about the laws prohibiting illegal immigration, so they may as well try their luck.

They will not be concerned with the details of the new law—whether it includes fines or English classes or a vacation across the border. Their perception is what will convince them to come illegally or, in the case of the bill the House passed last year, HR 4437, not to come illegally. We have seen this play out in real life over and over again.

IRCA was touted as the solution to the problem of millions of illegal aliens living and working in our country. Not only did it fail miserably on that score, it actually resulted in millions more foreign workers illegally settling in the United States. For example, the following chart, from an unpublished paper written by Robert Warren of the then-INS, shows a significant spike in illegal immigration immediately following passage of IRCA. Perhaps most notable in the post-9/11 world is the fact that the spike in "Other than Mexican" or OTM entries exceeded the spike for Mexico, even though Mexicans made up a majority of those actually legalized under IRCA. According to the provisions of IRCA, none of these illegal



Source: Warren, Robert, "Annual Estimates of the Unauthorized Immigrant Population Residing in the United States and Components of Change: 1987 to 1997" (draft), Office of Policy and Planning, Immigration and Naturalization Service.

entrants would have been eligible for either amnesty, and yet they clearly believed it would be in their best interest to come. Whether they believed they could use fraud to obtain amnesty or whether they were operating on misinformation is beside the point. They perceived an advantage in entering illegally immediately following passage of IRCA, and so they did.

Similarly, the Pew Hispanic Center found that the annual illegal alien flow exceeded the legal immigration flow to the United States for the first time in 1995. It is no coincidence that Section 245(i), another amnesty provision, was enacted for the first time in 1994. Enactment of Section 245(i) also marked the beginning of huge backlogs of pending applications for immigration status at INS and later at USCIS. Prior to 245(i), INS had had a steady, annual backlog of around 120,000 applications. By the end of 2003, the agency had six million pending applications.

In the past decade, we have seen sustained, high levels of illegal immigration that have not only replaced the entire estimated illegal population of 1986, but exceeded that population by more than two times over. Also during that time, Congress enacted five additional amnesties. The message these actions send is clear. And by focusing entirely on how it should change the law to accommodate illegal aliens, rather than on how to create a sensible and credible immigration policy, Congress continues to broadcast the message that illegal immigration will eventually pay off.

Amnesty cannot be our answer to illegal immigration, even in the short term, because it inevitably drives more illegal immigration. It happened with IRCA in 1986. It happened with the six additional amnesties in the 1990s. Congress has been using amnesty as its primary

solution for illegal immigration for more than 20 years now. After every amnesty, the illegal population has just grown more. The message has been clearly received throughout the world that if you can get into the United States, eventually you will be legalized.

If we are to deter future illegal entries, we have to change the message so that people around the world understand that we are serious about our immigration laws and that those who violate them will be penalized, not rewarded.

IRCA Failures

(1) Employer Sanctions

The most obvious reason why IRCA failed, and the one most often thrown around in Washington, is that the government failed to enforce the employer sanctions system and an ever-larger fraudulent documents industry has made it virtually impossible for employers to avoid hiring illegal aliens. This is undoubtedly true, and many of the Members of Congress who drafted and enacted IRCA were well aware of this potential outcome.

IRCA's drafters were right to focus the new enforcement efforts on the employers who hire illegal aliens. They understood that the availability of jobs in the United States served as a beacon to would-be illegal aliens. When aliens weighed the risks of getting caught or killed crossing the border or overstaying a temporary visa against the benefits of a U.S. job at U.S. wages, there was no contest for most. They knew that once they got into this country, there was almost no chance they would be caught and they were virtually guaranteed a job at significantly higher wages than they were making back home.

The fact that would-be illegal aliens are weighing the very same risks and benefits and coming to the very same conclusion more than 20 years after the enactment of IRCA makes clear that IRCA failed to remove the jobs magnet. By making it unlawful for an employer to hire an alien he knows to be illegal and by failing to give the employer the tools to determine accurately whether the alien is legal or illegal, Congress placed the burden on the government to prove that an employer has such knowledge. All the employer has to do is produce a filled-in I-9 form and say that the documents presented to him by the alien reasonably appeared on their face to be valid.

It did not take the Immigration and Naturalization Service (INS) long to decide that employer sanctions enforcement efforts were not cost effective for them. Of course, no administration and only a handful of Members of Congress objected strenuously to the lack of enforcement because it meant cheap labor for the business lobbies.

The provisions in IRCA that address fraudulent documents, including requirements for various studies by the Social Security Administration and others on how to reduce abuse of social security numbers and other identification documents, make it clear that Congress anticipated an increase in document fraud as a result of employer sanctions. Nonetheless, Congress failed to include a mandatory work eligibility verification system.

(2) Bureaucratic Incapacity and National Security Vulnerabilities

The next shortcoming of IRCA was that it suddenly and dramatically increased the workload of a Federal agency that was unprepared and ill-equipped to handle it. The INS was already under-funded and overworked when IRCA was passed. Like Congress, the INS

expected a significantly smaller number of amnesty applicants than it received. Even if the overall numbers had been smaller, though, the agency still would not have been prepared.

Like the amnesties being proposed today, IRCA required illegal aliens to go through a two-step process and meet a variety of criteria at each step. The steps were the same under the pre-1982 amnesty and the SAW amnesty. First, they had to fill out an application and pay a fee within 18 months. It would have taken the INS at least this long to hire and train sufficient staff to handle the applications properly. Instead, the agency had to begin accepting applications virtually immediately. Next, the applicants had to go to an INS office and submit fingerprints, which the agency was supposed to check against criminal and national security watch lists. Then, INS was required to grant "temporary resident status" and a work permit to all illegal aliens who met the criteria. Aliens with temporary resident status were required to maintain that status for 18 months, after which they had one year during which to apply for adjustment to permanent residence. In order to qualify for adjustment, the aliens had to submit another application, undergo another background check, and demonstrate a basic knowledge of English and Civics, which required an interview.

That means that each of the more than three million applicants had to meet with an INS employee at least twice, and the INS had to process two applications, do two background checks, and issue two sets of documents for each applicant, all within about three years. It should have come as no surprise that the agency bogged down almost immediately. When processing slowed down, applicants and their friends, relatives and attorneys began complaining to Congress, which in turn put pressure on the INS to figure out a way to speed

up processing. So the INS leadership put pressure on the field personnel, who found ways to speed up processing, mostly by taking shortcuts. The shortcuts led to widespread fraud and national security breaches.

For example, Mahmud Abouhalima, an Egyptian who entered the United States on a tourist visa and overstayed his authorized period of admission, was a cab driver in New York City when IRCA was enacted. He applied for the SAW amnesty and successfully convinced the INS that he had picked beans in Florida. Had a proper background check been done, the INS adjudicator would have learned that Abouhalima's New York license had been suspended at least once, which may have led the adjudicator to discover that the applicant was lying on his application. Instead, Abouhalima's application was approved. Once he received his green card, he used it to travel to Afghanistan for terrorist training. He returned to the United States to use his new skills in the 1993 bombing of the World Trade Center. He drove the getaway vehicle that followed the Ryder van carrying the explosives. Mahmud Abouhalima is currently serving a prison sentence of more than 108 years for his role in the attack.

Fares Khallafalla, who is currently in prison for his role in the plot to blow up New York City landmarks in 1993, also fraudulently used the SAW amnesty to obtain a green card. These and other examples of terrorists gaming our immigration system led the 9/11 Commission staff to conclude, "as the INS struggled, its inability to adjudicate applications quickly or with adequate security checks made it easier for terrorists to wrongfully enter and

remain in the United States throughout the 1990s.”¹ The overall fraud rate in the SAW program has been estimated by INS officials at around 70 percent.

US Citizenship and Immigration Services is in no better shape than INS to handle any increase in workload, let alone one that could involve three times the number of IRCA applicants. Fraud is still rampant in applications for immigration benefits and cutting corners is still the routine response to pressure to speed up processing.

Since USCIS is a fee-funded agency, revenues would not increase until applications began to be submitted. That is far too late for the agency to begin gearing up for a workload increase. Congress would have to appropriate hundreds of millions of dollars to USCIS well in advance of any application period to allow time for hiring and adequately training the new work force that would be required. Moreover, each adjudicator must undergo a background check in order to obtain the requisite security clearance to access the necessary terrorist and criminal databases that applicants must be checked against. It has been estimated that just the background checks on needed new employees would cost \$40 million.

Even if Congress were willing to appropriate sufficient money to allow USCIS to hire and train the necessary work force, there are yet other choke points that would bog down the entire process. For example, as of a couple of months ago, the FBI had a backlog of more than 400,000 immigration applicants awaiting name checks. Because USCIS is not a law enforcement agency, the FBI will not authorize USCIS employees to conduct the name checks

¹ *9/11 and Terrorist Travel: A Staff Report of the National Commission on Terrorist Attacks Upon the United States* (Franklin, Tenn.: Hillsboro Press, 2004), p. 99.

themselves. Since each applicant presumably would need to undergo a name check, the FBI backlog would continue to grow and would stall the entire adjudication process unless it was addressed beforehand.

(3) Flawed Premises

Clearly, one can point to any number of specific shortcomings in IRCA. The most important shortcoming, however, is the fact that the entire law was based on two primary faulty premises. Despite overwhelming evidence that they were faulty, they persist in today's immigration debate.

Mass Roundups vs. Amnesty—The first faulty premise was the idea that the only choices for dealing with the 4 million illegal aliens present at the time were either to order mass roundups and deportations or to legalize most of them.

In fact, though, a third solution should have been obvious, especially since it is the only option that has proven itself effective again and again. That solution is comprehensive enforcement, which many have called "attrition through enforcement." Everywhere enforcement has been seriously tried, we have seen predictable results: the message goes out to the illegal-alien community that a crackdown is underway, and behavior changes. Common sense tells us that enforcement of the law will result in modified behavior, just as non-enforcement of the law results in acceleration of illegal behavior.

This is the essence of the theory of attrition. If we steadily ramp up our enforcement efforts and, finally, take away the jobs magnet by making automated worksite verification

mandatory for all employers, would-be illegal aliens will decide not to come because the benefits no longer outweigh the risks. Those currently here illegally will begin to realize that the benefits of staying no longer outweigh the costs, inconveniences and separation from their home country, since they cannot work. They gradually decide to self-deport. Around 200,000 established illegal aliens each year already are deciding to move back home. Once again, the key to the success of the attrition theory is perception. Only if current and would-be illegal aliens believe that we are serious about enforcement and intend to sustain our enforcement efforts will they modify their behavior accordingly.

There is no question that some small share will find unscrupulous employers willing to hire them under the table for cash. The penalties for hiring illegal aliens under these circumstances must be severe to be a deterrent, and even then, they will not deter every employer. Any residual population of illegal aliens can be addressed as is appropriate at that point, though. The late Congresswoman Barbara Jordan had it right when she said:

The credibility of immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave.²

Part of the illogic of the 1986 amnesty can be found in these two contradictory assumptions:

² U.S. Commission on Immigration Reform, *U.S. Immigration Policy: Restoring Credibility*, 1994, p. 3.

1. On the one hand, Congress assumed that after giving amnesty to all current illegal aliens, the enforcement provisions in the law would be powerful enough in the future to greatly reduce the number of new illegal aliens settling in the United States and would cause most future visa overstayers to decide to voluntarily go back home.
2. On the other hand, they assumed that such enforcement was not capable of creating those results with the illegal aliens living in the country in 1986, thus requiring that they receive amnesty.

The attrition through enforcement option that was rejected in 1986 was based on the logical premise that if enforcement will work in the future, it can work in the present. At the very least, the enforcement provisions passed in 1986 should have been fully implemented without any amnesty to find out how well they would work in reducing the illegal population.

Economic Collapse—The other faulty premise that drove the 1986 debate and drives the current debate is the idea that our economy is dependent on the illegal aliens who are here. There are several variations on this economic theme, mostly promoted by the cheap labor lobby that profits from cheap foreign labor. Some would have us believe, for example, that the only way to keep the U.S. economy growing is to continually add workers to the labor force. Others assure us that immigration will save the Social Security system.

The latest study by Robert Rector of the Heritage Foundation should dispel these simplistic notions once and for all. Rector examined all households in the United States that are headed by a high school drop-out—about 17.5 million households total, of which about 26 percent are immigrant households (both legal and illegal). He looked at all spending and all

revenue at the Federal, state and local levels and found that each of these households costs taxpayers a net average of about \$22,500 each year. That means a total, annual, net cost of almost \$394 billion for all of these households.

Rector is working now on a study that separates out the foreign-born households headed by a high school dropout. He has found that each foreign-born household costs taxpayers slightly less—\$18,500 per year—than native-born households. If we apply his numbers to the population that was legalized under IRCA, which had a 70 percent dropout rate among roughly 1.5 million households, taxpayers are paying \$19.4 billion each year for this population. These costs apply to all foreign-born high school dropouts, regardless of their immigration status.

Obviously, the illegal aliens who are high school dropouts are already here and are already costing us. An amnesty, however, would ensure that they will stay here permanently and cost us into the indefinite future. It would also ensure that they could bring over any additional family members, who are likely to be high school dropouts, as well.

The costs would apply to unskilled guestworkers, as well. A new guestworker program that brought in 400,000 unskilled workers and their families each year would carry an annual price tag for U.S. taxpayers of roughly \$7.4 billion.

For those who believe we could just further restrict welfare eligibility to eliminate these costs, Rector has calculated what it would take to make these households fiscally neutral. If we eliminated the Social Security system, eliminated the Medicare system, eliminated all

means-tested welfare programs, and then cut public education by about 50 percent, these households would be fiscally neutral. Alternatively, we could just ask the employers who hire these workers to pay the actual costs, rather than forcing taxpayers to subsidize their profit margins. If every employer who hires an illegal alien or who imports a foreign worker had to pay the full costs of that worker's presence in the United States, we would suddenly find that there are more than enough Americans to fill American jobs.

Conclusion

Clearly, there are a number of reasons why IRCA failed to solve the illegal immigration problem that existed in 1986. The failure to implement the enforcement provisions, the administrative overload caused by the amnesties, and so on certainly contributed to the law's failure. Primarily, though, IRCA failed because it was an amnesty. We will never solve illegal immigration by rewarding illegal aliens.

Ms. LOFGREN. As everyone is aware, the bells have rung. What that means is that we have a vote on the floor of the House. Luckily, it is only one vote. So I would ask Members to go cast their vote and then immediately return. We will not have another vote for at least 2 hours, so we will have an uninterrupted opportunity to pose our questions to the witnesses.

So we will recess for the next 15 minutes.

[Recess.]

[4:12 p.m.]

Ms. LOFGREN. The Committee will return to order, and we will begin our question process. As with your testimony, we will attempt to limit our questions and answers to 5 minutes, but as the Members have already noticed, I don't have a very heavy hand on the gavel but let's try and stick within our 5 minutes.

Let me ask Dr. Pitti, first, in your testimony you talk about some of the economic impacts, and thinking about the Bracero program, the Federal Government really failed to ensure that employers complied with protections that were built into the program. And as a result, I think it is widely acknowledged that the individuals in the Bracero program received lower wages than native workers and had substandard living and working conditions. There is discussion now, and the White House in particular has been discussing a new worker program, a temporary program, as part of any immigration reform. What lessons do you think we could learn from the Bracero program to avoid if we were to do a temporary worker program as part of comprehensive reform?

Mr. PITTI. Thank you for the question. I think of a few things off the top of my head. It is important to remember that the Bracero program was commonly understood by the early 1960's, by the late 1950's as driving down wages for U.S. resident workers, for displacing many U.S. resident workers and keeping Bracero workers who were imported in very low wage positions. They were not paid the amount of money that they were supposed to have been paid under the terms of the contract. The other thing that is important here is the terms of the contract were actually quite generous.

So I think it is important in any discussion of another guest worker program to really think critically and clearly about enforcement mechanisms because the terms of the contracts under which Bracero came were actually quite explicit that they were not to be used to undermine domestic labor, they were not to be used—they were not to be paid less than the prevailing wage, and so forth. But in fact in the enactment of the Bracero program and the way it was carried out, it was anything but that.

So I would say this about any new efforts to think about a contract labor program, a guest worker program. First of all, I think portability is very important. I think workers need to be able to move from job to job. That was denied in Bracero and it kept them trapped under the thumb of employers and really vulnerable to a particular employer. I think portability is very important. I think that the ability—the guaranteed ability to join local organizations, including that collective bargaining is a very important part of any new guest worker program. And I think scrutiny, I think we need to think a lot about Department of Justice, the funding for the Department of Justice, funding for OSHA to investigate complaints

among guest workers, and I think actually also nongovernmental agencies ought to be brought into this, whether that is churches, citizens groups or others, also to play a role in monitoring working conditions among employed workers.

Ms. LOFGREN. Thank you very much. Mr. Chishti, in your testimony you state that a major failure of IRCA, what you call this narrow focus; namely, that it dealt almost exclusively with legalizing the people who are here, and then deterrence, border deterrence, and failed to provide for continuing market forces, for lack of a better word, and continuing demand for workers. But we have heard the IRCA also was basically in a sense a comprehensive bill in that it provided for future flows to the H-2A seasonal worker program. Now we have heard criticism of that program, but why was H-2A insufficient to meet the market demand in your opinion?

Mr. CHISHTI. Thank you so much for that question. I think it is a complete misrepresentation, I think, of IRCA with respect to the future flows. I think in this Committee no one knows this more than Congressman Berman that IRCA did not create a new program for temporary workers. We already had a temporary worker program since 1952 in the context of H-2 program. All that IRCA did was to split the H-2 program into H-2A and H-2B. H-2A is precisely meant for what it says, seasonal agricultural workers. So you can't use seasonal agricultural work for anything that is nonseasonal and nonagricultural. So obviously we didn't create any new channels in IRCA for future flows. That is basically positive and comprehensive in that regard by creating another channel.

Ms. LOFGREN. Finally, Dr. Legomsky, you have testified as to the family reunification issue. But you are a huge expert on immigration law, and I thank you for that. Some Members have recently said that IRCA is exactly like what we are considering, what is being discussed today, there were fines then and there was—they went to the back of the line. But what are the differences between—not to say that we would do—you know we don't have a bill before us, but what are the differences between say what the President is proposing as you know it and IRCA?

Mr. LEGOMSKY. As a couple of people have noted, IRCA imposed no fines or any other penalties whatsoever on the legalization beneficiaries. There were application fees to cover the cost of the process, but there was no punishment whatsoever. And as a result I think it is fair to call IRCA an amnesty. In my view, I don't know how anything else could be an amnesty if it involves punishing the person for what the person has done. Normally when you hear the word amnesty, it means you violated the law but for some particular policy reason, we will forgive you and not punish you in any way. The present legislation, most of the bills that have been introduced in both Houses, contain specific provisions for stiff fines. People could quibble about how severe the fines should be or whether these are severe enough but there was clearly a punishment. And the idea is that after you have suffered that punishment, then you are free to apply through regular channels like anyone else. And if you meet a long list of requirements, which are then laid out in the proposed bills, you will be permitted to become a permanent resident, but even then you go to the back of the line.

Ms. LOFGREN. I am going to interrupt you because I am going to live by the lights myself if I am going to ask others to try to keep within that rough time frame. So I will—we may have a second round if time permits and you are able to stay. So Mr. King.

Mr. KING. Thank you, Madam Chair. I do appreciate the testimony by the witnesses here today, and it piqued my curiosity for each of you. First, I should reference the issue raised by the esteemed Chairman of the Judiciary Committee as to where I might come up with a number of 20 million illegals in America. And I would reference Bear Stearns study here that I am referring to that was dated January 3, 2005 and ask unanimous consent to introduce it into the record.

Ms. LOFGREN. Without objection.

[The information referred to is available in the Appendix.]

Mr. KING. Thank you. And then I direct my first question then to Dr. Pitti. And as I listened to your testimony, Dr. Pitti, it occurs to me that there is a certain amount of focus on the compassion of America and what kind of Nation that we could and should become. My point comes down to, how many are too many? At what point does the geographical boundaries and their natural resources and the assimilation ability of the United States get saturated to where it sinks the lifeboat, so to speak; how many would be too many?

Mr. PITTI. Thank you for the question. With respect, I don't feel that I or most people can answer that sort of crowded lifeboat question. I think it really comes down to a subjective analysis of what we think are the relative capacities of different sorts of immigrants and the relative desirability of different groups in American society. What I often say to people who ask me that sort of question is that we have long lived with these sorts of questions in the United States. As I think you know from the hearings at Ellis Island, that there have long been concerns in the United States that the number of immigrants in this country is far too many already, far disproportionate to the number that we want, whether be they Italian, too many Italians, too many Chinese, too many Japanese.

Mr. KING. You wouldn't speculate to that answer but wouldn't that be the very first question they would advocate for a policy that couldn't be undone or redone? Wouldn't that be the principle question if we were to deduct a reasoning path down through this immigration question?

Mr. PITTI. What I tried to offer in my testimony, Congressman, as you know, is the reminder that we need to think about sending countries and about solutions that brings sending countries into a real vibrant part of the discussion of how we are going to solve immigration migration problems in the 21st century, to note that migration problems are global problems that they develop out of U.S. policies, out of the policies of governments and economies.

Mr. KING. I also admit again, that is a central question. I turn to Ms. Jenks. First of all, in the definition of amnesty that we just heard from Dr. Legomsky, would you agree with that definition?

Ms. JENKS. I wouldn't. I don't think that some or any kind of penalty is sufficient here if you are giving the person who broke the law what they broke the law for. If someone comes here for a job and they get the job but they have to pay \$2,000, \$5,000,

\$10,000, they still get the job. That is what they came for, and therefore the message that goes out is if you want to go to the United States for a job, you can go illegally and you will get your job.

So I think the strings that are attached are much less important and the people—I mean, the whole point of amnesty—we are not opposed to amnesty because it is the word “amnesty.” We are opposed to it because of the message it sends and results that it has. I mean that message has consequences. Other people are going to come.

Mr. KING. And undermine the rule of law?

Ms. JENKS. Absolutely.

Mr. KING. You also in your written testimony, I noticed you referenced a study done by Robert Rector of the Heritage Foundation. Would you care to expand on that a little bit?

Ms. JENKS. He has just in the last couple of weeks released the first of three studies that he is working on that looks at the cost to taxpayers of households headed by high school dropouts. There are 17½ million of those households in the United States, native born and foreign born, and those numbers he looked at include all expenditures and all revenues, Federal, State and local, and using the same methodology as the National Academy of Sciences did in the late nineties, for all U.S. households he found that these households cost \$394 billion a year; the net average cost is about \$22,500 per household. He is now working on a study that breaks out the foreign born portion of those households and he has given me some of the new numbers he has come up with. The average net annual cost is \$18,500 of these high school dropouts, foreign born headed households. So if you are looking at, for example, the people who are legalized under IRCA, the annual net cost of that population would be roughly \$19.4 billion.

Mr. KING. Thank you, Ms. Jenks. I would ask unanimous consent to introduce the Rector study into the record.

Ms. LOFGREN. Without objection, the study will be made part of the record.

[The information referred to is available in the Appendix.]

Mr. KING. Thank you, Madam Chair. And then would I turn to Mr. Chishti. In your written testimony I noticed that you discussed Social Security and how we are going to fund the baby boomer generation. If we bring in a massive number, tens of millions of new immigrants into the United States, who funds their retirement?

Mr. CHISHTI. The generation of people who come after that? I mean, the critical thing about the number is that by the year 2030 I think really more than—pretty close to one-third of our population is going to be more than 55 years old. That is a huge, staggering number. So if you are going to have that many retirees, we need active workers to contribute to the Social Security system. That is our more urgent problem. We can't solve the more urgent problem unless we get a new flow of workers into that.

Mr. KING. I would submit we need to look a few generations down the road.

Mr. CHISHTI. We need a continuing supply of workers to be able to do that.

Mr. KING. Thank you, Mr. Chishti, and thank you, Madam Chair.

Ms. LOFGREN. Thank you. I would turn now to the Chairman of the full Committee, Mr. Conyers, for 5 minutes.

Mr. CONYERS. Thank you. In the spirit of which the second hearing was called, I wanted to look at the Simpson-Mazzoli bill, IRCA, and from the perspective of worker exploitation. And that seems to be something that we need to be cognizant of as we try to put together the legislation in 2007. Now, Simpson-Mazzoli, one-time fix, no consequences, no fines, we concede—this is the one time I will concede amnesty was applicable here, folks. Remember that limitation. There was amnesty involved. But what about what happened there, the subcontractor relationships, the fictitious relationships? What do you think about that? I want to ask Dr. Legomsky about that. And all of you, as a matter of fact.

If you weren't following the question—

Mr. LEGOMSKY. I think I understand. The question is really what went wrong with employer sanctions and some of the related provisions?

Mr. CONYERS. And to the worker exploitation. It is the exploitation that I am really trying to get at is how that happened.

Mr. LEGOMSKY. Yeah. I think—

Mr. CHISHTI. As I said early on, Congressman, there are various ways in which employers have circumvented their liability under employer sanctions. The one you point out is one of the most charged ones. People use independent contractors and get away from the definition of an employee. Now that problem is a huge problem in our country, not just related to sanctions. I think the Department of Labor itself has found out that like 30 percent of companies in the U.S. use independent contractors or people who normally should be called employees.

Mr. CONYERS. Even now.

Mr. CHISHTI. Even now. Even now. Then we know people use fraudulent documents. We have a growth industry in fraudulent documents so that people can comply with the letter of the law while they are actually hiring undocumented workers. So we have paper compliance but a huge prevalence of undocumented population at the same time, and that is obviously not good for the rule of law. And then employers have used middlemen, as we call them, the employment agencies, to hire people. Wal-Mart had a very celebrated big case last year. Wal-Mart settled for \$11 million because they were using janitors in their stores which were supplied by some other company. Wal-Mart finally gave up and they settled for \$11 million. It was one of the largest awards in this country where an employer has paid, admitting essentially that they use undocumented workers.

So all these ways in which people have circumvented this law should be stopped. And my suggestion about this is threefold. With respect to the employment agencies, we should make employers directly liable for hiring undocumented workers and not let them take the refuge in using employment agencies. If the employer-employee relationship is with the actual employer, that employer has to be responsible. With respect to independent contractors, I respectfully say that this Congress should revisit the definition of an

employer of an independent contractor. We had a very important commission all of you are familiar with, in 1995, look at this issue and basically said we should be honest about who an independent contractor is. Unless these people are willing to take risks for their own jobs, if they work for multiple employers, only in those kind of contexts we should treat someone as an independent contractor and not just let an ordinary employee be called a contractor. And I think those things are very important. The first thing is people are off the books. And people are off the books because we have stopped enforcing minimum wage laws in our country. There is less enforcement of wage in our laws today in the United States than there was in 1975.

Mr. CONYERS. Attorney Chishti, has worker exploitation increased since Simpson-Mazzoli days?

Mr. CHISHTI. I mean Simpson-Mazzoli as you full know, Congressman, was intended to improve wages and working conditions. We now know that about 8 million people in this country live below the poverty level. That is not—it certainly hasn't helped the—we know there are industries out there, especially labor intensive industries where DOL has demonstrated that there is huge violation of wage and law provisions, overtime law, health and safety law. It clearly has not improved, and unionization has clearly gone down since IRCA. And we know especially in the unionizing context, employers have very effectively used sanctions as a way to avoid a union.

Mr. CONYERS. Well, thank you so much.

Ms. LOFGREN. Thank you, Mr. Conyers. I would turn now to my colleague from California, former Attorney General Mr. Lungren.

Mr. LUNGREN. I thank the Chair for the time. And as one of those who worked on the 1986 bill, I am very interested in your comments. There was an expressed concern on many of our parts that the SAW program was a program that would potentially be subjected to fraud. And it was not our first choice, but it looked like that that is the one that ended up with the most fraud. I was interested in Ms. Jenks' comments that there was a spike in illegal immigration immediately after the signing of the bill. That is not quite accurate. If you look at the figures, the bill was in 1986, you will see the numbers in 1987 were down actually, and they were down for about, as I recall—and I am doing this from memory—for about 14 months. And then when it became clear that employer sanctions were not going to be imposed and the SAW program was rather fraudulently exploited, then the signal was very clear. We were going to have the legalization but we weren't going to do the other part, which was supposed to be the balance of the program that we all signed off on. We would have enforcement, and that is not a criticism of any Administration or any Congress, that was followed through by both Democrat and Republican administrations and Congresses. We didn't have the will to do it.

So it seems crystal clear to me that we had better have the will to have enforcement and we had better have meaningful enforcement if we are going to have any type of legislation whatsoever. Now, our first two witnesses—I am sorry I was not here to hear your testimony, but in the written testimony it appears that you were suggesting exploitation of the workers as a result of some of

the programs we had. It seems to me one of the worst parts—well, the real negative part of the Bracero program, for instance, was that it tied you inextricably to a particular employer. So that if you wished to make a complaint about that employer, you would probably find yourself back in Mexico before that could be heard. And it seems to me if we were able to have another temporary worker program, maybe it would make more sense to identify a geographic region and a particular line of work, make the determination as to how many jobs may be necessary, and allow people to come into a geographic region for a particular type of work but not necessarily tie them to a particular employer so they do have some mobility and the argument that you would find exploitation would be lost.

I would just like the four panelists to answer this question, and that is, with the legalization program we had before, what is your opinion with respect to the argument that therefore, that is based on the history of the 1986 program, we cannot entertain any thought of any program that would regularize those who have been here illegally for a substantial period of time even if you were not to have citizenship as part of that because it would be tantamount to amnesty?

Mr. PITTI. I will try to answer that quickly. I don't think that is the lesson of IRCA. I think in fact that the regularization of residents who were in the United States prior to 1986 by providing them with amnesty and what might in the future of course might not be amnesty but some sort of regularization was the success of IRCA in some real way. That part of it allowed members of the U.S. society to come out of the shadows, to use 21st century parlance, to join with workers who were U.S. born and U.S. citizens.

Mr. LUNGREN. Well, we made it very clear at the time that it was to be one time only. That is the way we broadcast it internally and externally.

Mr. PITTI. You are asking me if the U.S. Congress cannot afford to be inconsistent on this question?

Mr. LUNGREN. I am saying, what would the future hold for us if we enacted some sort of program to regularize those who are here short of citizenship? Would that set up the same scenario that we see now where we legalize 20 years ago 3.5 million people, now we have by your estimates I think 12, or whatever the number is that you are talking about.

Mr. PITTI. I will just quickly say that you know my testimony was designed to argue that in fact flows northward from Latin America through the United States are so systemic and institutionalized that it is hard to imagine—one has to imagine very, very stringent enforcement to stop that migration from coming in the future. And I don't think that another legalization program would encourage further migration.

Mr. LUNGREN. So it is irrelevant?

Mr. PITTI. I am sure it is relevant, but I don't see it as a dominant problem.

Mr. CHISHTI. Well, first of all, I mean it really depends, it is all nomenclature. I think the A word, that the concept of amnesty I think sort of diffuses the discussion of what we are trying to do in terms of integration of people here. I think most of them as you know full well, Congressman, have engaged in civil infractions.

These are civil violations of our law. It is perfectly fine to have civil fines and have large civil fines exactly to punish people for large civil violations. I think if we do a heavy fine, I think that would not in my mind be called amnesty.

The second question isn't going to create a precedent, so we keep on doing this again and again. This was what was wrong with IRCA, and you were in the middle of that charged debate. What we didn't do with IRCA was provide a mechanism for people to come for labor market needs in the future, and I said that while you were not in the room today. If as part of a comprehensive immigration reform we create more channels for people to come through for the labor needs of our country, we won't have the need to do the amnesty in the future that we are doing now 20 years later.

Ms. LOFGREN. Dr. Legomsky and Ms. Jenks. Be very quick if we could, please.

Mr. LEGOMSKY. As a proponent of legalization, I have to acknowledge that I don't think legalization will solve the undocumented problem any more than I think most backers of legalization in 1986 really thought that this would solve the entire problem of legal immigration once and for all. It was never designed to accomplish anything that ambitious. But it does take into account the practical reality that today we have 12 million undocumented immigrants in the United States who clearly are not going to leave voluntarily. And therefore, if there is no legalization, the question becomes, what do you do with these 12 million people?

Now one option is to simply do nothing and to say, okay, we have 12 million undocumented folks here in the United States. But there are real disadvantages in doing that. One is that these people are living in underground subcultures that are not healthy for anyone. They certainly aren't healthy for the immigrants themselves or for their children who live in daily fear that 1 day they or their parents are going to be apprehended or deported. Many of these children are U.S. citizens.

Second, in this post-9/11 era, it is much better for the Government to know who people are, where they are, to have photographs, to have biometric information, et cetera, than for people to be underground.

And third and last, illegal status renders you extremely vulnerable to exploitation by employers, which is bad not only for you but also for American workers who don't get hired as a result.

Ms. LOFGREN. Ms. Jenks.

Ms. JENKS. I would say that if we have another regularization program of any sort where illegal aliens get legal status, temporary or permanent, we will see more illegal immigration. And we will be sitting here again 10 years from now 20 years from now, and there are additional issues if you make it no citizenship in the path because then you essentially create a second class of people in this country. Essentially we are importing a servant class if that is—if these people can stay for any length of time and not get on the normal path to citizenship. But yes, absolutely we will see additional illegal immigration.

Ms. LOFGREN. Thank you very much. I am going to call now on the gentleman from Illinois, our colleague, Mr. Luis Gutierrez.

Mr. GUTIERREZ. Thank you. Mr. Pitti, I would like to ask you a question. In IRCA, the year everybody seems to know around here, 1986, what year did you have to be in the United States and be able to prove you were in the United States if you were not an agricultural worker? I mean, you were washing dishes or some other function in our economy in order to benefit from the 1986 legislation?

Mr. CHISHTI. January 1 of 1982.

Mr. GUTIERREZ. January 1, 1982. And isn't it true that the first offices that were opened by the Federal Government did not open until about mid-1987?

Mr. CHISHTI. They opened on June 1, 1987.

Mr. GUTIERREZ. Good. I was guessing. Actually, Mr. Berman helped me quite a bit in figuring out that day. Congressman Berman helped me quite a bit. So we passed the legislation in 1986. What do you think the figure was of undocumented workers that were locked out, that were here in the United States on June 1, 1987, when the Government said, come on down, bring us your documents, we are going to take some fingerprints, make sure you are not a security risk, we want you to legalize. What do you think between 1982 and that date, how many people do you think didn't make it because of that?

Mr. CHISHTI. Again these are all estimates. At that point we had about 4 million people.

Mr. GUTIERREZ. About 4 million people.

Mr. CHISHTI. And 3 million, as we know, got legalized.

Mr. GUTIERREZ. So about a million, a fourth of them?

Mr. CHISHTI. Three-fourths of them did get legalized.

Mr. GUTIERREZ. So a fourth of them didn't make it because of the time lapse.

Mr. CHISHTI. Time, yeah. And in response to Congressman Lungren's question about the SAW fraud, this was I think what I was trying to point out in my earlier testimony, the fact that we had this huge 5-year gap from the enactment to eligibility. It created a huge incentive for people who were not eligible to try to be SAWs. SAWs fraud was created by people who became ineligible because of the long line. Then they found all kinds of fraudulent documents to become SAWs.

Mr. GUTIERREZ. Thank you. And because the Chair may not be as generous with extra time for me—

Ms. LOFGREN. I am very even-handed.

Mr. GUTIERREZ. So if we do it—if we overhaul our immigration system, there should be a date closer to the date we pass the legislation and actually open up the offices and the legislation so we don't have that gap again?

Mr. CHISHTI. As I said, the lesson from 1986 was the program should be as inclusive as possible because that is the way to avoid fraud.

Mr. GUTIERREZ. Because that is the way to avoid fraud. And it also helps to bring the undocumented—

Mr. CHISHTI. Otherwise you would have split families because one family member would be eligible, the other would not, and we are not going to deport the spouse. In fact, that is what created the backlog in our present family immigration system.

Mr. GUTIERREZ. I don't know because this is a little bit outside, but given your expertise in this matter maybe you could help this Committee understand. Ms. Jenks says they are all here illegally, we shouldn't give them any benefit, any right to regularize because it will cause another massive wave of illegal immigration.

Let me ask you, of the 12 million undocumented workers that exist in this country, if those are workers, are we talking—when we use the figure 12 million, are we talking about the children and spouses that aren't working? Is that the total number?

Mr. CHISHTI. It is the total number. The best guess about workers is about 8 million.

Mr. GUTIERREZ. And I have found that in my practice as a Member of Congress, as people come to my office, on a number of occasions that undocumented workers come with seventh, eighth grader, high school, even college children to my office, coming and seeking—I have the case regularly, I am 21 years old, you know, I was born in the United States. I would like to legalize my parents' status and petition for them. But they can't because there is a 10 and the 3-year bar; even if they are employed and can meet the other things, they can't. And I ask them well, why didn't you regularize before? And actually they were born after January 1 of 1982. What do you think the number—if we were to do a massive—if we were to use all the power of the Federal Government that could come and we had the political will and the requisite resources to deport them, how many American citizen children would have to be deported with their parents in order to keep that family unit?

Mr. CHISHTI. Like 3.1 million in households where at least one member is undocumented.

Mr. GUTIERREZ. So the question of undocumented workers has an impact on American citizens. And if we are going to do a comprehensive immigration reform, we stress many times our immigration, we always stress the undocumented, the undocumented, the undocumented. But I think, as Mr. Legomsky said, it impacts those of us that are here legally. Mr. Legomsky, do you know how many years it would take if I were a Filipino to petition my brother from the Philippines? Could you share how many years it would take?

Mr. LEGOMSKY. I believe it is somewhere between 15 and 20. The estimates are not exact because all the visa bulletins will tell us is how many years those who are now receiving visas had to wait. We don't necessarily know how many years a person who applies now would have to wait. But 15 to 20 I think would be a reasonable estimate.

Mr. CHISHTI. I think for the Philippines it is exactly 22 years.

Mr. GUTIERREZ. Okay. 22 years. That is to reunite—and I will end with this. That is to reunite, Ms. Jenks, an American citizen at their Thanksgiving table, and they have one brother still outstanding from the Philippines to bring him to America. Those are American citizens who did it the right way. So our immigration policy and our reform also has an impact on those of us who are here legally in the United States and the family unity and basis and the roots and the stability of our Nation.

Thank you very much, Madam Chairwoman.

Ms. LOFGREN. Thank you. And now we will turn to Mr. Forbes.

Mr. FORBES. Thank you, Madam Chairman. And let me thank all of you for being here. I heard the distinguished Chairman of the full Committee mention the fact that we had an enforcement-only approach, but as I travel around and talk to people, we don't have an enforcement-only approach. We basically have an enforcement-when-you-feel-like-it approach. And that is what we feel are the most complaints about. We also hear a lot about nomenclature, and I know people don't like words but as my good friend from California says over and over again, at some point in time, words really do mean something. And basically we look and we have immigrants that are here and some of them are here legally and some of them are here illegally.

I had a friend one time who would never balance his bank account. And what he would do is each time he would get in trouble, he would close the bank account and then he would go to another bank and open up a new account and say he had solved the problem. And sometimes that is what we do. We come in here and one of the easiest things we can do to get rid of an illegal immigration problem is change the name and say that everybody who is here illegally is here legally.

I have heard all this talk today about workers, but the problem is not just workers. One of the things we have heard testimony in here about are criminal gang members that are here criminally and under TPS are actually protected where they could be out on the sidewalk in front of somebody with a placard that says, I am here illegally and I am a member of the most violent criminal gang in America, and we can't even reach down pick them up and get them out of the country. We don't need a lot of hearings to do that. We could do something about that today. We have individuals who are here that are driving under the influence illegally, and they kill innocent people who are here legally. And you know, as I look at this problem 20 years ago by all the testimony I heard, we had 3 million people. Today we have four to seven times that number, 12 to 20 million. I don't know how you ever get that number exact. There is no directory out there that tells how many people are here illegally. But 20 years from today if we do the same process that everybody is arguing to do and we fail again, we will have between 48 million to 140 million illegal immigrants in the country. And just like a *Casablanca* movie, we will round up the same witnesses and we will come back and say let's just change the bank account, let's change the name and do it all over again.

Ms. Jenks, this is the question I have for you. Go back to 1986. Look at the 3 million illegal aliens that were in the country. We paid \$1 billion for 4 years to basically compensate for the reimbursement to States for public assistance, health and education costs resulting from that legalization. Was that \$4 billion sufficient? And then given the fact that we are looking at today based on whichever numbers you want to pick, the 12 million or 20 million, how much would it cost us today if we began to reimburse the States for those costs?

Ms. JENKS. Well, the \$1 billion didn't even come close to the actual cost. And according to Robert Rector's numbers from the Heritage Foundation, if we are looking at a population of 12 million illegal aliens, conservatively 6 million households at a 49 percent high

school dropout rate, according to DHS numbers, the average annual cost of this population to taxpayers right now is \$54.4 billion.

Mr. FORBES. \$54 billion per year?

Ms. JENKS. Per year.

Mr. FORBES. And that is the annual cost today?

Ms. JENKS. Right. That is Federal, State and local, so not just State.

Mr. FORBES. Mr. Pitti, did I misread your testimony or did I read in there and basically hear you indicate that you think the poverty and crisis in Mexico was caused by the policies of the United States officials?

Mr. PITTI. Certainly not exclusively U.S. officials, Congressman. That would be a real misreading of history and I would not like to be accused of that.

Mr. FORBES. You might want to reread your testimony again. It kind of indicates that when you look at the testimony in there on page 3. But maybe I am just misreading that.

Just to finish up with you, Mr. Chishti. I notice in your testimony you say the legalization program in hindsight was the most successful element of IRCA legislation. Yet only 3 years after that bill—here is the headlines that were in the papers. In 1989. “Border Patrol Losing Ground”—that is *The Washington Post*—3 years after the signing of landmark immigration reform law designed to bring the border at San Diego under control, the nightly rush of illegal immigrants has begun again to overwhelm U.S. border patrol.”

In 1989, *New York Times*, “Migrants’ False Claims, Fraud on Huge Scale. In one of the most extensive immigration frauds ever perpetrated against the United States Government, thousands of people who falsified amnesty applications will begin to acquire permanent resident status next month under the 1986 immigration law.”

Finally, 1989, *Los Angeles Times*, “Border Arrests Rising Rapidly.” And then it says that there is a sweeping increase along U.S.-Mexico border has begun to surge, signaling a possible renewed wave of illegal entries, according to officials.

How do we find success?

Mr. CHISHTI. Thank you. That is a long question though. I think success means—I am talking about the legalization component of IRCA. That is why I say compared to other components.

Mr. FORBES. So was I.

Mr. CHISHTI. Yeah. That the people who were the—who were supposed to get legalized under that program about in the general legalization program, I think most evaluations thought that there was very little fraud. The fraud that happened was in the SAWs program. And as I said before, there was reason for the fraud in the SAWs program because the way we wrote that SAWs program and wrote this long time between the eligibility date and the implementation date. That is what created.

Mr. BERMAN. Not in the SAW. In the regular program.

Mr. CHISHTI. Exactly. Sorry. In the regular program, that created incentive for the fraud in the SAWs program. So legalization as a program I think was very successful both in terms of people it was supposed to legalize, and two, in terms of very effective, actually

collaborative relationship between the Government and the not for profit sector. It was one of the best collaborative roles.

Mr. FORBES. But not effective in stemming the tide of illegals?

Mr. CHISHTI. I didn't say anything about border enforcement or—sorry. I wanted to say that if we had provided for future flows by increasing legal channels, we would not have had those kinds of pressures from the border that you point out.

Mr. FORBES. Because we would have defined them as legal instead of illegal.

Ms. LOFGREN. Thank you, Mr. Forbes.

Mr. Berman.

Mr. BERMAN. Well, that is—the last point Mr. Forbes made is an interesting one because in my way of thinking that is why the comprehensive approach is so important. I would never suggest that a legalization program will result in there not being future illegal immigrants. I don't buy Ms. Jenks' notion that it will incentivize it because it seems quite incentivized already. I don't think passing a legalization program will do much more than—it is about availability of jobs and whatever else might be available and the ability to do it.

Simply creating new legal avenues for people to come isn't enough because whatever new avenues we create, there will be more people who want to come than slots we allow. So then you get to two other issues, one of which I think was the single biggest failure of IRCA was the fraud of—we know about the SAW fraud, but the fraud of employer sanctions was the big fraud. And I think Mr. Chishti spoke to that issue, and the importance—

If we want to be straight with the American people, we have to devise something which essentially tells them that because of things like a meaningful effectively implemented and very difficult to implement employer verification program involving biometrics and the ways in which an employer can quickly learn that the particular worker is authorized to work—by the way, the existing voluntary pilot program that some of my colleagues like to rave about, yeah, it tells you if you have a Social Security number that is a real Social Security number. It doesn't tell you if you are the person who should be using that Social Security number. So you need a very sophisticated verification program. And then you need to do the things like holding the—sure, employers should be able to use labor contractors and employment agencies and all these other things. But they have to be accountable in the context of the employer-employee relationship for the decisions of their agents in those capacities.

We know what happened in agriculture after 1986. A bunch of people were legalized. But the flow of illegal immigrants continued. Employers a little nervous about employer sanctions delegated whatever direct hiring they were doing to farm labor contractors, who in many cases were—I mean it was a total sham. And those new workers were cheaper than the ones who had been legalized, in part because there is a natural progression out of agricultural work and in part because they were pushed out by the availability of cheaper labor. You create a whole new wave of illegal immigrants. So I think—I mean that is the essence of it.

And to Ms. Jenks, I don't accept your definition of amnesty because it would seem to me if all the people who tried to rob banks and were arrested, and in one decree we released them all from jail, they may not have gotten the money from the bank but I would call that an amnesty. So in other words,—and secondly, under—but accepting your definition for these purposes. So even a person who introduces a bill that says if they came here illegally, if they go back home they can come in as a legal guest worker, for you that would be an amnesty as well because in the end they would be part of a process which allowed them to get that for which they committed the illegal act.

Ms. JENKS. If they could bypass the 3- or 10-year penalty that is an amnesty. Waiving that penalty is an amnesty. It is not a tax amnesty.

Mr. BERMAN. When my friend from Virginia, Mr. Goodlatte, introduces a bill for agricultural guest workers to be eligible, you could have come here illegally, but if you go back and come through that program that is an amnesty, too.

Ms. JENKS. I have had this discussion with his office in fact that, yes, that is waiving the penalty.

Mr. BERMAN. What about the amnesty of doing nothing?

Ms. JENKS. Absolutely horrible.

Mr. BERMAN. What about the amnesty of allowing 12 million people with all of the conditions of exploitation, the paralysis of the Congress unable to figure out how to deal with this, scared of words like “amnesty,” unable to find that kind of common ground to reach a sensible and effective solution, doing nothing because whatever those newspaper articles Mr. Forbes read about 1989 and illegal immigration, the numbers for many years later were much, much higher than they were in 1989. And why doesn't that just continue? Why isn't the biggest amnesty of all the amnesty of doing nothing?

Ms. JENKS. It isn't. I certainly would not say that this is what we want. We don't advocate doing nothing at all. But in fact, the numbers were the highest that we have seen—that we saw for about a 10-year period in 1989. I mean, they spiked after the amnesty.

Mr. BERMAN. When they really got high was after we passed that tough 1996 law that was going to stop illegal immigration with the 3- and 10-year bar. Then we really saw the number of illegal immigrants—I don't think you would call the 1996 law an amnesty.

Ms. JENKS. No. But the 245(i) provisions that Congress was passing every 2 years were.

Mr. BERMAN. In 1996 they repealed the 245(i) provisions, as a matter of fact.

Ms. LOFGREN. Thank you, Mr. Berman. The gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. I thank the Chairwoman very much. I think these methodical building block hearings are both important for the thoughtful testimony that the witnesses have given and that we are allowed to share, and also it indicates the seriousness of the effort that we intend to engage in in this Congress. I have said on a number of issues, I think this takes a number one position in

that, that this is the year, frankly, that you have to address a question that becomes a mounting crisis because of the inactivity.

Just for the record, I want to make sure that the idea of amnesty is clearly defined, as I noted to be in the dictionary, because one of the main criticisms of IRCA is that its legalization program granted amnesty, and I have heard both humorous and other definitions of amnesty. But by the American Heritage Dictionary, it is considered a general pardon granted by Government, especially for political offenses. And it was derived from the Latin word "amnesti" which means amnesia.

The STRIVE Act, which is a bill that has been introduced and the Save America Comprehensive Immigration Reform Act that I authored that has been introduced, and what I have heard from the leadership of this Congress, the leadership of this Committee does not suggest that any underlying bill will have adopted the definition of amnesty. None of those will have any provisions that would forget or overlook immigration law violations.

In addition, out of some respect for history, because certainly Senator Simpson and Senator Mazzoli obviously wanted to do the right thing, and I believe that as they have described the shortcomings were not necessarily due to design because they were looking at maybe a more limited picture of immigration, but really due to the failure to execute the law properly. So my frame of questions will be in that context to be able to try and address where we need to go.

And might I also say to Ms. Jenks, I think the value of America is that we have diversity and diversity of opinion. But I couldn't help analyze the 17 million high school graduates or, I am sorry, those who had not graduated from high school. And it cost about \$300 billion, a small pittance to the billions upon billions of dollars that the war in Iraq is costing. And I would imagine you know if there was a group that was the NumbersUSA on poverty if they had indicated that these folk are really costing the country and what next train can we put them on, these are not helpful answers because out of those non-high school graduates, I would imagine there are any number of laborers that are doing constructive work.

One of the failures that amounts to the \$354 billion, whatever the number is that you have given us, is a systemic societal problem of a lack of access to health care. We don't have universal health care. So we have poor Americans and poor others not because they are poor with a lack of education not working, it is because we don't have a system to give them access to health care. So therefore, there is an enhanced burden on the system for the cost of their health care. But that is a cost of poverty as well.

Let me go to Mr. Pitti on my overall framework and say to you, if we had had a better enforcement system under the Mazzoli-Simpson, would we have been more effective? And isn't that what you see or perceive that we are trying to do now, measures of enforcement that work alongside the border but also work internally?

Mr. PITT. I think that had Simpson-Mazzoli had a more effective enforcement mechanism or set of mechanisms, indeed there might have been gains made in the 1980's and in the 1990's. And I certainly recognize that that is what this Congress is trying to think very carefully about as we move forward into the 21st century.

These are labor market issues. As you know, they are regional, international labor market issues. They are difficult ones because, as we know, undocumented residents have come despite the enforcement mechanisms that we have put in place. And what I tried to call Congress' attention to again, as it has been in the past, are the difficult—the real costs on migrants in trying to pass through the border in the era of the 1980's and 1990's.

Ms. JACKSON LEE. This question to Mr. Chishti and Mr. Legomsky. I hope I have it almost correct. Ms. Jenks, why do we demonize the system of immigration and immigrants? And my red light. But if you could all each try to answer that. Why do we all try to demonize this issue?

Mr. LEGOMSKY. I think that "demonize" is the right word because there are individuals and organizations who demonize the undocumented population. There are clearly harms associated with illegal immigration, and we shouldn't sweep those under the rug. But by and large, we are talking about a population of fairly hard-working folks who come here because they want a better opportunity for themselves and for their children. That is not to say that we have an obligation to give people whatever they want. But at the same time I think we need to take pains not to exaggerate the harms associated with illegal immigration or to ignore the benefits.

Many of the studies that have been done on the economic impact, and the one that Ms. Jenks mentions is just one of many, many studies, come up with very different conclusions. Undocumented immigrants do cost taxpayers money in services. But of course they also pay taxes. They pay Federal and State income taxes, they pay property taxes indirectly when they rent. They pay sales taxes. They pay gasoline taxes. Whether the total amount they pay exceeds the amount they receive in services is an issue on which economists are very much in disagreement. So I think we need to be very careful on this.

Ms. LOFGREN. Mr. Chishti.

Mr. CHISHTI. I think it raises really to me very compelling moral issues. I mean, people who prepare our food, people who take care of our children, people who take care of our grandparents, we find it okay for them to do it. But we don't want to award them with membership in society. I mean that to me I think is fundamentally immoral. And you know, and that level of understanding I think on this issue has sadly been lacking.

Ms. JENKS. I actually agree with that. I think it is absolutely wrong that anyone would blame the individual immigrants who are here illegally. They have only done what we have invited them to do. You know, we should be blaming our Government, blaming the people who are not willing to make the enforcement decisions that have to be made. But the fact is we are a country of laws, and we need to expect people, all people, Americans, foreign born, everyone to obey our laws. And of course we should not be blaming the immigrants. We should be—anyone who comes to our country as a legal immigrant should be welcomed with open arms. But the fact is we can't do that economically or socially or any other way unless we have limits. It is the limits that allow us to spend the money that is needed to be spent. And I didn't bring up the \$394 billion to say that we shouldn't be paying those costs. Of course these

are—you know, the majority are America's poor. Yes, we should be paying those costs, but do we need to add to the costs? Does the Government want—should the Government have a policy of adding to poverty in this country? I think the answer is no.

Ms. JACKSON LEE. Thank you, Madam Chair. I just want to say we are a Nation of laws and immigrants, and I think we can do both enforcing of laws and providing a vehicle for immigrants.

Ms. LOFGREN. Thank you. The gentlelady's time has expired. I turn to our colleague from Virginia, Mr. Goodlatte, for 5 minutes.

Mr. GOODLATTE. I thank the Chairman, and I thank her for holding this hearing. Back in 1986 she and I may be the only current Members of Congress who were practicing immigration law at the time, and I think it is a very pertinent—

Ms. LOFGREN. Actually, I had given it up by then.

Mr. GOODLATTE. Well, I was still practicing immigration law and quite frankly very concerned what we did then, both from the standpoint of giving amnesty to millions of people and also from the standpoint of imposing sanctions on employers but not enforcing them.

So I guess the first question I would like to ask of Ms. Jenks, do you believe that the granting of amnesty in 1986 created an incentive that has encouraged more illegal immigration across the border in the hopes these new illegal immigrants would 1 day receive amnesty as well?

Ms. JENKS. I do. And I know Congressman Berman disagrees with me on this. But yes, I think amnesty does create an incentive to come. We have seen it bear out in the numbers. Every time there has been an amnesty, whether it is 245(i), whether it is the 1986 amnesty, there has been an increase in illegal immigration. And every time there has been major talk in Washington of an amnesty, when the President first announced his plan in January 2004, the Border Patrol first saw a spike. So yes, I think it creates an incentive.

Mr. GOODLATTE. Well, I agree with you and I certainly saw that as well. Congress vowed then that it would crack down on illegal immigration following the massive grant of amnesty. Obviously we haven't done so. Have we ruined our credibility on this issue, or do you believe it is possible to craft immigration reform that does not again encourage a flood of new aliens?

Ms. JENKS. I think it is possible and it is necessary. But the thing we have to focus on is changing the message we are sending to the rest of the world. If we send the message that they will eventually get amnesty, they will eventually—they can come here now and get a job, that message will increase the number of people trying to come. If we send the message that we are going to take our immigration laws seriously, that we are going to enforce those laws, that there will be serious consequences, you will have to leave the country if you are here illegally, things will change.

Not everyone will stop. I mean, we are not going to stop all attempts at illegal immigration. But we can certainly stop the majority of it just by changing that message.

Mr. GOODLATTE. Let me ask the other members of the panel if they would like to respond to that as well, but also ask them if they feel that we have consistently through the last three Adminis-

trations, if you will, enforced those new employer sanctions and other aspects of our immigration law within the interior of the country, and rather than simply focusing on the border because 40 percent of our illegal aliens enter the country legally on student visas, visitor visas, business visas. Obviously, what enables them to stay, what draws them to violate the terms of their visa or to come across the border is employment. And I am wondering if you would just simply tell us whether you think we should have been more strongly enforcing our immigration laws over the last 20 years. This problem wasn't created overnight, was it, Dr. Pitti?

Mr. PITTI. The problem of nonenforcement of immigration laws?

Mr. GOODLATTE. Of having 12 million or more people illegally in the United States.

Mr. PITTI. No. Of course. There were of course many people on the American side in the early 20th century from Europe who under 21st century parlance would qualify as illegal aliens. So no, this is not something that does not have a history.

Mr. GOODLATTE. No. But in 1986 we came up—I wasn't here. Ms. Lofgren wasn't here. Mr. Lungren was here, but that is another story. In 1986 we came up with a solution to this problem. We said for the first time we are going to impose sanctions on employers and we are going to give amnesty to millions of people who are here illegally. So therefore, the illegal immigration problem is going away. There will no longer be a magnet to draw them here and those who are already here have been taken care of. It obviously did not work out that way. Now there are those who are asking for amnesty, and I know there is a difference of opinion on how to define amnesty. But basically I would define it as not requiring somebody to leave the country to adjust their status before they can come back and gain a lawful status in the country. But be that as it may, I would like to have each of you address that. Should we be enforcing our current immigration laws much more aggressively than we are now?

Mr. PITTI. Excuse me. As I tried to say in my testimony, I think that the enforcement of employer sanctions brings benefits, but it also brings costs to American workers. Those that have employer sanctions run the risk and have run the risk of creating a workforce that is more vulnerable to exploitation, to creating subcontracting relationships that hurt American workers.

Mr. GOODLATTE. Well, I agree with that. I think illegal immigration undercuts the wage base of our current workforce, and I think there are sectors of our economy—clearly I have identified one in the agriculture sector where I was Chairman of this Committee and have introduced and reintroduced legislation to address the shortage of workers in that sector of our economy.

However, the fact of the matter is, having workers here illegally does cause problems with the workforce. That is not my question. The question is, should we be doing it? Should we be enforcing our immigration laws? Would that help to drive us toward a better policy? Would that help get us back to the kind of better credibility that we need internationally? And would it help get the kind of confidence that we do not have today with the American people?

Ms. LOFGREN. If the three remaining witnesses could very quickly answer.

Mr. CHISHTI. Quickly. Of course we should. I think employer sanctions has built in problems. I distinctly remember the great colloquies between Congressman Frank and Congressman Lungren in the debates during those days. We gave a huge loophole to the employers first by saying, we are going to hold you guilty only if you knowingly hire undocumented workers. They have found so many ways of using the loophole of the knowing definition that has created a huge incentive. We have stopped enforcing our labor laws, Congressman. We enforce our labor laws much less today than we did in 1975. There are like 796 inspectors in the Wage and Labor Division. There is one inspector for like every 11,000 employers. We have to enforce our labor laws better. We have to enforce our employer sanctions, and I think you missed part of the colloquy between me and Congressman Berman. We have to improve our verification system, and that may get us to where we need to go in terms of the enforcement you are talking about.

Mr. GOODLATTE. I agree with all of that. Thank you.

Mr. LEGOMSKY. It is really a two-part question. On the credibility issue that Mr. Goodlatte has raised, I think it is a fair question to ask, but my view is that no Congress can bind future Congresses, and everyone knows that no Congress can bind future Congresses. And therefore, even though there is a legitimate debate about whether legalization is a good idea, I would counsel against opposing legalization simply because there are some Members of a Congress 20 years ago who said this would only be a one-time affair. It seems to me it is up to each Member of Congress to decide, given where we are now, how the pros outweigh the cons. On the issue of enforcement—would you like me to stop?

Ms. LOFGREN. I think we—actually out of fairness to the other Members, we will thank you. And Ms. Jenks has waved off her answer. She says yes. And we will call on the gentlelady from Los Angeles, my colleague, Ms. Maxine Waters.

Ms. WATERS. Thank you very much, Madam Chairwoman. I am very pleased that you are our leader on this issue. I know of your long experience, and it is going to help get us to comprehensive reform. I think it is going to happen.

Just a word about the employer sanctions. I don't think that employer sanctions will ever work. I hear the discussion about better verification, but America will not fine in any significant way or jail the business leaders of this country who violate the laws over and over and over again. And they will have the protection of the Chamber of Commerce, who on the one hand will rant and rave about illegal immigration, but on the other hand will protect the business sector from any real sanctions.

So I am not going to even really deal with that because that is simply what I believe.

But what I am fascinated with is this. I hear the numbers about what the cost has been to this country for illegal immigrants, and I wonder how these numbers are compiled, how do we get the bottom line, how do we get to the numbers? I have also heard some information over a period of time about the amount of revenue that is brought into our economy and the strengthening of the economy by undocumented workers, and I am anxious to see how we can get to some real facts about this. Because right now I don't believe

much of what I hear. But I would like some comments from the members of our panel about something that is happening right now.

[5:05 p.m.]

Ms. WATERS. I read an article recently where there are some accountants who have developed a niche, and the niche is helping undocumented workers file Federal income taxes. And the offices are springing up all over and out in Los Angeles, and they had a line of undocumented workers filing their income taxes. Can I get some discussion on that? Are we not counting revenue and monies that are being brought into this economy by undocumented? What is going on?

Mr. LEGOMSKY. I can say a couple of small things about that. One is that the newspaper accounts to which Congresswoman Waters has just referred often make the point that much of this is happening in anticipation of legalization. So that is one thing to consider.

The other thing, though, is that in most studies of the fiscal impact of immigration, of illegal immigration, I should say, it is very common, depending on the ideological slant of the particular researcher, either to ignore some of the services that have to be provided for immigrants on the one hand or to ignore the tax contributions of immigrants on the other hand.

In addition to that, there are many other indirect positive impacts. One of them is that undocumented migrants, like anyone else present in the United States, consume goods and services. They create jobs in that way, in the same way that you and I do, and it is very difficult to quantify what the effect of that is. They also help in many cases to sustain marginal business enterprises that also employ Americans. And in addition, they give rise to economic growth, which increases demand, which in turn creates jobs. So it is very difficult for any serious researcher to piece all of this together, and that is why I would suggest that most of the studies are very difficult to draw hard conclusions from.

Ms. JENKS. I would say that it is estimated that about 50 percent of illegal workers do actually pay taxes. They use ITINs to pay taxes. That is what the ITIN is generally used for, for illegal aliens. So clearly there is a contribution of income taxes.

And I can tell you that the Heritage Foundation study looks at all revenues and all expenditures, and if you add up all the revenues that it looks at and all the expenditures, you get total Government spending and total Government revenues, Federal, State and local. That is sort of how he started out. But in any case, the problem is that the incomes are very low. So therefore, income taxes are very low. They also pay sales taxes. And they buy lottery tickets, it turns out quite a lot of lottery tickets, according to the Heritage study.

So there are a lot of ways they can contribute, but there are also a lot of services. If you also take into account the services that have to increase as population increases, highways, infrastructure, things like that, then they have to pay a share of that as well. So when you add all that up, there tends to be the net loss that the Heritage study has found.

Ms. WATERS. Is there an underground economy that you can quantify that we really don't know what is going on with that underground economy?

Ms. JENKS. You can quantify it to some degree because of census data. Obviously there is an undercount, and they try to add some number for the undercount. So there is a small portion of it that would probably be lost.

Ms. WATERS. I am sorry, are you saying that the census will document the number of undocumented migrants?

Ms. JENKS. Yes. The Census Bureau essentially is collecting data on everyone out there. You don't just get a census form if you are here legally; you get a census form if you are living at a particular address.

Ms. WATERS. And you think undocumented migrants are filling out census forms?

Ms. JENKS. Some of them are.

Ms. WATERS. What percentage of Americans don't fill out the form?

Ms. JENKS. Very few people who get the form actually fill out the form. The Census Bureau is getting data that is—I mean, it is all self-reported, so they are getting data that says it is from illegal immigrants, and they are also factoring in that the undercount would be greater for illegal aliens than for citizens.

Mr. CHISHTI. First, just on the study. There are a number of studies completely on the other side of the cost/benefit analysis which say that the net contribution of immigrants is much larger, estimates have said \$30 billion larger, than the benefit they receive. So that is not the only study on the table. And we will be glad to provide the Subcommittee with other studies on that issue.

[The information referred to was not received by the Subcommittee prior to the printing of this hearing.]

Mr. CHISHTI. When I read the tax study, there are three things that went through my mind. First of all, these people pay taxes, they actually pay taxes. That is good news to me.

Second is that of all the immigrants in the country, the people who are eligible for the least benefits are undocumented. They get almost no benefits. They get basic public education and emergency healthcare. So they are the least drain among all immigrants and are paying taxes.

The third good news for me was if so many of them are actually paying taxes, that means they are on a payroll. That means we have actually a way of getting through the employment verification system to the employer sanctions regime, which has been very good news to me.

Ms. LOFGREN. I wonder if we could ask Mr. Ellison to take this.

Mr. ELLISON. Thank you, Madam Chair. I want to join with the other Members of this Committee in applauding your efforts, and let me begin.

Ms. Jenks, thank you for your presentation. Earlier when you made your opening remarks, I think you made the observation that amnesty is giving the criminal the rewards, the sought-after thing that they wanted, which is a job. And to use the word "criminal" and "crime" sort of struck me because I wasn't aware that being in the United States without the proper documentation constituted

a criminal offense. Did you mean to imply that it does, or maybe I am not informed?

Ms. JENKS. No. Illegal presence is not a crime; however, entering the country without inspection is a misdemeanor the first time, a felony thereafter. So that is a crime.

Mr. ELLISON. I guess what I am wondering is when you were using the term "crime," that was just really kind of a rhetorical device in order to make your point; is that right?

Ms. JENKS. No, not really. I am saying that if you have entered the country illegally, you have committed a crime. If you have overstayed a visa, you have committed a civil violation.

Mr. ELLISON. Right. Ma'am, I do know what a civil violation is, but that is not a crime. You will agree with me, right?

Ms. JENKS. I agree with you.

Mr. ELLISON. So the term "crime" was sort of a loose use of the term; would you agree with that?

Ms. JENKS. Sure.

Mr. ELLISON. Because in this case being precise is important; wouldn't you agree?

Let me ask you this question. I think it was Representative King who was relying on a number of 20 million undocumented people in the United States. And Chairman Conyers said he heard the term 12 million. I heard the term 12 million. It doesn't really matter which one, but is it your view that those individuals must be deported from the country in order to have what you would view a fair and just resolution to the problem here?

Ms. JENKS. It is my view that they need to leave the country, not that they need to be deported. But, yes.

Mr. ELLISON. But one way or another out, right?

Ms. JENKS. Yes.

Mr. ELLISON. Now, you have made some interesting observation about cost. What would it cost to do that?

Ms. JENKS. That is why I am saying that we are not proposing that there be mass round-ups to pick up all these people and make them leave the country. What we are saying is that if you start to enforce employer sanctions, if you actually take away the jobs—we know that the vast majority are coming for jobs. Take away the jobs, they have no choice but to go home. Not all of them will go, clearly. There will be some residual population here. At that point we can decide as a Nation what to do with those people. But we can start a process of, yes, we need to ramp up enforcement so the number of deportations would increase, but then you also provide incentives essentially for self-deportation, and that would be the vast majority.

Mr. ELLISON. But you would agree that for the United States to input resources, buses, trains, planes, whatever, to get everybody out, whether it is 12 million or 20-, that would be cost-prohibitive?

Ms. JENKS. Sure. And I have not heard anyone propose that.

Mr. ELLISON. Well, you said they have to go, so I was just thinking, assuming they are not all going to walk.

Ms. JENKS. Well, they got here somehow.

Mr. ELLISON. Right. Sure. They certainly did. And if they are going to get out, they are going to have to get out somehow, right, and that is going to cost something, right?

So anyway, my next question is you cited some studies focusing on the expenses to our Government to have undocumented people here. Can you tell me, did those studies incorporate the contributions that these individuals make to our society, or were they simply just an assessment of the expense?

Ms. JENKS. Well, it is an assessment of fiscal impact. So in terms of contributions, they are considering taxes paid, lottery tickets bought, you know, all of the fiscal contributions. If you are talking about adding to diversity, adding to ethnic flavor, things like that, no, of course not. But I don't know how you would quantify those things. But on the other side of that there are costs that are non-quantifiable as well.

So how does the Government make those decisions? I would suggest that the Government would be best off making decisions largely on the basis of things that it can quantify and are you as taxpayers going to be willing to continue to foot this bill.

Mr. ELLISON. Thank you, ma'am.

Now, Dr. Legomsky, you did mention, and I was going to bring it up, but I think you beat me to it, that there have been a number of studies, not just one. Could you kind of talk about what some of the other studies have found in terms of this question of whether or not undocumented people are a drain to the American economy or not?

Mr. LEGOMSKY. I suspect that Dr. Chishti is probably more familiar with some of those studies than I am, but over the course of the past 20 or 30 years, there has been a proliferation of studies, as he has said. Many of them have found that the fiscal contributions of undocumented immigrants exceed the money that is spent on services, in large part because of some of the reasons that he mentioned. One of them is even though undocumented immigrants are subject to the same taxes as everyone else, they receive almost nothing in the way of Government assistance. They do by adding to the population, I suppose, increase the need for more roads, more infrastructures, et cetera. But the two main expenditures that States and local governments have been the most concerned about are public education and emergency medical care. They are eligible for almost nothing else. Moreover, and I don't think this point has been mentioned yet, while they contribute tremendously to the Social Security System, they are ineligible to receive anything from it, so they have a very positive fiscal impact in that sense.

Mr. ELLISON. Could you offer your views on the advisability of permitting students who have been educated in American high schools to be able to take advantage of in-State tuition in the States from which they graduated from those high schools without regard to their status, immigration status? Could you comment on that?

Mr. LEGOMSKY. Thank you for the question. I would love to comment on that. I think this is one of the more heartbreaking issues. The vast majority of the students who are undocumented and who wish to attend a State college or university in the United States are kids who came to the United States typically at a very early age. They were in no position at the time to say to their parents, I am sorry, I can't come with you, it would be wrong. They have

committed no more wrong than anyone in the United States, and yet in many cases, no matter how hard they work in high school, they are being deprived of any practical opportunity for a college education.

The reason I assume that if they can't go to State public universities, they will be deprived of an education is that undocumented kids are also ineligible for almost all forms of financial aid. So if, in addition to both those things, we have the current law which seems to say that a State may not regard an undocumented student as an in-State resident for tuition purposes, unless it also regards all U.S. citizens from other States in the same way, which, of course, they are not going to do, the combination makes it almost impossible for very deserving children to be able to go to college.

Mr. ELLISON. The last question, if I have any time left. One of the things that has been sort of marketed in some of the communities of color that I represent—I represent the Fifth Congressional District of Minnesota, and we have communities of color there, as we all do, I guess, some of the ones that are native born and maybe been in the United States for many generations—is that somehow undocumented workers are taking their jobs. And it is interesting to me because some people who on the political spectrum seem to demonstrate not too much concern for these communities of color now all of a sudden want to champion their cause in terms of enlisting them in the fight against undocumented people. And my question is, is there any validity to that point of view? Do you understand my question?

Mr. LEGOMSKY. Yes, I think.

Mr. ELLISON. Should I make it tighter?

Is there any validity to the idea that, for example, native-born Hispanics and African Americans are being displaced by undocumented workers?

Mr. LEGOMSKY. With all respect, I think there is some validity to that observation. There are distinguished economists who otherwise support liberal immigration rules who will say that one negative effect could be the impact on low-skilled American workers. There are other studies that say such an impact does not exist. But there really are credible points of view on both sides of that issue.

Mr. ELLISON. Mr. Chishti, would you like to weigh in on that point?

Mr. CHISHTI. I would be glad to.

Again, I think what Dr. Legomsky said is true. Studies on this issue are all over the map, to be honest. But I think the best study shows the extent is minimal, and it is in pockets. African American workers should not get discriminated by immigrants taking these jobs. There is discrimination some places against African Americans, and we must enforce our discrimination laws to make sure that doesn't happen.

The second most important thing is the jobs that we should be training African Americans for, we have cut out a lot of training expenditures, and that is where we need to put more of an effort, because the jobs of the future are going to be more in the high end of our labor market, and some of the African Americans can't com-

pete in these labor markets because they don't have the access to that training, and we should beef up on those programs.

Mr. ELLISON. Thank you.

Ms. LOFGREN. Thank you, Mr. Ellison. And thanks to all of you for a very extensive and useful hearing. The witnesses, thank you so much for your testimony, both your written testimony, which as I said earlier will be part of the record, as well as your oral testimony.

Without objection, Members will have 5 legislative days to submit any additional written questions to any of you, which we will forward and ask that you answer as promptly as you can to be made part of the record. Without objection the record will remain open for 5 legislative days for the submission of any other materials.

Our hearing today I think has helped to illuminate some of the issues concerning the 1986 immigration reform legislation. I hope that this information will guide us and be of value to us as we move forward on looking at comprehensive immigration reform.

I thank all of you and note tomorrow morning we will be here at 10 looking at shortfalls in the 1996 Act. And so thank you again, and this hearing is adjourned.

[Whereupon, at 5:36 p.m., the Subcommittee was adjourned.]

A P P E N D I X

MATERIAL SUBMITTED FOR THE HEARING RECORD

STUDY ENTITLED "THE UNDERGROUND LABOR FORCE IS RISING TO THE SURFACE," BY ROBERT JUSTICH AND BETTY NG, BEAR STEARNS, SUBMITTED BY THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

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Asset Management

The Underground Labor Force Is Rising To The Surface

Robert Justich and Betty Ng, CFA
January 3, 2005

Illegal immigrants constitute a large and growing force in the political, economic, and investment spheres in The United States. The size of this extra-legal segment of the population is significantly understated because the official U.S. Census does not capture the total number of illegal immigrants. In turn, the growth of the underground work force is increasingly concealing the economic impact of this below-market labor supply. Our research has identified significant evidence that the census estimates of undocumented immigrants may be capturing as little as half of the total undocumented population. This gross undercounting is a serious accounting issue, which could ultimately lead to government policy errors in the future.

Though we cannot conduct an independent census of the United States population, as investors, we need not accept the accuracy of the official census immigration statistics, which are widely recognized as incomplete. There are many ancillary sources of data that provide evidence that the rate of growth in the immigrant population is much greater than the Census Bureau statistics. School enrollments, foreign remittances, border crossings, and housing permits are some of the statistics that point to a far greater rate of change in the immigrant population than the census numbers. At the risk of appearing dogmatic or taking a leap of faith, we have applied the rate of growth from these other areas and have drawn several conclusions about the current immigration population:

1. The number of illegal immigrants in the United States may be as high as 20 million people, more than double the official 9 million people estimated by the Census Bureau.
2. The total number of legalized immigrants entering The United States since 1990 has averaged 962,000 per year. Several credible studies indicate that the number of illegal entries has recently crept up to 3 million per year, triple the authorized figure.
3. Undocumented immigrants are gaining a larger share of the job market, and hold approximately 12 to 15 million jobs in the United States (8% of the employed)

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4. Four to six million jobs have shifted to the underground market, as small businesses take advantage of the vulnerability of illegal residents.
5. In addition to circumventing the Immigration Reform and Control Act of 1986, many employers of illegal workers have taken to using unrecorded revenue receipts. Employer enforcement has succumbed to political pressure.
6. Cell phones, internet and low-cost travel have allowed immigrants easier illegal access to the United States and increased their ability to find employment and circumvent immigration laws.

We believe that immigration is becoming one of the most significant economic themes of this decade. The investment implications for 2005 and 2006 will hinge on the forthcoming government policy decisions in amnesty, employer enforcement, and monitoring systems, as well as the effective enforcement of the laws. Over the coming year, we intend to monitor and analyze the benefits and costs of assimilating a demographic group the size of New York State into the financial and legal mainstream. Though this challenge is not quite the magnitude of, say, German reunification, we believe most investors are underestimating the magnitude and significance of this theme.

The growing extralegal system in the United States has distorted economic statistics and government budget projections. The stealth labor force has enhanced many of the economic releases that investors follow closely. Payroll numbers understate true job growth and inflation has been artificially dampened by this seemingly endless supply of low-wage workers. The large infusion of the imported labor supply has reduced average annual earnings by approximately 4 to 6 percent. Real estate prices have been boosted by the foreign population infusion. The productivity miracle may be exaggerated because the government is incorporating the output of millions of illegal immigrants but not counting their full labor input. Long-term budget projections are probably overstating the potential growth of the U.S. economy because productivity is inflated. Or, stated differently, are long-term growth projections dependent on a steady flow of illegal immigration that no one is taking into account?

As census procedures improve and the immigration numbers are revised closer to reality, many of these questions will be answered, and public perceptions will change. Many government forecasts, policies and procedures will be modified to compensate for the undercounting. The public sector will incur significant costs in assimilating a reclassified population. An abrupt increase in employer enforcement could have a negative impact on GDP. In the short-term, an adjustment to immigration policies could squeeze small business profits and increase the budget deficits. Longer-term, we believe the effects will be more balanced as this invisible work force provides aid to the demographic

problems of social security. Increased enforcement of legal employment procedures should also boost tax revenues.

The implications of these massive inflows of workers are enormous. Although there are economic benefits to cheap, illegal labor, there are significant costs associated with circumventing the labor laws. The social expenses of health care, retirement funding, education and law enforcement are potentially accruing at \$30 billion per year. Many of these costs lag and will not be realized until the next economic downturn and beyond as new immigrants require a safety net.

On the revenue side, the United States may be foregoing \$35 billion a year in income tax collections because of the number of jobs that are now off the books. Illegal aliens offer below market labor costs and many employers circumvent regulations to take advantage of the laissez faire government enforcement process. We estimate that approximately 5 million illegal workers are collecting wages on a cash basis and are avoiding income taxes.

The United States is simply hooked on cheap, illegal workers and deferring the costs of providing public services to these quasi-Americans. Illegal immigration has been America's way of competing with the low-wage forces of Asia and Latin America, and deserves more credit for the steroid-enhanced effect it has had on productivity, low inflation, housing starts, and retail sales.

From a personal standpoint, our research does not take sides with any of the emotional arguments of the *Crossfire* mindset. We are grateful to have had the opportunity to speak with immigrants, local business owners, realtors, and police officers. This project afforded us the opportunity to see into the past and look into the future of the United States.

Problems With The Census: The Missing Half

The Census Bureau estimates that 8.7 million people are illegally residing in the United States, while the Urban Institute estimates a total of 9.3 million people. The Current Population Survey (CPS), a joint project of the Bureau of Labor Statistics and the Census Bureau, puts the number at 9.2 million. In a recent report released in November 2004, the Center for Immigration Studies (CIS) stated that the CPS could have missed as many as 10% of illegal aliens, suggesting a total illegal population of 10 million as of March 2004. We believe that these estimates fall short. The Census Bureau's counting process for the migrant population has some shortcomings. According to our discussions with illegal immigrants, they avoid responding to census questionnaires. For this reason, the official estimates do not fully capture this group. The CPS, the Census Bureau, the Urban Institute, and the former INS (now part of the Department of Homeland Security) all use similar processes to determine the total number of immigrants, and which immigrants should be categorized as legal and illegal. In essence, this has created a

circular equation that relies on a singular source of inaccurate statistics that gives the impression of independent, multiple verifications.

According to a recent study by the Migration Research Unit, University College London, a wide range of methods have been used to measure immigration flows, which by definition eludes registration and statistical coverage. "Estimating the numbers of illegal resident persons in a country is a task made extremely difficult by the unrecorded nature of the phenomenon, by the problems of the data that are recorded and the different definitions, data sources, collection methods and legislative differences between countries. The dynamism and fluctuation in the size of the illegal population is as much related to the intricacies of the immigration law as to the movements of the migrants themselves." Studies of methods used to calculate the illegal population have concluded that no existing method "provides a well-founded or rigorous method by which to measure the illegal population."

The Congressional Budget Office acknowledges "deriving estimates of the number of unauthorized, or illegal, immigrants is difficult because the government lacks administrative records of their arrival and departure, and because they tend to be undercounted in the census and other surveys of the population. Unauthorized immigrants generally fall into one of two categories: those who entered the United States illegally and without inspection and those who were admitted legally as visitors or temporary residents but overstayed their visa."

According to Maxine Margolis, author of *An Invisible Minority: Brazilians in New York City*, the discrepancies started well over a decade ago. The 1990 census, for example, recorded only 9,200 Brazilians in New York City, while the local Brazilian consulate estimated 100,000 Brazilians at that time. The Brazilian foreign office placed the number at 230,000; Dr. Margolis also noted that comparisons of the Boston Archdiocese and Brazilian consulate records with U.S. census records show a startling 10 to 1 difference.

The latest census taken in 2000 significantly revised the number of illegal immigrants upward versus 1990 projections. The INS also increased their estimates. Upward revisions to such projections have been a consistent trend.

The Implications of Illegal Labor

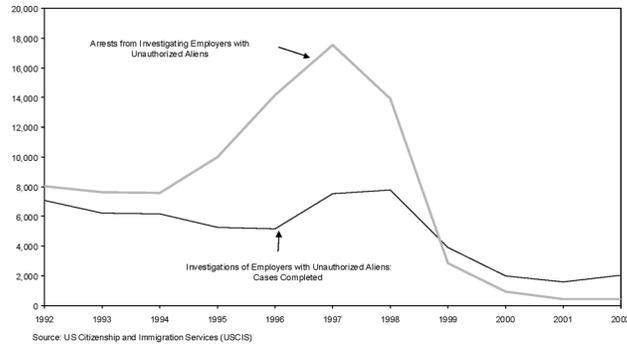
Regardless of the politics of immigration, getting an accurate read on the size of the current wave is important. Tax collections, budget projections and school capacity planning are a few of the public sectors functions that rely on accurate head counts. Eventually, the official statistics will catch up with the new reality that global migration is exploding. When population and labor force statistics are properly synchronized, we will see an impact on financial markets, economic statistics and social policy.

These revisions will bring some difficult decisions to the surface, as it seems that we have been living in a state of denial for almost a decade. If indeed, the number of illegal immigrants is 20 million people, approximately the equivalent of New York State, any amnesty or legalization and assimilation process will require significant public sector resources.

Illegal immigrants work very hard to conceal their identities and successfully avoid being counted. Even apprehended illegal migrants will hide important personal data on their status to avoid removal. Census officials and academics underestimate the ingenuity and the efficiency of the communications network among immigrants. Understandably, illegal immigrants go to great lengths to maintain a low profile and conceal their identities, not only for census purposes, but for tax purposes as well. The risk-reward trade of dodging census inquiries is severely skewed. Migrants that pay large portions of future earnings to gain entry into the United States make the sacrifice of leaving their families behind, or have trekked through physical obstacles and thousands of miles; accordingly, they have no downside risk in discarding census surveys.

Employers also have incentive to hire undocumented workers off the books, taking advantages of inefficient immigration enforcement. The competitive winds of deflation from overseas labor markets have forced U.S. employers to find extra-legal, innovative ways to capitalize on sources of cheaper labor to stay competitive. These employers have, in turn, placed pressure on the government to ignore the flood of cheap labor. INS enforcement of employer violations has decreased dramatically over the last five years. This trend is counter intuitive, given the substantial rise in illegal immigration during a new era of national security.

Chart 1. INS (now USCIS) Enforcements

**Evidence Beyond Anecdotal**

The strongest evidence supporting our theory that the actual illegal population is double the consensus estimates lies within several micro trends at the community level. We see very dramatic increases in services required in communities that have become gateways for immigration. States with high populations of undocumented immigrants have experienced extra demand for public services. The top nine states, California, Texas, Florida, New York, Illinois, New Jersey, Arizona, Georgia and North Carolina account for approximately 50% of the undocumented population. Although the federal government has the sole authority to govern immigration flows, the responsibility for providing support to legal and illegal immigrants rests with the state and local governments.

The de facto administration at the state and local level reinforces our premise that we must look at local statistics to extrapolate the most reliable headcount of immigrants. **The increases in services, including public school enrollment, language proficiency programs, and building permits all point to a rate of change far greater than the census numbers would imply for the demand for these local services.** The growth in these areas indicates that more people are moving into these communities than the official estimates.

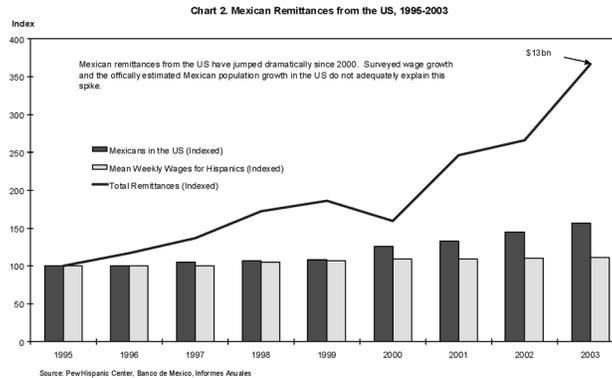
Based on several criteria, we believe that immigration is growing significantly faster than the consensus estimates:

1. Remittances
2. Housing permits in gateway communities
3. School enrollment
4. Cross border flows

Remittances

Many immigrants, particularly those with immediate families in their native country, provide financial support to those left behind. Remittances are surging because many immigrants send home on average \$1,400 to \$1,500 per year through money transfers. In 2002, people sent \$133 billion worldwide, according to the World Bank. Developing countries accounted for \$88 billion of the total, up 33% from \$60 billion in 2000. Countries that are experiencing migration outflows are having very large increases in remittances. Remittances from the United States to Mexico have tripled to \$13 billion between 1995 and 2003. For Mexico, this is an important source of funds that has surpassed foreign direct investments and tourism receipts in 2003, and is second only to petroleum export revenues.

Most importantly, this explosion in remittances is not consistent with the estimates of legal and illegal immigrants from Mexico. The rate of increase in remittances far exceeds the increases in Mexicans residing in the U.S. and their wage growth. Between 1995 and 2003, the official tally of Mexicans has climbed 56%, and median weekly wage has increased by 10%. Yet total remittances jumped 199% over the same period. Even considering the declining costs of money transfers, the growth of remittances remains astounding.



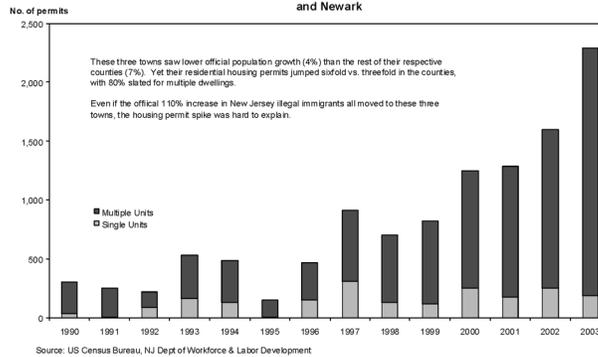
The rapid addition of bank accounts by Mexicans living in the U.S. is also revealing. According to the Pew Hispanic Center, 39% of surveyed Latino immigrants cited legal status as a concern for opening bank accounts. This motivates many immigrants to remit cash through private money centers such as Western Union and Money Gram, which charge very high fees. Since late 2001, however, many major banks including Citibank, Bank of America, and Wells Fargo Bank began accepting *matriculas*, photographed identity cards for Mexicans living in the U.S. These cards show the local addresses of the holders, and any legal or illegal Mexican can obtain it at one of the 45 Mexican consulates across the country. The removal of legal status as a concern for opening and using bank accounts has led to a boom in retail business for some banks. Wells Fargo opens an average of 700 new accounts everyday based on this identification, representing the fastest growing segment for the bank. To date, around 2.5 million *matriculas* have been issued, and the number is growing.

Housing permits

In major immigrant gateway cities, the influx of immigrants has led to overcrowded dwellings and a housing boom unexplained by official population growth. Many illegal immigrants, especially those who just arrive, reside in congested dwellings in cities, with the hope of finding jobs and upgrading to better living conditions later. These congested dwellings often house far more tenants than they are built for, and their landlords have no qualms about cramming in additional renters for a surcharge. Even so, new housing demand in these illegal immigrant enclaves outstrips those in other areas.

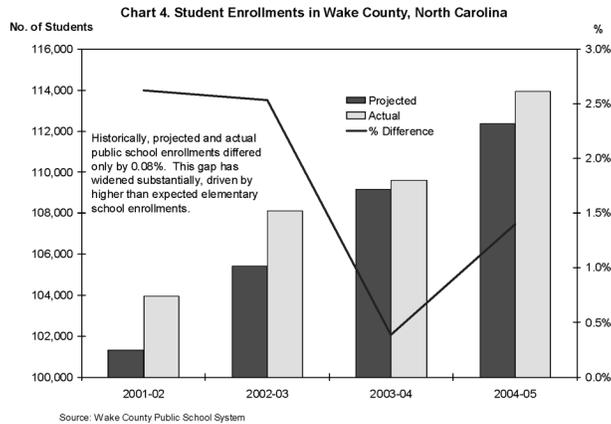
In New Jersey, the three gateway towns of New Brunswick, Elizabeth, and Newark exemplify this trend. According to the census, the combined population in these three towns between 1990 and 2003 grew only 5.6%, less than the 9% reported in the rest of the three corresponding counties. Yet housing permits in these three towns shot up over six-fold, while the rest of the three counties only saw a three-fold increase. More importantly, 80% of these permits were designated for multiple dwellings, so the corresponding increase in people accommodated are even greater. Official statistics state that illegal immigrants in New Jersey have jumped 110% during the same period – an estimate that is inconsistent with the housing statistics, our discussions with local realtors and the changes that we have visually observed in the demographic landscape.

Chart 3. Housing Permits in New Jersey Immigrant Gateways: New Brunswick, Elizabeth, and Newark



School Enrollment

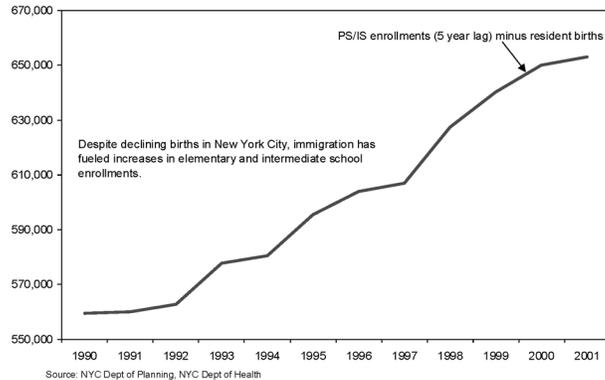
The major immigration gateways have experienced school enrollments much higher than projections. The decrease in the number of births in the past decade had led education administrators to expect decreasing school enrollments as a post echo boom trend. A higher immigration rate, however, has offset the impact of declining births. The enrollment statistics for a sample of school districts that included Queens, New York, Elizabeth, Newark and New Brunswick, New Jersey and Wake County in North Carolina revealed explosive growth in immigrant students, far beyond numbers consistent with legal migration limits.



According to the Urban Institute, children under 18 comprise approximately 17% of the undocumented population, with only half attending school, making the sharp increases in school enrollment more telling. We can extrapolate that for every undocumented immigrant child in the public school system, there are potentially 8 to 9 additional undocumented men, women and children living in the United States.

In New York City, nearly one-quarter of the general population is under the age of 18. Approximately 55% of these children were enrolled in grades pre-K-12 in the 2001-2002 school year. It appears that the ratio of illegal immigrant school children to adults is much lower than the general population, and understandably so. Historically, the transition of illegal immigrants is lead by single males, followed by single females, who establish a presence, a job and home before starting a family or relocating other family members from their native countries.

Chart 5. Declining Births and Increasing School Enrollments in New York City



With a total enrollment of 1.1 million students, the NYC public school system is the largest in the nation. Immigrant student enrollment for the 1998-2001 period was 103,000, with Queens accounting for the largest share, 37,000. Between 1990 and 2001, more than half of New York City's school districts increased their enrollments 10% or more, driven by a high number of immigrant students.

Demographic and enrollment trends according to the New York City Public Schools system state:

- "To a significant degree, high rates of immigration offset the effect of a declining number of births on school enrollment." Administrators have been surprised that school population growth significantly exceeded earlier projections, thus creating overcrowding in many school districts.
- "In the three-year period from 1999 to 2001, 102,867 immigrant students registered for grades pre-K-12 in New York City Public Schools, with many predominant countries of origin, other than Mexico, including the Dominican Republic, China, Jamaica, Mexico, Pakistan, Ecuador, Colombia and Haiti."

Cross Border Flows

Pulitzer Prize reporters Donald L. Barlett and James B. Steele recently reported for *TIME* magazine that “the number of illegal aliens flooding into the United States this year will total 3 million. It will be the largest wave since 2001 and roughly triple the number of immigrants that will come to the U.S. by legal means.” The *TIME* investigation, according to Mr. Barlett, relied not only on figures projected by the U.S. Border Patrol, but also on the reporter’s extensive investigations along the Mexican border at factories, local communities, and the district offices of the U.S. Border Patrol.

Though more resources have been designated to patrolling the Mexican border, *TIME* argues that “the government doesn’t want to fix it, and the politicians, as usual, are dodging the issue, even though public opinion polls show that Americans overwhelmingly favor a crackdown on illegal immigration.” It can be strongly argued that enforcement at the work place is a much more efficient way of controlling illegal flows because the primary incentive for sneaking into the United States is money and jobs. A telephone verification system was designed under the auspices of the Immigration Reform and Control Act of 1986 for employers to confirm the legal status of potential employees. As of today, this system is still not running.

Migration is a Global Macro Trend

The world is undergoing the largest migration wave since the late 1800’s. Over 175 million people are in motion. The dramatic increase in human mobility has left the public sector and policy makers behind. The specific and general understanding of migration flows has not kept pace with the growth, complexity and implications of this phenomenon. The economic implications of demographics have increased tremendously over the last 20 years. In no other time period during the last century have demographics undergone such a subcutaneous change in the United States.

The human race is on the move – human mobility is increasing drastically, according to the International Organization for Migration (IOM), the Population Division of the United Nations. It estimates the total number of international migrants is approximately 175 million or 2.9% of the world population. The migration wave has two components – transnational and rural to urban, and these waves are changing the dynamics of government, economics and lifestyles more than any other driver of human behavior.

Governments are seriously behind in recording and comprehending the current phenomenon, and more importantly, governments are making economic and social policy decisions based on flawed information. Like corrupt corporate accounting practices or poor national security information, the United States is struggling with its immigration policies because of false assumptions and unreliable data.

Far Reaching Investment Implications Hinging on Government Policy and Enforcement

The importance, rightfully or wrongfully, that markets place on economic data can be demonstrated in the bond market reactions to employment releases. Employment releases are like earnings releases in that investors count on the information to be accurate, within a reasonable margin of error, so that good analysis can lead to prudent evaluations of risk and reward.

In the case of household employment numbers, there is a 90% confidence interval for monthly changes in employment, which equates to a margin of error of approximately plus or minus 350,000. A 350,000 margin of error on a labor force of 135 million people is acceptable, but the current migration wave is distorting total employment by the millions, we believe. This presents serious statistical problems that can lead to faulty investment decisions. Unless the government and investors get the numbers on immigration correct, the market will fail to grasp the extent of the required policy changes. The consequent adjustments could be drastic and disruptive to the bond market.

To a large extent, U.S. immigration policy is adhoc, according to Robert Shiller, Stanley B. Resor Professor of Economics, Yale University:

The system that developed countries currently use to keep people from less-developed countries out is inefficient. The United States has strict immigration policies but lax enforcement; so many people manage to slip illegally over the border. Once here, the illegal immigrants pay dearly in terms of quality of life. Then, periodically, the United States considers granting amnesty to illegal immigrants. This is a crazy system, and we could imagine a better one that could someday handle immigration.

Belated policy responses no doubt complicate efforts to assess the number of illegal migrants. However, the focus on the migration issue is growing. The profile of the immigration topic is rising in the media, the legislature, and in grass root movements. Many documentary and feature films are exploring the immigration themes. State and local governments and medical institutions in the gateway states are being financially impacted by the increased demand generated by these new American residents. Arizona's Proposition 200 may represent a new trend to address the state and local strains associated with this unanticipated and underestimated population growth. We expect that the coverage, the tangential issues and the political emotions will be magnified in 2005. In this paper, we have merely outlined what we see as the magnitude of the current migration wave. We have barely touched on the economic and investment implications. In the coming months, we will explore further the specific relationship between public policy, enforcement and the more specific implications for the economy and the bond markets.

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STUDY ENTITLED "THE FISCAL COST OF LOW-SKILL HOUSEHOLDS TO THE U.S. TAXPAYER," BY ROBERT RECTOR, CHRISTINE KIM, AND SHANEA WATKINS, PH.D., THE HERITAGE FOUNDATION, SUBMITTED BY THE HONORABLE STEVE KING, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF IOWA, AND RANKING MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

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or as an attempt to aid or hinder the passage of any bill before Congress.

Executive Summary

Each year, families and individuals pay taxes to the government and receive back a wide variety of services and benefits. When the benefits and services received by one group exceed the taxes paid, a distributional deficit occurs, and other groups must pay for the services and benefits of the group in deficit. Each year, government is involved in a large-scale transfer of resources between different social groups.

This paper provides a fiscal distribution analysis of households headed by persons without a high school diploma. The report refers to these households as “low-skill households.” The analysis measures the total benefits and services received by these households compared to total taxes paid. The difference between benefits received and taxes paid represents the total resources transferred by government on behalf of this group from the rest of society.

The size and cost of government are far larger than many people imagine. In fiscal year (FY) 2004, federal, state, and local expenditures combined amounted to \$3.75 trillion. One way to grasp the size of government more readily is to calculate average expenditures per household. In 2004, there were some 115 million households (multi-person families and single persons living alone) in the U.S. Government spending thus averaged \$32,706 per household across the U.S. population.

Government expenditures can be divided into six categories. The first four, which can be termed “immediate benefits and services,” are:

- **Direct benefits**, which include Social Security, Medicare, and a few smaller transfer programs;
- **Means-tested benefits**, including cash, food, housing, social services, and medical care for poor and near poor individuals;
- **Public educational services**, which include the governmental cost of primary, secondary, vocational, and post-secondary education;
- **Population-based services**, which are government services made available to a general community including police and fire protection, highways, sewers, food safety inspection, and parks.

Two additional spending categories are:

- **Interest and other financial obligations resulting from prior government activity**, including interest payments on government debt and other expenditures relating to the cost of government services provided in earlier years; and
- **Pure public goods**, which include national defense, international affairs and scientific research, and some environmental expenditures.

On average, low-skill households receive more government benefits and services than do other households. In FY 2004, low-skill households received \$32,138 per household in immediate benefits and services (direct benefits, means-tested benefits, education, and population-based services). If public goods and the cost of interest and other financial obligations are added, total benefits rose to \$43,084 per low-skill household. In general, low-skill households received about \$10,000 more in government benefits than did the average U.S. household, largely because of the higher level of means-tested welfare benefits received by low-skill households.

In contrast, low-skill households pay less in taxes than do other households. On average, low-skill households paid only \$9,689 in taxes in FY 2004. Thus, low-skill households received at least three dollars in immediate benefits and services for each dollar in taxes paid. If the costs of public goods and past financial obligations are added, the ratio rises to four to one.

Strikingly, low-skill households in FY 2004 had average earnings of \$20,564 per household. Thus, the \$32,138 per household in government immediate benefits and services received by these households not only exceeded their taxes paid, but also substantially exceeded their average household earned income.

A household's net fiscal deficit equals the cost of benefits and services received minus taxes paid. If the costs of direct and means-tested benefits, education, and population-based services alone are counted, the average low-skill

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

household had a fiscal deficit of \$22,449 (expenditures of \$32,138 minus \$9,689 in taxes). The average net fiscal deficit of a low-skill household actually exceeded the household's earnings.

If interest and other financial obligations relating to past government activities are added, the average deficit per household rose to \$27,301. In addition, the average low-skill household was a free rider with respect to government public goods, receiving public goods costing some \$6,095 per household for which it paid nothing.

Receiving, on average, at least \$22,449 more in benefits than they pay in taxes each year, low-skill households impose substantial long-term costs on the U.S. taxpayer. Assuming an average adult life span of 50 years for each head of household, the average lifetime costs to the taxpayer will be \$1.1 million for each low-skill household for immediate benefits received minus all taxes paid. If the cost of interest and other financial obligations is added, the average lifetime cost rises to \$1.3 million per low-skill household.

In 2004, there were 17.7 million low-skill households. With an average net fiscal deficit of \$22,449 per household, the total annual fiscal deficit (total benefits received minus total taxes paid) for all of these households equaled \$397 billion (the deficit of \$22,449 per household times 17.7 million households). This sum includes direct and means-tested benefits, education, and population-based services. If the low-skill households' share of interest and other financial obligations for past activities is added, their total annual fiscal deficit rises to \$483 billion. Over the next ten years the total cost of low-skill households to the taxpayer (immediate benefits minus taxes paid) is likely to be at least 3.9 trillion dollars. This number would go up significantly if changes in immigration policy lead to substantial increases in the number of low-skill immigrants entering the country and receiving services.

Politically feasible changes in government policy will have little effect for decades on the level of fiscal deficit generated by most low-skill households. For example, to make the average low-skill household fiscally neutral (taxes paid equaling immediate benefits received and the appropriate share of interest on government debt), it would be necessary to eliminate Social Security, Medicare, all 60 means-tested aid programs and cut the cost of public education in half. It seems certain that, on average, low-skill households will generate deep fiscal deficits for the foreseeable future. Policies that reduce the future number of high school dropouts and other policies affecting future generations could reduce long-term costs.

Policies that would expand Medicaid and other entitlements will increase the size of future deficits of low-skill households at the margin. On the other hand, policy changes that curtailed medical inflation could reduce costs at the margin in future years. Policies which would halt the growth of out-of-wedlock childbearing or increase real educational attainments of future generations could also limit the growth of future deficits somewhat. However, these policy changes would be dwarfed by any alteration in immigration policy that would substantially increase the future inflow of low-skill immigrants; such a policy would dramatically increase the future fiscal burden to taxpayers.

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The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Introduction

Each year, families and individuals pay taxes to the government and receive back a wide variety of services and benefits. A fiscal deficit occurs when the benefits and services received by one group exceed the taxes paid. When such a deficit occurs, other groups must pay for the services and benefits of the group in deficit. Each year, government is involved in a large-scale transfer of resources between different social groups.

Fiscal distribution analysis measures the distribution of total government benefits and taxes in society. It provides an assessment of the magnitude of government transfers between groups. This paper provides a fiscal distribution analysis of households headed by persons without a high school diploma. It measures the total benefits and services received by this group and the total taxes paid. The difference between benefits received and taxes paid represents the total resources transferred by government on behalf of this group from the rest of society.

The first step in an analysis of the distribution of benefits and taxes is to count accurately the cost of all benefits and services provided by the government. The size and cost of government is far larger than many people imagine. In fiscal year (FY) 2004, the expenditures of the federal government were \$2.3 trillion. In the same year, expenditures of state and local governments were \$1.45 trillion. The combined value of federal, state, and local expenditures in FY 2004 was \$3.75 trillion.¹

The sum of \$3.75 trillion is so large that it is difficult to comprehend. One way to grasp the size of government more readily is to calculate average expenditures per household. In 2004, there were some 115 million households in the U.S.² (This figure includes multi-person families and single persons living alone.) The average cost of government spending thus amounted to \$32,706 per household across the U.S. population.³

The \$3.75 trillion in government expenditure is not free but must be paid for by taxing or borrowing economic resources from Americans or by borrowing from abroad. In general, government expenditures are funded by taxes and fees. In FY 2004, federal taxes amounted to \$1.82 trillion. State and local taxes and related revenues amounted to \$1.6 trillion.⁴ Together, federal, state, and local taxes amounted to \$3.43 trillion. At \$3.43 trillion, taxes and related revenues came to 91 percent of the \$3.75 trillion in expenditures. The gap between taxes and spending was financed by government borrowing.

Types of Government Expenditure

Once the full cost of government benefits and services has been determined, the next step in the analysis of the distribution of benefits and taxes is to determine the beneficiaries of specific government programs. Some programs, such as Social Security, neatly parcel out benefits to specific individuals. With programs such as these, it is relatively easy to determine the identity of the beneficiary and the cost of the benefit provided. At the opposite extreme, other government programs (for example, medical research at the National Institutes of Health) do not neatly parcel out benefits to individuals. Determining the proper allocation of the benefits of that type of program is more difficult.

1. See Appendix Tables A-1, A-2A, A-2B, and A-2C.

2. This figure includes persons in nursing homes. See Appendix A.

3. In measuring the distribution of benefits and services, this paper will count the value of each benefit and service as equal to the cost borne by the taxpayer to deliver it. The cost of any benefit to the taxpayer does not necessarily equal the subjective value the beneficiary may place upon the benefit. For example, if the food stamp program provides a family \$400 per month in food stamp benefits, the family itself may value the food stamps at more or less than \$400. Similarly, if child receives public education costing \$10,000 per pupil per year, the child's family may value these education services subjectively as worth more or less than \$10,000. While the question of recipient valuation of government benefits is an interesting one, this paper is concerned with the basic question of the distribution of benefits valued according to their costs to taxpayers.

4. This figure includes property income earned by the government such as the sale of assets or interest earned on assets.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

To ascertain most accurately the distribution of government benefits and services, this study begins by dividing government expenditures into six categories: direct benefits; means-tested benefits; educational services; population-based services; interest and other financial obligations resulting from prior government activity; and pure public goods.

Direct Benefits. Direct benefit programs involve either cash transfers or the purchase of specific services for an individual. Unlike means-tested programs (described below), direct benefit programs are not limited to low-income persons. By far the largest direct benefit programs are Social Security and Medicare. Other substantial direct benefit programs are Unemployment Insurance and Workmen's Compensation.

Direct benefit programs involve a fairly transparent transfer of economic resources. The benefits are parceled out discretely to individuals in the population; both the recipient and the cost of the benefit are relatively easy to determine. In the case of Social Security, the cost of the benefit would equal the value of the Social Security check plus the administrative costs involved in delivering the benefit.

Calculating the cost of Medicare services is more complex. Ordinarily, government does not seek to compute the particular medical services received by an individual. Instead, government counts the cost of Medicare for an individual as equal to the average per capita cost of Medicare services. (This number equals the total cost of Medicare services divided by the total number of recipients.)⁵ Overall, government spent \$840 billion on direct benefits in FY 2004.

Means-Tested Benefits. Means-tested programs are typically termed welfare programs. Unlike direct benefits, means-tested programs are available only to households below specific income thresholds. Means-tested welfare programs provide cash, food, housing, medical care, and social services to poor and low-income persons.

The federal government operates over 60 means-tested aid programs.⁶ The largest of these are Medicaid; the Earned Income Tax Credit (EITC); food stamps; Supplemental Security Income (SSI); Section 8 housing; public housing; Temporary Assistance to Needy Families (TANF); the school lunch and breakfast programs; the WIC (Women, Infants, and Children) nutrition program; and the Social Services Block Grant (SSBG). Many means-tested programs, such as SSI and the EITC, provide cash to recipients. Others, such as public housing or SSBG, pay for services that are provided to recipients.

The value of Medicaid benefits is usually counted in a manner similar to Medicare benefits. Government does not attempt to itemize the specific medical services given to an individual; instead, it computes an average per capita cost of services to individuals in different beneficiary categories such as children, elderly persons, and disabled adults. (The average per capita cost for a particular group is determined by dividing the total expenditures on the group by the total number of beneficiaries in the group.) Overall, the U.S. spent \$564 billion on means-tested aid in FY 2004.⁷

Public Education. Government provides primary, secondary, post-secondary, and vocational education to individuals. In most cases, the government pays directly for the cost of educational services provided. In other cases, such as the Pell Grant program, the government in effect provides money to an eligible individual who then spends it on educational services.

Education is the single largest component of state and local government spending, absorbing roughly a third of all state and local expenditures. The average per pupil cost of public primary and secondary education is now around \$9,600 per year. Overall, federal, state, and local governments spent \$590 billion on education in FY 2004.

Population-Based Services. Whereas direct benefits, means-tested benefits, and education services provide discrete benefits and services to particular individuals, population-based programs generally provide services to a whole group or community. Population-based expenditures include police and fire protection, courts, parks, sanitation, and food safety and health inspections. Another important population-based expenditure is transportation, especially roads and highways.

5. For example, the Census Bureau assigns Medicare costs in this manner in the Current Population Survey.

6. Congressional Research Service, *Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004*, March 27, 2006.

7. This spending figure excludes means-tested veterans programs and most means-tested education programs.

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A key feature of population-based expenditures is that such programs generally need to expand as the population of a community expands. (This quality separates them from pure public goods, described below.) For example, as the population of a community increases, the number of police and firemen will generally need to expand in proportion.

In its study of the fiscal costs of immigration, *The New Americans*, the National Academy of Sciences argued that if service remains fixed while the population increases, a program will become "congested," and the quality of service for users will deteriorate. Thus, the NAS uses the term "congestible goods" to describe population-based services.⁸ Highways are an obvious example of this point. In general, the cost of population-based services can be allocated according to an individual's estimated utilization of the service or at a flat per capita cost across the relevant population.

A sub-category of population-based services is government administrative support functions such as tax collections and legislative activities. Few taxpayers view tax collection as a government benefit; therefore, assigning the cost of this "benefit" appears problematic.

The solution to this dilemma is to conceptualize government activities into two categories: primary functions and secondary functions. Primary functions provide benefits directly to the public; they include direct and means-tested benefits, education, ordinary population-based services such as police and parks and public goods. By contrast, secondary or support functions do not provide direct benefits to the public but do provide necessary support services that enable the government to perform primary functions. For example, no one can receive food stamp benefits unless the government first collects taxes to fund the program. Secondary functions can thus be considered an inherent part of the "cost of production" of primary functions, and the benefits of secondary support functions can be allocated among the population in proportion to the allocation of benefits from government primary functions.

Government spent \$662 billion on population-based services in FY 2004. Of this amount, some \$546 billion went for ordinary services such as police and parks, and \$116 billion went for administrative support functions.

Interest and Other Financial Obligations Relating to Past Government Activities. Often, tax revenues are insufficient to pay for the full cost of government benefits and services. In that case, government will borrow money and accumulate debt. In subsequent years, interest payments must be paid to those who lent the government money. Interest payments for the government debt are in fact partial payments for past government benefits and services that were not fully paid for at the time of delivery.

Similarly, government employees deliver services to the public; part of the cost of the service is paid for immediately through the employee's salary. But government employees are also compensated by future retirement benefits. Expenditures of public sector retirement are thus, to a considerable degree, present payments in compensation for services delivered in the past. The expenditure category "interest and other financial obligations relating to past government activities" thus includes interest and principal payments on government debt and outlays for government employee retirement. Total government spending on these items equaled \$468 billion in FY 2004.⁹

Allocation of the benefit of this spending is problematic since the benefits were actually delivered in past years, but a definite portion of spending on interest and employee retirement was generated by past expenditures on behalf of low-skill households. Broadly conceived, spending on behalf of low-skill households includes not only spending for benefits in the current year, but also lagged spending that relates to outlays on such households in earlier years. In this sense, the low-skill households' share of interest and government employee retirement outlays would be proportionate to their share of government expenditures in prior years. Although calculating the low-skill households' share of spending in prior years would be very complex, the present analysis approximates this figure by assuming that these households' share of expenditures in prior years is equal to its share of FY 2004 expenditures.

An alternative approach to allocating interest and employee retirement costs would employ the distinction between government primary and secondary functions described in the prior section. If government failed to pay interest on its existing debt, it would be unable to borrow in the future; benefits would have to be slashed or taxes raised steeply. Gov-

8. National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997), p. 303.

9. Of this total, an estimated \$67 billion represents the costs of financial obligations resulting from past public goods expenditures. These costs are entered in the public goods category in Table 1.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

ernment's honoring of past financial obligations is thus an essential secondary function, a necessary cost of business that enables government to perform its primary functions. The ultimate beneficiaries of this secondary function are the beneficiaries of the primary functions that can be continued because government fulfills its debt obligations. The low-skill households' share of expenditures on these secondary functions would equal their share of benefits from primary function expenditures in FY 2004. Both approaches to allocating costs relating to interest and related financial obligations yield the same level of spending on behalf of low-skill households in FY 2004.

Pure Public Goods. Economic theory distinguishes between "private consumption goods" and pure public goods. Economist Paul Samuelson is credited with first making this distinction. In his seminal 1954 paper "The Pure Theory of Public Expenditure,"¹⁰ Samuelson defined a pure public good (or what he called in the paper a "collective consumption good") as a good "which all enjoy in common in the sense that each individual's consumption of such a good leads to no subtractions from any other individual's consumption of that good." By contrast, a "private consumption good" is a good that "can be parceled out among different individuals." Its use by one person precludes or diminishes its use by another.

A classic example of a pure public good is a lighthouse: The fact that one ship perceives the warning beacon does not diminish the usefulness of the lighthouse to other ships. Another clear example of a governmental pure public good would be a future cure for cancer produced by government-funded research. The fact that non-taxpayers would benefit from this discovery would neither diminish its benefit nor add extra costs to taxpayers. By contrast, an obvious example of a private consumption good is a hamburger: When one person eats it, it cannot be eaten by others.

Direct benefits, means-tested benefits, and education services are private consumption goods in the sense that use of a benefit or service by one person precludes or limits the use of that same benefit by other. (Two people cannot cash the same Social Security check.) Population-based services such as parks and highways are often mentioned as "public goods," but they are not pure public goods in the strict sense described above. In most cases, as the number of persons using a population-based service (such as highways and parks) increases, either the service must expand (at added cost to taxpayers) or the service will become "congested" and its quality will be reduced. Consequently, use of population-based services such as police and fire departments by non-taxpayers does impose significant extra costs on taxpayers.

Government pure public goods are rare; they include scientific research, defense, spending on veterans, international affairs, and some environmental protection activities such as the preservation of endangered species. Each of these functions generally meets the criterion that the benefits received by non-taxpayers do not result in a loss of utility for taxpayers. Government pure public good expenditures on these functions equaled \$628 billion in FY 2004. Interest payments on government debt and related costs resulting from public good spending in previous years add an estimated additional cost of \$67 billion, bringing the total public goods cost in FY 2004 to \$695 billion.

Although low-income households that pay little or no tax do benefit from pure public good programs, their gain neither adds costs nor reduces benefits for others. Thus, the benefit gleaned by non-taxpayers from these pure public good functions does not impose an extra burden on society. However, households that pay little or no tax are "free riders" on public good programs in the sense that they benefit from government activities for which they have not paid. (For a further discussion of pure public goods, see Appendix B.)

Summary: Total Expenditures. As Table 1 shows, overall government spending in FY 2004 came to \$3.75 billion, or \$32,706 per household across the entire U.S. population. Direct benefits had an average cost of \$7,326 per household across the whole population, while means-tested benefits had an average cost of \$4,920 per household. Education benefits and population-based services cost \$5,143 and \$5,765, respectively. Interest payments on government debt and other costs relating to past government activities cost \$3,495 per household. Pure public good expenditures comprised 18.5 percent of all government spending and had an average cost of \$6,056 per household.

A detailed breakdown of expenditures is provided in Appendix Table A-1 for federal expenditures and Appendix Tables A-2A, A-2B, and A-2C for state and local expenditures.

10. Paul A. Samuelson. "The Pure Theory of Public Expenditure." *Review of Economics and Statistics*, Vol. 36, No. 4 (1954), pp. 387-389.

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	Federal Expenditures (in millions)	State and Local Expenditures (in millions)	Total Expenditures (in millions)	Percentage of Total Expenditures	Average Expenditure per Household Whole Population (in dollars)
Direct Benefits	783,350	57,607	840,957	22.4%	\$7,326
Means-tested Benefits	406,512	158,240	564,752	15.0%	\$4,920
Educational Benefits	59,621	530,801	590,422	15.7%	\$5,143
Population-Based Services	180,122	481,696	661,818	17.6%	\$5,765
Interest and Related Costs*	182,000	219,260	401,260	10.7%	\$3,495
Pure Public Goods Expenditures	694,153	1,050	695,203	18.5%	\$6,056
Total Expenditures	2,305,758	1,448,654	3,754,412	100.0%	\$32,706
Total Expenditures Less Public Good Expenditures	1,611,605	1,447,604	3,059,209		\$26,660

* Excludes interest costs resulting from public goods expenditures in prior years.
Source: Appendix Tables 1 and 2c.

Taxes and Revenues

Total taxes and revenues for federal, state, and local governments amounted to \$3.43 trillion in FY 2004, with an average cost of \$29,919 per household across the whole population. A detailed breakdown of federal, state, and local taxes is provided in Appendix Table A-3. The biggest revenue generator was the federal income tax, which cost the taxpayers \$808 billion in 2003, followed by Federal Insurance Contribution Act (FICA) taxes, which gathered \$685 billion.

Property tax was the biggest revenue producer at the state and local levels, generating \$318 billion, while general sales taxes gathered \$244 billion.

Summary of Estimation Methodology

This paper seeks to estimate the total cost of benefits and services received, and the total value of taxes paid, by households headed by persons without a high school diploma. To produce this estimate, calculations were performed on 50 separate expenditure categories and 33 tax and revenue categories. These calculations are explained in detail in Appendix A and presented in Appendix Tables A-4 and A-5. The present section will briefly summarize the procedures used.

Data on receipt of direct and means-tested benefits were taken from the U.S. Census Bureau's Current Population Survey (CPS). Data on attendance in public primary and secondary schools were also taken from the CPS; students attending public school were then assigned educational costs equal to the average per pupil expenditures in their state. Public post-secondary education costs were calculated in a similar manner.

Wherever possible, the cost of population-based services was based on the estimated utilization of the service by low-skill households. For example, the low-skill households' share of highway expenditures was assumed to equal their share of gasoline consumption as reported in the Bureau of Labor Statistics Consumer Expenditure Survey (CEX). When data on utilization of a service were not available, the estimated low-skill households' share of population-based services was assumed to equal their share of the total U.S. population.

The share of public goods received by low-skill households was assumed to equal their share of the total U.S. population. The low-skill households' share of the cost of interest and other financial obligations relating to past government activities was assumed to equal their share of current expenditures on direct and means-tested benefits, education, population-based services, and public goods.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Federal and state income taxes were calculated based on data from the CPS. FICA taxes were also calculated from CPS data and were assumed to fall solely on workers.

Sales, excise, and property tax payments were based on consumption data from the Consumer Expenditure Survey. For example, if the CEX showed that low-skill households accounted for 10 percent of all tobacco product sales in the U.S., those households were assumed to pay 10 percent of all tobacco excise taxes.

Corporate income taxes were assumed to be borne partly by workers and partly by owners; the distribution of these taxes was estimated according to the distribution of earnings and property income in the CPS.

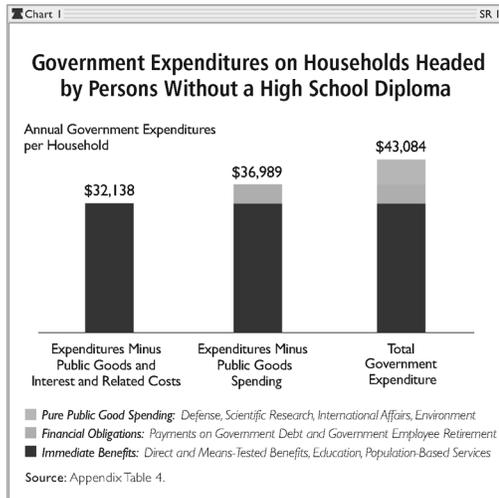
A fundamental rule in the analysis was that the estimated expenditure for each program for the whole population had to equal actual government outlays for that program. Similarly, total revenue for each estimated tax had to equal total revenue from the tax as reported in government budget documents.

CPS data are problematic in this respect since they generally underreport both benefits received and taxes paid. Consequently, both benefits and tax data from the CPS had to be adjusted for underreporting. The key assumption in this adjustment process was that households headed by persons without a high school diploma (low-skill households) and the general population underreport benefits and taxes to a similar degree. Thus, if food stamp benefits were underreported by 10 percent in the CPS as a whole, then low-skill households were also assumed to underreport food stamp benefits by 10 percent. In the absence of data suggesting that low-skill and high-skill households underreport at different rates, this seemed to be a reasonable working assumption.

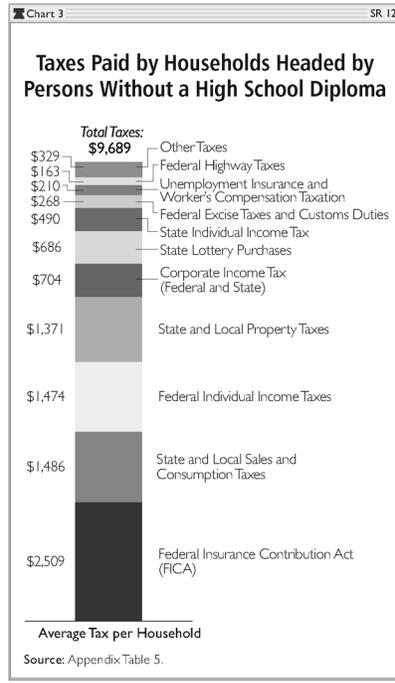
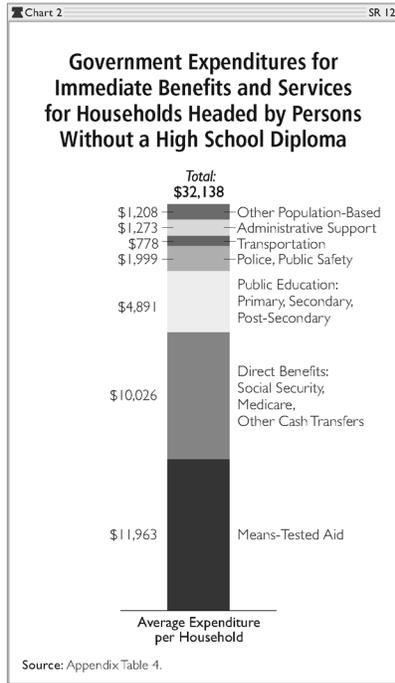
Costs of Benefits and Services for Low-Skill Households. The focus of this paper is the benefits received and taxes paid by households headed by persons without a high school diploma. (Throughout the paper, these households are also called low-skill households.) In 2004, there were 17.7 million such households in the U.S. Appendix Table A-4 shows the estimated costs of government benefits and services received by these households in 50 separate expenditure categories. The results are summarized in Charts 1 and 2.

Overall, households headed by persons without a high school diploma (or low-skill households) received an average of \$32,138 per household in direct benefits, means-tested benefits, education, and population-based services in FY 2004. If expenditures for interest and other financial obligations relating to past government activities are added to the count, expenditures rise to \$36,989 per household. If the cost of public goods is added, annual total expenditures on benefits and services come to \$43,084 per low-skill household.

Chart 2 gives a more detailed breakdown of the immediate benefits and services received by low-skill households. Means-tested aid came to \$11,963 per household, while direct benefits (mainly Social Security and Medicare) amounted to \$10,026. Education spending on behalf of these households averaged \$4,891 per household, while spending on police, fire, and public safety came to \$1,999 per household. Transportation added another \$778, while administrative support services cost \$1,273. Miscellaneous population-based services added a final \$1,208.



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It is important to note that the costs of benefits and services outlined in Chart 2 are a composite average of all low-skill households. They represent the total costs of benefits and services received by all low-skill households divided by the number of such households. It is unlikely that any single household would receive this exact package of benefits; for example, it is rare for a household to receive Social Security benefits and primary and secondary education services at the same time. Nonetheless, the figures are an accurate portrayal of the governmental costs of low-skill households as a group. When combined with similar data on taxes paid, they enable an assessment of the fiscal status of such households as a group and their impact on other taxpayers.

Taxes and Revenues Paid by Low-Skill Households. Appendix Table A-5 details the estimated taxes and revenues paid by low-skill households in 31 categories. The results are summarized in Chart 3. As the chart shows, total federal, state, and local taxes paid by low-skill households came to \$9,689 per household in 2004. Federal and state individual income taxes comprised only 20 percent of total taxes paid. Instead, taxes on consumption and employment produced the bulk of the tax burden for low-skill households.

The single largest tax payment was \$2,509 per household in Federal Insurance Contribution Act (FICA) tax. (Workers were assumed to pay both the employee and employer share of FICA taxes.) On average, low-skill households paid \$1,486 in state and local sales and consumption taxes. The analysis assumed that a significant portion of property taxes on rental and business properties was passed through to renters and consumers; this contributed to a

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

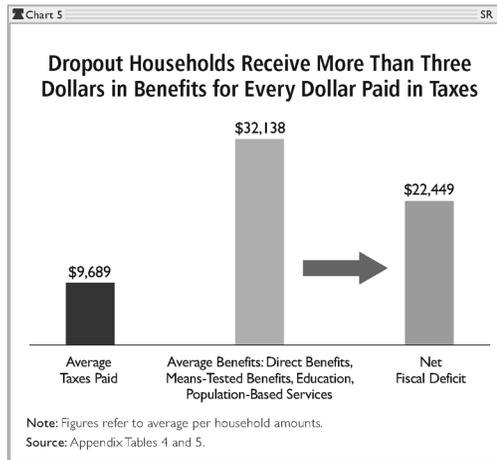
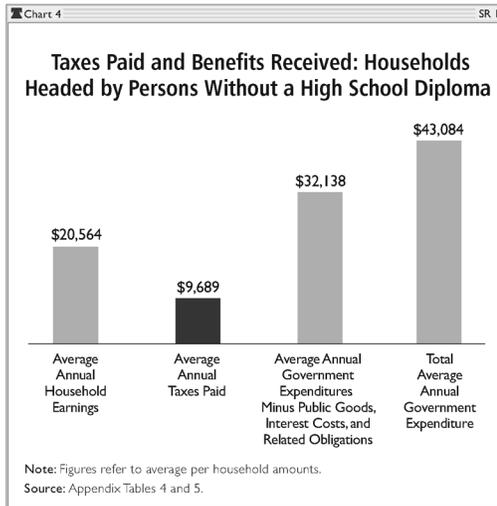
\$1,371 property tax burden for the average low-skill household. The analysis also assumed that 70 percent of corporate income taxes fell on workers; this contributed to an average \$704 corporate tax burden for low-skill households. Low-skill households are frequent participants in state lotteries, with an estimated average purchase of \$686 in lottery tickets per household in 2004.

Balance of Taxes and Benefits. On average, low-skill households received \$32,138 per household in immediate government benefits and services in FY 2004, including direct benefits, means-tested benefits, education, and population-based services. Total benefits rose to \$43,084 if public goods and the cost of interest and other financial obligations are added.

By contrast, low-skill households paid only \$9,689 in taxes. Thus, low-skill households received at least three dollars in benefits and services for each dollar in taxes paid. If the costs of public goods and past financial obligations are added, the ratio rises to four to one.

Strikingly, as Chart 4 shows, low-skill households in FY 2004 had average earnings of \$20,564 per household; thus, the average cost of government benefits and services received by these households not only exceeded the taxes paid by these households, but substantially exceeded the average earned income of these households.

Net Annual Fiscal Deficit. The net fiscal deficit of a household equals the cost of benefits and services received minus taxes paid. As Chart 5 shows, if the costs of direct and means-tested benefits, education, and population-based services alone were counted, the average low-skill household had a fiscal deficit of \$22,449 (expenditures of \$32,138 minus \$9,689 in taxes). The net fiscal deficit of the average low-skill household actually exceeded the household's earnings. If interest and other financial obligations relating to past government activities were added as well, the average deficit per household rose to \$27,301.



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In addition, the average low-skill household was a free rider with respect to government public goods, receiving public goods costing some \$6,095 per household for which it paid nothing.

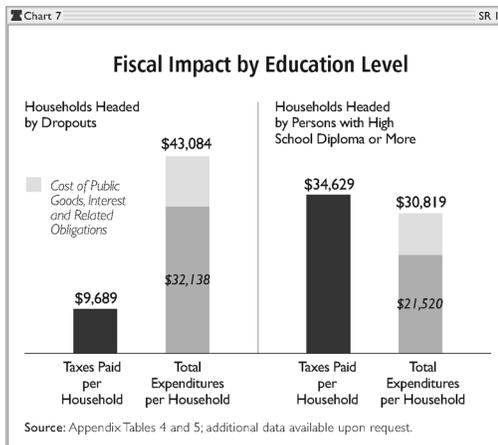
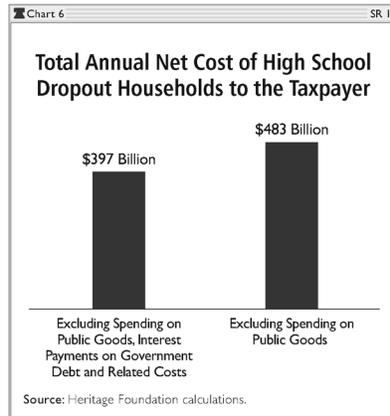
Net Lifetime Costs. Receiving, on average, at least \$22,449 more in benefits than they pay in taxes each year, low-skill households impose substantial long-term costs on the U.S. taxpayer. Assuming an average 50-year adult life span for heads of household, the average lifetime costs to the taxpayer will be \$1.1 million for each low-skill household, net of any taxes paid. If the costs of interest and other financial obligations are added, the average lifetime cost rises to \$1.3 million per household.

Aggregate Net Fiscal Costs. In 2004, there were 17.7 million low-skill households. As shown in Chart 5, the average net fiscal deficit per household was \$22,449. This means that the total annual fiscal deficit (total benefits received minus total taxes paid) for all 17.7 million low-skill households together equaled \$397 billion (the deficit of \$22,449 per household times 17.7 million households). This sum includes direct and means-tested benefits, education, and population-based services.

If the low-skill households' share of interest and other financial obligations for past activities is added, the total annual fiscal deficit of these households rose to \$483 billion. Over the next ten years, the constant dollar net cost of low-skill households (immediate benefits received minus taxes paid) is likely to be at least \$3.9 trillion. Policy changes that would expand entitlement programs such as Medicaid will increase these costs at the margin. On the other hand, changes in immigration law that would significantly increase the inflow of low-skill workers and families will increase future government spending dramatically.

Low-Skill Households Compared to Other Households. Chart 7 compares households headed by persons without a high school diploma to households headed by persons with a high school diploma or better. Whereas the dropout-headed household paid only \$9,689 in taxes in FY 2004, the higher-skill households paid \$34,629—more than three times as much. While dropout-headed households received from \$32,138 to \$43,084 in benefits, high-skill households received less: \$21,520 to \$30,819. The difference in government benefits was due largely to the greater amount of means-tested aid received by low-skill households.

Households headed by dropouts received \$22,449 more in immediate benefits (i.e., direct and means-tested aid, education, and population-based



The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

services) than they paid in taxes. Higher-skill households paid \$13,109 more in taxes than they received in immediate benefits.

Externalities of Benefits. It might be argued that certain government benefits generate positive externalities; that is, they benefit society at large as well as the immediate beneficiary. This is argued most often with respect to education.

An increase in the skill level of each U.S. worker may have a positive feedback effect that increases the productivity and wage of other workers; thus, everyone will gain indirectly as the overall skill level of U.S. workers rises.

Consequently, it might be argued that all Americans benefit economically from the education of children in low-skill families. If so, it might be further argued that it is inappropriate to assign the full per pupil costs of education to children in low-skill households. But if other households benefit indirectly from the education of children in low-skill families, it is equally true that low-skill families benefit indirectly from the education of children in middle- and upper-class families. This is particularly true of the education of high-skill workers who will produce future technological and managerial innovations that lead to productivity increases.

Thus, if it is true that the education of children in low-skill homes produces positive externalities that raise the incomes of more affluent families, it is equally true that the education of children in more affluent homes will produce positive externalities for low-skill households. Rather than attempting to map the reciprocal externalities of education, it appears simpler to assign the full per pupil cost of public education to the child receiving that education.

Education as a Social Investment. It is sometimes argued that the costs of public education should be “off the books” and should not be counted toward the fiscal deficits generated by low-skill households. Proponents of this view contend that publicly financed education for children in low-skill families represents a positive investment for taxpayers because it will increase the wages earned and taxes paid by those children as adults, thereby reducing the future fiscal drag (benefits in excess of taxes) that their children will impose on society.¹¹ Although this argument obviously has considerable merit, two caveats are in order.

First, even if public education does represent a positive investment for taxpayers, the immediate costs of that investment are real. When children in low-skill families receive public education, other families generally will pay the costs of that education and will be forced to forgo their own economic needs and wants to do so. Consequently, education costs should remain on the ledger when computing the net transfers between social groups.

Second, the potential returns to public education often appear exaggerated. When a child from a lower socioeconomic class receives subsidized public education, three fiscal outcomes are possible:

1. There is no increase in wages, and the child remains in the same deep fiscal deficit as his parents;
2. The child's income increases, and the magnitude of his fiscal deficit is reduced relative to that of his parents, but the child remains in fiscal deficit when becoming an adult; or
3. Education raises the child's income to the point where he becomes a positive fiscal contributor (taxes exceed benefits over a lifetime).

Simplistic accounts of the gains from education often suggest that schooling will enable children from a lower socioeconomic standing to readily achieve the third outcome. Given the regressive nature of the distribution of benefits and the progressive nature of taxation, this seems unlikely. On average, an individual must achieve a fairly high income to become a net fiscal contributor. This does not mean that investment in education is unwise. It simply means that society should be realistic about its expectations with respect to what education can achieve.

Conclusion

Households headed by persons without a high school diploma are roughly 15 percent of all U.S. households. Overall, these households impose a significant fiscal burden on other taxpayers: The cost of the government benefits

11. The analysis in this paper does not include fiscal impacts in the second generation, that is, it does not examine the fiscal status of children in low-skill households once they become adults and begin to live independently. Once a minor child in a low-skill household becomes an adult and moves out of his parents' household, he is no longer included in the fiscal cost analysis for the parents' household.

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they consume greatly exceeds the taxes they pay to government. Before government undertakes to transfer even more economic resources to these households, it should have a very clear account of the magnitude of the economic transfers that already occur.

The substantial net tax burden imposed by low-skill U.S. households also suggests lessons for immigration policy. Recently proposed immigration legislation would greatly increase the number of poorly educated immigrants entering and living in the United States.¹² Before this policy is adopted, Congress should examine carefully the potential negative fiscal effects of low-skill immigrant households receiving services.

Politically feasible changes in government policy will have little effect on the level of fiscal deficit generated by most low-skill households for decades. For example, to make the average low-skill household fiscally neutral (taxes paid equaling immediate benefits received plus interest on government debt), it would be necessary to eliminate Social Security, Medicare, all 60 means-tested aid programs and cut the cost of public education in half. It seems certain that, on average, low-skill households will generate deep fiscal deficits for the foreseeable future. Policies that reduce the future number of high school dropouts and other policies affecting future generations could reduce long-term costs.

Future government policies that would expand entitlement programs such as Medicaid would increase future deficits at the margin. Policies that reduced the out-of-wedlock childbearing rate or which increased the real educational attainments and wages of future low-skill workers could reduce deficits somewhat in the long run.

Changes to immigration policy could have a much larger effect on the fiscal deficits generated by low-skill families. Policies which would substantially increase the inflow of low-skill immigrant workers receiving services would dramatically increase the fiscal deficits described in this paper and impose substantial costs on U.S. taxpayers.

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12. Robert Rector, "Senate Immigration Bill Would Allow 100 Million New Legal Immigrants over the Next Twenty Years," Heritage Foundation WebMemo No. 1076, May 13, 2006. Robert Rector, "Immigration Numbers: Setting the Record Straight," Heritage Foundation WebMemo No. 1097, May 26, 2006.

Appendix A General Methodology

Introduction

This appendix documents the methods used to calculate the spending and tax figures presented in the paper. Throughout, the term “low-skill households” is used as a synonym for households headed by persons without a high school degree.

Data Sources

Data on federal expenditures were taken from *Historical Tables, Budget of the United States Government, Fiscal Year 2006*.¹³ Data on federal taxes and revenues were taken from *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*.¹⁴

State and local aggregate expenditures and revenue data were taken from the U.S. Bureau of Census survey of government finances and employment.¹⁵ Added information on state and local spending categories was taken from U.S. Census Bureau, *Federal State and Local Governments: 1992 Government Finance and Employment Classification Manual*.¹⁶

Detailed information on means-tested spending was taken from Congressional Research Service, *Cash and Non-cash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004*. This report provides important information on state and local means-tested expenditures from states’ and localities’ own financial resources as distinct from expenditures funded by federal grants in aid.¹⁷

Data on Medicaid expenditures for different recipient categories were taken from the Medicaid Statistical Information System (MSIS) as published in *Medicare & Medicaid Statistical Supplement, 2006*.¹⁸ Data on the distribution of benefits and distribution of some taxes were taken from the U.S. Census Bureau’s Current Population Survey (CPS) of March 2005 (which covers the year 2004).¹⁹ Additional data on public school attendance were taken from the October 2004 *Current Population Survey*.²⁰ Data on household expenditures were taken from the Bureau of Labor Statistics Consumer Expenditure Survey (CEX) for 2004.²¹

Data on Medicaid expenditures in institutional long-term care facilities were taken from *Medicare & Medicaid Statistical Supplement, 2006*.²² Data on the education levels of elderly persons in institutional long-term care facilities were taken from the National Long Term Care Survey (NLTCS).²³ Data on the number of individuals residing in nursing homes in the average month and the number of Medicaid recipients in nursing homes were taken from the

13. Office of Management and the Budget, *Historical Tables, Budget of the United States Government, Fiscal Year 2006*.

14. Office of Management and the Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, pp. 299–313.

15. See www.census.gov/govs/estimate/0400ussl_1.html.

16. See <http://ftp2.census.gov/govs/class/classfull.pdf>.

17. Congressional Research Service, *Cash and Non-cash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004*, March 27, 2006.

18. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare & Medicaid Statistical Supplement, Medicaid Tables 14.1–14.27, 2006*. This survey covers 2003.

19. The analysis used an electronic version of the March CPS data from the National Bureau of Economic Research. See www.nber.org/data/cps.html.

20. The analysis used an electronic version of the October CPS data from the National Bureau of Economic Research. See www.nber.org/data/cps.html.

21. U.S. Department of Labor, U.S. Bureau of Labor Statistics, *Consumer Expenditure in 2004*, Report 992, April 2006.

22. U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare & Medicaid Statistical Supplement, Medicaid Tables 14.1–14.27, 2006*.

23. Duke University and National Institutes of Health, National Institute on Aging, National Long Term Care Survey, 1999 Public Use Data Files (National Long Term Care Study (NLTCS), 1999 public use dataset. Produced and distributed by the Duke University Center for Demographic Studies with funding from the National Institute on Aging under Grant No. U01-AG007198. The NLTCS is a nationally representative sample of individuals ages 65 years and older in long-term care facilities.

The Heritage Foundation

2004 National Nursing Home Survey (NNHS). Data on the number of individuals in other types of institutions were taken from Census 2000 Summary File 1.²⁴

Count of Households. The Current Population Survey (CPS) reports some 113.15 million households in the U.S. in 2004. In addition, in the average month in 2004, some 1.65 million persons resided in long-term care facilities.²⁵

These long-term care residents were not included in the population reported in the CPS; however, because these individuals are the beneficiaries of a substantial share of Medicaid expenditure, it is important that they be included in any accounting of fiscal balances and distribution. Consequently, the 1.65 million persons in long-term care facilities were included in the present analysis; each individual in such a facility was counted as a separate household, swelling the overall count of households from 113.15 million to 114.8 million.²⁶

Calculating Aggregate Federal, State, and Local Spending. Aggregate federal expenditures at the sub-function level were taken from *Historical Tables, Budget of the United States Government, FY 2007*. These data are presented in Appendix Table A-1. State and local aggregate expenditures were based on data from the U.S. Bureau of Census survey of government.²⁷

Two modifications were necessary to yield an estimate of the overall combined spending for federal, state, and local government. First, some \$408 billion in state and local spending is financed by grants in aid from the federal government. Since these funds are counted as federal expenditures, recording them again as state and local expenditure would constitute a double count. Consequently, federal grants in aid were deducted from the appropriate categories of state and local spending.

A second modification involves the treatment of market-like user fees and charges at the state and local levels. These transactions involve direct payment of a fee in exchange for a government service; for example, payment of an entry fee at a park. User fees are described in the federal budget in the following manner:

[I]n addition to collecting taxes...the Federal Government collects income from the public from market-oriented activities and the financing of regulatory expenses. These collections are classified as user charges, and they include the sale of postage stamps and electricity, charges for admittance to national parks, premiums for deposit insurance, and proceeds from the sale of assets such as rents and royalties for the right to extract oil from the Outer Continental Shelf.²⁸

In the federal budget, user fees are not counted as revenue, and the government services financed by user fees are not included in the count of government expenditures. As the Office of Management and Budget states:

[User charges] are subtracted from gross outlays rather than added to taxes on the receipts side of the budget. The purpose of this treatment is to produce budget totals for receipts, outlays, and budget authority in terms of the amount of resources allocated governmentally, through collective political choice, rather than through the market.²⁹

24. Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, 2004 National Nursing Home Survey (NNHS), public use files, and U.S. Census Bureau, 2000 Census Summary File (SF 1), PCT16, PCT17–PCT171.

25. In the average month in 2004, about 1.49 million individuals resided in nursing homes; another estimated 155,000 individuals resided in long-term care institutions other than nursing homes. Data on nursing home residents come from Department of Health and Human Services, Centers for Disease Control and Prevention, National Center for Health Statistics, 2004 National Nursing Home Survey (NNHS), public use files. Data on individuals in other types of long-term care institutions come from the Bureau of Labor Statistics.

26. Because individuals in long-term care facilities are not counted in the CPS, they are not included in the expenditure and revenue allocation estimation of this analysis, except for Medicaid expenditures on institutional long-term care. However, they are included in the total number of U.S. households and the total number of low-skill households. To the extent that individuals without a high school degree represent a disproportionate share of the population in institutional long-term care and receive a number of government benefits and services, this analysis provides an underestimation of both actual aggregate and average expenditures received by low-skill households in the U.S.

27. See www.census.gov/govs/estimate/0400ussl_1.html.

28. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, p. 301.

29. *Ibid.*

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

In contrast, Census tabulations of state and local government finances include user fees as revenue and also include the cost of the service provided for the fee as an expenditure.³⁰ The most prominent user fees treated in this manner in the Census state and local government financial data are household payments to public utilities for water, power, and sanitation services.

But market-like, user fee payments of this type do not involve a transfer of resources from one group to another or from one household to another. In addition, government user fee transactions do not alter the net fiscal deficit or surplus of any household (defined as the cost of total government benefits and services received minus total taxes and revenues paid) because each dollar in services received will be matched by one dollar of fees paid. Finally, determining who has paid a user fee and received the corresponding service is very difficult.

For these reasons, this paper has applied the federal accounting principle of excluding most user fees from revenue tallies and excluding the services funded by the fees from the count of expenditures to state and local government finances. This means that user charges and fees were removed from both the revenue and expenditure tallies for state and local government. As noted, the inclusion or exclusion of these user fees has no effect on the fiscal deficit figures for low-skill households presented in this paper.

Appendix Tables A-2A, A-2B, and A-2C show the deductions of federal grant in aid and user fee expenditures that yielded the state and local expenditure totals used in this analysis.

Estimating the Allocation of Direct and Means-Tested Benefits. In most cases, the dollar cost of direct benefits and means-tested benefits received by low-skill households was estimated by the dollar cost of benefits received as reported in the Census Bureau's Current Population Survey (CPS). One problem with this approach is that the CPS underreports receipt of most government benefits. This means that the aggregate dollar cost of benefits for a particular program as reported in the CPS is generally less than the actual program expenditures according to government budgetary data.

To be accurate, any fiscal analysis must adjust for benefit underreporting. This has been done in prior studies; for example, the National Academy of Sciences study of the fiscal costs of immigration, *The New Americans*, made an adjustment for such underreporting.³¹

The current analysis adjusts for underreporting in the CPS with a simple mathematical procedure that increases overall spending on any given program to equal actual aggregate spending levels and increases expenditures on low-skill households in an equal proportion. Let:

E_{ix} = total expenditures for program x reported in the CPS;

E_{lx} = expenditures for program x for low-skill households reported in the CPS;

E_{bx} = total expenditures for program x according to independent budgetary sources; and

H_l = number of low-skill households in the CPS.

The share of expenditures reported in the CPS received by low-skill households would equal E_{lx}/E_{ix} . The actual expenditures allocated to low-skill households would be estimated to equal (E_{ix}/E_{bx}) times E_{lx} .

The average per household benefit from the program received by low-skill households would equal:

$$(E_{ix}/E_{bx}) \text{ times } (E_{lx}/H_l)$$

For example, if the CPS reported that low-skill households received 50 percent of food stamp benefits and the total expenditures on food stamps according to budgetary data were \$10 billion, then low-skill households would be estimated to receive \$5 billion in food stamp benefits. If there were 20 million low-skill households, then the average food stamp benefit per low-skill household would equal \$5 billion divided by 20 million households, or \$250.

30. U.S. Census Bureau, *Federal State and Local Governments: 1992 Government Finance and Employment Classification Manual*, sections 3.31 and 7.24.

31. National Research Council, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1997), p. 308.

The Heritage Foundation

The key assumption behind this underreporting adjustment procedure is that low-skill households underreport receipt of welfare and other government benefits at roughly the same rate as the general population. For example, if receipt of food stamps is underreported by 15 percent in the CPS for the overall population, the adjustment procedure assumes that the sub-group of low-skill households in the CPS would also underreport food stamp receipt by 15 percent. The average level of food stamp benefits among low-skill households as reported in the CPS is then adjusted upward by this ratio to compensate for the underreporting.³² Since there is no evidence to suggest that low-skill households underreport government benefits to the Census at a rate different from that of the general population, this procedure appears valid as an estimating technique.

Estimating the Allocation of Education Expenditures. The average cost of public education services was calculated in a somewhat different manner since the CPS reports whether an individual is enrolled in a public school but does not report the cost of education services provided. Consequently, data from the Census survey of governments were used to calculate the average per pupil cost of public primary and secondary education in each state.³³ The total governmental cost of primary and secondary schooling for each household was then estimated by multiplying the number of enrolled pupils in the household by the average per pupil cost in the state where the household resides.

This procedure yielded estimates of total public primary and secondary education costs for low-skill households in the CPS and for the whole population in the CPS. Adjustments for misreporting in the CPS were made according to the procedures outlined above. (This process is described more fully below.) Public costs for post-secondary education were allocated in a similar manner.

Estimating the Allocation of Medical Expenditures. There is often confusion concerning the calculation of the cost of Medicaid and Medicare benefits by the Census. The Census makes no effort to determine the costs of medical treatments given to a particular person. Instead, it calculates the average cost of Medicaid or Medicare benefits per person for a particular demographic/beneficiary group. For example, per capita Medicaid costs for children are very different from those for the elderly. The Census assigns the appropriate per capita Medicaid or Medicare costs to each individual who reports coverage in the CPS, according to the individual's beneficiary class: for example, elderly, children, non-elderly able-bodied adults, and disabled adults.

The present analysis uses the per capita Medicaid and Medicare costs provided by the CPS and then adjusts for underreporting according to the procedures described above. (For more details, see the specific discussion of Medicare and Medicaid below.)

Medicaid expenditures on persons in institutional long-term care facilities require separate calculations. In the average month in 2004, some 1.65 million persons resided in long-term care facilities;³⁴ about 62 percent of these individuals received Medicaid assistance.³⁵

Individuals in long-term care facilities are not included in the population reported in the CPS. In FY 2004, some \$76 billion in Medicaid funds was spent on individuals in nursing homes and other institutional long-term care facilities,³⁶ of which nearly 60 percent was spent on Medicaid recipients without a high school diploma.³⁷

Estimating the Allocation of Population-Based Services. Wherever possible, this analysis has allocated the cost of population-based services for low-skill households in proportion to their estimated utilization of those ser-

32. If CPS underreports benefits by 15 percent, then the underreporting would be corrected by multiplying the CPS total by the inverse of 100 percent minus 15 percent (the inverse of 85 percent).

33. U.S. Census Bureau, Governments Division, *Public Education Finances, 2004*, issued March 2006. Costs included both current expenditures and capital outlays.

34. In the average month in 2004, about 1.49 million individuals resided in nursing homes; another estimated 175,000 individuals resided in long-term care institutions other than nursing homes.

35. The 62 percent statistic comes from the 2004 National Nursing Home Survey (NNHS). This analysis assumes that the share of Medicaid recipients in other types of long-term care institutions is equal to the share of Medicaid recipients in nursing homes.

36. Estimates based on FY 2003 MSIS expenditure data, as published in *Medicare & Medicaid Statistical Supplement, 2006*, and adjusted to equal actual FY 2004 expenditure levels as reported by the CRS. The spending figure includes a 16 percent increase for ancillary medical services.

37. Estimate comes from the 1999 National Long Term Care Survey.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

vices. For example, the proportionate utilization of roads and highways by low-skill households was estimated, in part, on the basis of their share of gasoline purchases as reported in the Consumer Expenditure Survey (CEX).

When an estimate of proportionate utilization was not possible, the cost of population-based services was allocated on a uniform per capita basis. Some population-based services, such as airports, will be used infrequently by low-skill households; in these cases, the cost of the service for low-skill households was set at zero or at an arbitrary low level.

Estimating the Allocation of the Costs of General Government and Administrative Support Services. Allocation of the costs of general government services such as tax collections and legislative functions presents difficulties since there is apparently no one who directly benefits from those services. Most taxpayers would regard IRS collection activities as a burden, not a benefit; however, while government administrative functions *per se* do not benefit the public, they do provide a necessary foundation that makes all other government benefit and service programs possible. A household that receives food stamp benefits, for example, could not receive those benefits unless the IRS had collected the tax revenue to fund the program in the first place.

It seems reasonable to integrate proportionally the cost of government support services into the cost of other government functions that depend on those services. Following this reasoning, the expenditures for general government and administrative support have been allocated among households in the same proportions that total direct benefits, means-tested benefits, education, and population-based services are distributed among households.³⁸

Estimating the Allocation of Financial Obligations Relating to Past Government Activities. Year by year, throughout most of the post-war period, U.S. taxpayers have not paid for the full cost of benefits and services provided by government. A portion of annual costs is passed on to be paid in future years.

Government costs are shifted to future years through two mechanisms. First, when government expenditure exceeds revenue, the government runs a deficit and borrows funds. The cost of borrowing is passed to future years in the form of interest payments and repayments of principal on public debts. Second, when a government employee provides a service to the public, part of the cost of that service is paid for immediately through the employee's salary, but the employee may also receive government retirement benefits in the future in compensation for services provided in the present. Expenditures on public-sector retirement systems are thus, to a considerable degree, present payments in compensation for services delivered in the past.

The mechanism for allocating these costs for past service among the present-day population is uncertain. In this paper, the following procedure was used.

First, veterans benefits were regarded as compensation for pure public goods and were allocated as such.

Second, the share of debt payments associated with past public good expenditure was considered a pure public good itself and allocated as such.

Third, the remaining interest and government retirement payments were allocated in proportion to the share of all direct benefits, means-tested benefits, education, and population services received by a group in FY 2004. Thus, the share of interest payments on government debt and government employee retirement costs allocated to low-skill households was proportionate to those households' share of direct and means-tested benefit spending, education, and spending on population-based services in FY 2004.

There are two rationales for this allocation. First, the government's honoring of past financial obligations is a necessary precondition for current government operations. For example, if government violated its obligations and refused to pay retirement benefits owed to past employees, it would find it difficult to hire current employees, at least at their present wage rates. Similarly, if the government failed to pay interest on its existing debt, it would find it very difficult to borrow money in the future; unable to borrow, the government would be forced to slash benefits or sharply raise taxes. Thus, payment of past government financial obligations is a necessary element of current government operations; it is an integral part of the "cost of production" of current government benefits and services.

38. Approximately 27 percent of total federal expenditure is devoted to pure public good functions; thus, 27 percent of federal support service expenditure was assumed to assist public good functions.

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As in the case of tax collections, the public does not benefit directly from the payment of past governmental financial obligations, but the payment of those past obligations makes the provision of current benefits and services possible. Payment of past obligations is an important governmental secondary function that makes primary functions possible.

It seems reasonable, therefore, to integrate the cost of servicing past financial obligations into the costs of current government operations and to allocate the benefits of debt service expenditures in proportion to the distribution of present benefit and services.³⁹ That procedure has been used in this analysis.

A second perspective on this issue can be obtained by considering the multi-year costs of high school dropout households rather than just the single-year costs. As noted, in most years in the post-war period, government has failed to pay fully for its activities, passing part of the cost on to future years. A significant portion of current government debt represents benefits for low-skill households that were financed by deficit spending in prior years. In a multi-year perspective, the true fiscal cost of low-skill households includes not merely the fiscal deficit (benefits minus taxes) for the current year, but the fiscal deficit of low-skill households from prior years that has been shifted forward to the present by government borrowing.

Consequently, the true cost of low-skill households for the taxpayers would include the portion of government debt obligations that can be attributed to past benefits for low-skill households. To calculate this, it would be necessary to calculate the share of government debt that can be attributed to past benefits and services for low-skill households, a number that would be roughly comparable to the share of total government spending allocated on behalf of low-skill households in prior years.

Calculating such a figure would be a daunting task; however, review of government spending over the past three decades suggests that the share of spending devoted to low-skill households has probably not changed dramatically over that time. Consequently, the share of government spending on direct benefits, means-tested benefits, education, and population-based services to support low-skill households in FY 2004 (19 percent) can serve as a very rough proxy for the share of spending on such households in recent decades. Thus, the share of interest on the government debt that can be attributed to past expenditures on low-skill households is probably roughly proportionate to the share of current spending devoted to those households.

Estimating the Distribution of Pure Public Goods. Government pure public goods include expenditures on defense, veterans, international affairs, scientific research, and part of spending on the environment, as well as debt obligations relating to past public good spending. The total cost of pure public goods was divided by the whole U.S. population to determine an average per capita cost.

The share of benefits going to low-skill households was estimated based on their share of the population; the average value came out at roughly \$6,000 per low-skill household. (This procedure assumes that low-skill households receive the same per capita utility from pure public good spending as does the general population.) Thus, it might be reasonable to say that each low-skill household benefits from some \$6,000 in public goods spending each year that it does not pay for, but it would be inaccurate to assume that the benefit received by low-skill households imposes added costs on society. For a further discussion, see Appendix B.

Estimating the Distribution of Taxes and Other Government Collections. The distribution of federal and state income taxes was calculated from CPS data. The Census imputes tax payments into the CPS based on a household's income and demographic characteristics and the appropriate federal and state tax rules; however, since income is underreported in the CPS, this means that imputed taxes will also be too low. Thus, the imputed tax payments in the CPS were adjusted to equal the aggregate income tax revenues reported in government budgetary documents. Federal revenue totals were taken from *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2006*.⁴⁰ State and local tax and revenue data were taken from the U.S. Census survey of governments.⁴¹

39. Financial obligations also include government employee retirement costs.

40. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, pp. 299–323.

41. See www.census.gov/govs/estimate/0400ussl_1.html.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

The procedures for adjusting for the underreporting of income taxes were the same as those used to adjust for underreporting of expenditures. For example, for federal income tax, let:

T_t = total income tax reported in the CPS;

T_l = total income tax for low-skill households reported in the CPS;

T_b = total income tax according to independent budgetary sources; and

H_l = number of low-skill households in the CPS.

The share of taxes paid by low-skill households as reported in the CPS would equal T_l/T_t . The actual taxes allocated to low-skill households would be estimated to equal (T_l/T_t) times T_b .

The average tax paid per low-skill household would equal:

(T_l/T_t) times (T_b/H_l)

State income taxes were adjusted for underreporting according to the same formula.

Employees were assumed to pay both the "employee" and "employer" share of FICA taxes. Allocation of FICA taxes was estimated based on the distribution reported in the CPS, adjusted for underreporting in the manner described above.

The incidence of federal and state corporate profits tax was assumed to fall 70 percent on workers and 30 percent on owners of capital.⁴² The workers' share was allocated according to the distribution of earnings in the CPS, the owners' share according to the allocation of property income in the CPS.

Sales and excise taxes were assumed to fall on the consumer; tax payments were estimated based on the share of total consumption of relevant commodity or commodities in the Consumer Expenditure Survey. For example, since the CEX reported that households headed by persons without a high school degree consumed 18.2 percent of the sales of tobacco products, these same households were estimated to pay a corresponding 18.2 percent of all excise and sales taxes on tobacco products. Additional information on specific taxes is provided below.

Specific Calculations on Expenditures

The average cost of government benefits and services per low-skill household was calculated for 50 separate expenditure categories. The algorithms employed for each category are described below, and the specific calculations are shown in Appendix Table A-4.

Calculations for Specific Direct Benefit Expenditures.

- **Social Security Benefits.** Social Security benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Medicare.** The value of Medicare benefits per household was calculated based on data in the CPS. The CPS calculates the value of Medicare coverage for an individual as equal to the average cost per eligible beneficiary. Adjustments for misreporting of benefits in the CPS were made using the procedures described above.⁴³
- **Unemployment Insurance Benefits.** Unemployment insurance benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Workmen's Compensation.** Workmen's compensation benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.

⁴² William C. Randolph, "International Burdens of the Corporate Income Tax," Congressional Budget Office *Working Paper* No. 2006-09, 2006.

⁴³ In the case of Medicare, the CPS actually slightly overreports the total cost of benefits; therefore, in this case, the adjustment procedure results in a small reduction in Medicare costs per household compared to the CPS data.

The Heritage Foundation

- **Other Federal Retirement Programs.** This category includes Railroad Retirement and the Black Lung Disability Trust Fund. Benefits for individual households were calculated using dollar values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Agricultural Subsidy Programs.** Low-skill households were assumed to receive zero benefit from these programs.
- **Deposit Insurance.** Net expenditure for this category is very low; low-skill households were assumed to receive zero benefit.

Calculations for Public Education.

- **Public Primary and Secondary Education.** The average cost of public education services was calculated in a somewhat different manner since the CPS reports whether an individual is enrolled in a public school but does not report the cost of education services provided. Data from the October 2004 CPS were used to determine enrollment in public schools, while data from the Census survey of governments were used to calculate the average per pupil cost of public primary and secondary education in each state.⁴⁴ The total governmental cost of primary and secondary schooling for each household was then estimated by multiplying the number of enrolled pupils in the household by the average per pupil cost in the state where the household resides.

This procedure provided an estimate of total public primary and secondary education costs for the whole population and the percentage of total costs going to low-skill households. The percentage of costs going to low-skill households was multiplied by the expenditure total for primary and secondary education from independent budgetary sources; this yielded an estimate of aggregate primary and secondary public school expenditures for low-skill households. Average per household costs of public primary and secondary education were calculated by dividing the total costs of low-skill households by the overall number of such households.

- **Public Post-Secondary Education.** Public costs for post-secondary education were allocated using the same procedures used for primary and secondary expenditures.
- **Other Education.** These state and local costs were allocated in proportion to the low-skill households' share of the general population.

Calculations for Specific Means-Tested Benefit Expenditures.

Means-Tested Expenditures in General. Aggregate figures on federal means-tested expenditures were taken from Office of Management and Budget totals in *Historical Tables, Budget of the United States Government, Fiscal Year 2006*. (See Appendix Table A-1.) Federal expenditures on individual means-tested programs are presented in Appendix Table A-4 and were taken from the Congressional Research Service report, *Cash and Noncash Benefits for Persons with Limited Income: Eligibility Rules, Recipient and Expenditure Data, FY2002–FY2004*.

Figures on specific state and local means-tested expenditures are presented in Appendix Tables A-2A, A-2B, A-2C, and A-4 and were taken from the CRS report. These figures exclude state means-tested expenditures financed by federal grants. An estimated \$2.5 billion in state-run General Relief programs was included in the "public assistance" category in Appendix Table A-4; these expenditures do not appear in the CRS report because they lack a federal component.

The total means-tested expenditure figure of \$550.9 billion, presented in Appendix Table A-3, excludes means-tested veterans benefits (which are counted as public good spending) and most means-tested educational spending.⁴⁵

Medicaid Expenditures in General. The Medicaid Statistical Information System (MSIS)⁴⁶ reports Medicaid expenditures for four recipient groups: children; disabled, non-elderly adults; able-bodied, non-elderly adults;

44. Data from U.S. Census Bureau, Governments Division, *Public Education Finances, 2004*, issued March 2006.

45. The means-tested spending total does include Head Start.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

and elderly adults. The MSIS data further divide expenditures in each of the four recipient categories into expenditures for recipients in the general population and expenditures for recipients in long-term care institutions, which include nursing facilities (NF) and intermediate care facilities for the mentally handicapped (ICF-MR). This yields eight overall Medicaid recipient categories; separate expenditure calculations were made for each of these eight categories.

- **Elderly Medicaid Recipients in Long-Term Care Institutions.** Medicaid expenditures for elderly persons without a high school diploma in long-term care institutions were estimated according to four steps.

First, institutional long-term care expenditures on recipients of unknown recipient status were imputed into the four known recipient categories of persons in institutions on a pro rata basis.

Second, institutional long-term care expenditures (nursing facility plus ICF-MR spending) as reported in the MSIS are facility expenditures and do not reflect Medicaid spending on ancillary medical services (such as inpatient hospital, physician, and prescription drugs services) used by institutional long-term care recipients. On average, ancillary medical spending is estimated to be about 16 percent of facility expenditures across the four recipient groups.⁴⁷ To calculate the adjusted institutional long-term care expenditures that would include both facility and ancillary spending, MSIS-based nursing facility and ICF-MR expenditures are multiplied by a factor of 1.16.

Third, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service.⁴⁸ To compensate for this shortfall, the expenditure total calculated in stage 2 was multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures; this yielded an adjusted institutional long-term care expenditure total (ALCET) for elderly persons in long-term care.

Fourth, the National Long Term Care study showed that some 59 percent of elderly Medicaid recipients in nursing facilities lacked a high school diploma.⁴⁹ In addition, all elderly persons in ICF-MR were assumed to lack a high school diploma. Based on their share of Medicaid recipients in long-term care institutions, elderly persons without a high school diploma were assumed overall to receive 59.9 percent of the adjusted long-term care expenditure total (ALCET) for all elderly persons in institutional long-term care.

- **Non-elderly Medicaid Recipients in Long-Term Care.** Medicaid expenditures for non-elderly persons without a high school diploma were estimated according to four steps similar to those used for the elderly.

First, institutional long-term care expenditures on recipients of unknown recipient status were imputed into the four known-eligibility recipient categories on a pro rata basis.

Second, institutional long-term care expenditures (nursing facility plus ICF-MR spending) as reported in the MSIS are facility expenditures and do not reflect Medicaid spending on ancillary medical services (such as inpatient hospital, physician, and prescription drugs services) used by institutional long-term

46. Calculations in this appendix are based on FY 2003 MSIS data, U.S. Department of Health and Human Services, Centers for Medicare and Medicaid Services, *Medicare & Medicaid Statistical Supplement, 2006*, Medicaid Tables 14.1-14.27, at www.cms.hhs.gov/Medicare/MedicaidStatSuppl/ItemDetail.asp?filterType=none&filterByDID=99&sortByDID=1&sortOrder=ascending&itemID=CMS1190631&pageNumPerPage=10 (February 20, 2007).

47. The 16 percent figure was taken from Anna Sommers *et al.*, "Medicaid's Long-Term Care Beneficiaries: An Analysis of Spending Patterns," Kaiser Commission on Medicaid and the Uninsured, 2006, Table 2. The study used MSIS 2002 data.

48. MSIS expenditures fall short of actual Medicaid expenditures because of its accounting system and because the MSIS does not include disproportionate provider payments, some supplemental payments, and administrative costs. In addition, Medicaid expenditure calculations for the different recipient groups are based on published FY 2003 data. Assuming that each recipient group's share of spending did not vary from 2003 to 2004, FY 2003 expenditure figures were also adjusted to equal actual FY 2004 spending levels as reported by the CRS. Step 3 in this estimation process accounted for both adjustments at once.

49. National Long Term Care Study (NLTCS), 1999 public use dataset. Produced and distributed by the Duke University Center for Demographic Studies with funding from the National Institute on Aging under Grant No. U01-AG007198. The NLTCS is a nationally representative sample of individuals ages 65 years and older in long-term care facilities.

The Heritage Foundation

care recipients. On average, ancillary medical spending is estimated to be about 16 percent of facility expenditures across the four recipient groups.⁵⁰ To calculate the adjusted institutional long-term care expenditures that would include both facility and ancillary spending, MSIS-based nursing facility and ICF-MR expenditures were multiplied by a factor of 1.16.

Third, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, the expenditure total calculated in stage 2 was multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures; this yielded an adjusted institutional long-term care expenditure total (ALCET) for non-elderly persons in long-term care.

Fourth, the share of adjusted institutional long-term care expenditure for non-elderly persons that went to persons without a high school diploma was then estimated. Of the total adjusted Medicaid expenditures for non-elderly recipients in institutional long-term care, 52.3 percent was spent on individuals residing in intermediate care facilities for the mentally handicapped (ICF-MR); all beneficiaries in these facilities were assumed to be without a high school diploma.⁵¹ Some 6.8 percent of expenditures went to non-elderly persons who lacked a high school diploma and who resided in nursing facilities.⁵² Altogether, 59.1 percent of Medicaid expenditures on non-elderly persons in institutional long-term care went to persons who lacked a high school diploma.

- **Medicaid Expenditures on Elderly Persons in the General Population.** Medicaid expenditures for elderly persons residing in low-skill households were calculated as follows.

First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for elderly persons as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

Second, the adjusted long-term care expenditure total (ALCET) for elderly persons in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled expenditures on the non-institutional elderly.

Third, the percent of Medicaid expenditures on the non-institutional elderly going to persons in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutional elderly going to low-skill households.

The formula for Medicaid expenditures for elderly persons in low-skill households in the general population would be as follows. Let:

M_{gt} = Medicaid expenditures for elderly persons residing in low-skill households in the general population;

M_{ot} = Total Medicaid expenditures on the elderly according to MSIS data;

M_{it} = Medicaid expenditures on the elderly in long-term care institutions;

$MSIS_t$ = Total Medicaid expenditure according to MSIS data;

CRS_t = Total Medicaid expenditure according to Congressional Research Service data; and

$CPS_{\%}$ = Share of Medicaid expenditures for elderly persons in the CPS going to elderly persons residing in low-skill households.

50. The 16 percent figure came from Anna Sommers *et al.*, "Medicaid's Long-Term Care Beneficiaries: An Analysis of Spending Patterns," Kaiser Commission on Medicaid and the Uninsured, 2006, Table 2. The Kaiser study used MSIS 2002 data.

51. For more information on ICF-MR facilities, see www.cms.hhs.gov/CertificationandCompliance/09_JCFMRs.asp (March 7, 2007).

52. To derive this figure, the percent of non-elderly adult recipients without a high school education in long-term care nursing facilities was assumed to equal that of the general U.S. population: about 14 percent in 2004. U.S. Census Bureau, Current Population Survey, Educational Attainment in the United States: 2004, Table 1, at www.census.gov/population/socdemo/education/cps2004/aab01-01.xls (March 2, 2007).

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Medicaid expenditures for elderly persons residing in low-skill households in the general population can then be calculated as:

$$M_{el} = (M_{et} - M_{ep}) \text{ times } CRS_e/MSIS_t \text{ times } CPS_e$$

- **Medicaid Expenditures on Children in the General Population.** Medicaid expenditures for children residing in low-skill households were calculated with the same three-step procedure used for elderly persons in the general population.

First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for children as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

Second, the adjusted long-term care expenditure total (ALCET) for children in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled Medicaid expenditures on non-institutionalized children.

Third, the percent of Medicaid expenditures on non-institutionalized children going to children in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutionalized children residing in low-skill households.

- **Medicaid Expenditures on Able-bodied Adults in the General Population.** Medicaid expenditures for able-bodied adults residing in low-skill households were calculated with the same three-step procedure used for elderly persons in the general population.

First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for able-bodied adults in the general population as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

Second, the adjusted long-term care expenditure total (ALCET) for able-bodied adults in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled Medicaid expenditures on non-institutionalized able-bodied adults.

Third, the percent of Medicaid expenditures on non-institutionalized able-bodied adults going to able-bodied adults in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutionalized able-bodied adults residing in low-skill households.

- **Medicaid Expenditures on Disabled Adults in the General Population.** Medicaid expenditures for disabled adults residing in low-skill households were calculated with the same three-step procedure used for elderly persons in the general population.

First, total Medicaid expenditures reported in the MSIS fall short of total expenditures reported by the Congressional Research Service. To compensate for this, Medicaid expenditures for disabled adults in the general population as reported in the MSIS were multiplied by the ratio of CRS total Medicaid expenditures divided by MSIS total expenditures.

Second, the adjusted long-term care expenditure total (ALCET) for disabled adults in long-term care institutions was subtracted from the product calculated in stage 1. The remainder equaled Medicaid expenditures on non-institutionalized disabled adults.

Third, the percent of Medicaid expenditures on non-institutionalized disabled adults going to disabled adults in low-skill households was calculated from CPS data; this percentage was applied to the remainder in stage 2 to yield Medicaid expenditures for the non-institutionalized disabled adults residing in low-skill households.

The Heritage Foundation

- **Food Stamps.** The Food Stamp Program is a means-tested program. Benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of food stamp benefits in the CPS were made using the procedures described above.
- **Supplemental Security Income (SSI).** SSI is a means-tested program. SSI benefits for individual households were calculated using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **The Earned Income Tax Credit (EITC).** The EITC is a means-tested program supporting low-income working families with children. Dollar values of EITC benefits are calculated by the Census for each eligible household and imputed into the CPS data files. For the present analysis, EITC benefits for individual households were based on the dollar benefit values reported in the CPS. Adjustments for underreporting of EITC benefits in the CPS were made using the procedures described above.
- **Public Housing Subsidies.** There are a number of federal means-tested housing benefit programs. Public housing benefits for individual households were determined using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Public Assistance.** Public assistance covers cash benefits from the Temporary Assistance to Needy Families (TANF) program and General Relief programs.⁵³ Public assistance benefits were determined for individual households using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Energy Assistance.** Energy assistance is a means-tested benefit program. Benefits for individual households were determined using dollar benefit values reported in the CPS. Adjustments for underreporting of benefits in the CPS were made using the procedures described above.
- **Women, Infants and Children (WIC) Nutrition Program.** WIC is a means-tested program subsidizing food consumption for low-income pregnant women and low-income mothers with infants and small children. The CPS reports receipt of WIC benefits by households but gives no dollar value. The share of total WIC spending going to low-skill households was assumed to equal the share of WIC recipients in the CPS in low-skill households.
- **Day Care Assistance.** Federal, state, and local governments provide day care assistance to low-income parents through a variety of means-tested programs. The CPS reports receipt of day care assistance by households but gives no dollar value. The share of total day care spending going to low-skill households was assumed to equal the share of day care recipients in the CPS in low-skill households.
- **Indian Health Services.** Indian Health is a means-tested aid program. The CPS reports receipt of Indian Health benefits by households but gives no dollar value. The share of total Indian Health spending going to low-skill households was assumed to equal the share of Indian Health recipients in the CPS in low-skill households.
- **Training.** The CPS reports whether an individual participates in government job training programs but assigns no cost to this participation. The share of total means-tested training spending going to low-skill households was assumed to equal the share of training-participant recipients in the CPS who lived in low-skill households.
- **Other Means-Tested Aid.** Altogether, the federal government operates some 70 different means-tested aid programs. The CPS contains data on household utilization of 11 of the largest programs, which cover 93 percent of overall means-tested spending, but provides no data on the smaller programs. Allocation of benefits from the remaining means-tested programs was estimated in the following manner.

53. The state and local expenditures on public assistance presented in Appendix Table A-4 include data and state TANF spending taken from the Congressional Research Service and an estimated \$2.5 billion in state and local spending on General Relief.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

First, the share of reported total spending for the 11 means-tested programs covered by the CPS going to households headed by persons without a high school degree was determined.

Second, the low-skill households were assumed to receive a share of the means-tested benefits from the remaining unreported programs equal to their share of all expenditures on reported means-tested programs in the CPS.

Third, once the estimated total benefits from these residual programs received by low-skill households as a whole was calculated, an average value per low-skill household could be computed.

Specific Calculations for Population-Based Programs.

- **Highways and Roads.** Utilization of roads, highways, and parking facilities by low-skill households was assumed to be proportionate to their share of gasoline expenditures in the CEX.
- **Mass Transit Subsidies.** Low-skill households were assumed to utilize mass transit in proportion to their share of expenditures on public transportation as reported in the CEX.
- **Air Transportation.** Low-skill households were assumed to receive minimal benefit from government spending on airports and air travel. The low-skill household share of this spending was arbitrarily set at 2 percent of total expenditures.
- **Sea and Inland Port Facilities and Other Ground Transportation.** The share of these expenditures benefiting low-skill households was assumed to equal their share of total consumption in the CEX.
- **Other Federal Ground Transportation.** Low-skill households were assumed to receive none of the benefits of this spending.
- **Justice, Police, and Public Safety.** These programs provide a general benefit to entire communities. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Population-Based Expenditures on Resources, Sanitation, and the Environment.** This category covers spending on parks and recreation, sewage and waste management, pollution control, natural resources, and public utility expenditures that are not financed through user fees. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Public Utility Spending for Water Supply.** These expenditures represent expenditures on public water supply beyond those financed through user fees. The low-skill households' share of this spending was assumed to equal the group's share of expenditures on water in the CEX.
- **Public Utility Spending for Electric Power Supply.** These expenditures represent expenditures on public electric power beyond those financed through user fees. The low-skill households' share of this spending was assumed to equal the group's share of expenditures on electricity in the CEX.
- **Public Utility Spending for Gas Supply.** These expenditures represent expenditures on public gas supply beyond those financed with user fees. The low-skill households' share of this spending was assumed to equal the group's share of expenditures on gas supply in the CEX.
- **Pollution Control and Abatement.** The analysis assumes that expenditures on pollution control would be proportionate to a household's propensity to pollute and that a household's propensity to pollute would be proportionate to its share of overall consumption. In consequence, low-skill households' share of pollution control expenditure would be proportionate to the group's share of total consumption in the CEX.
- **General Health.** This category includes spending on mental health, substance abuse, and public health. These expenditures were assumed to have a uniform per capita value across the entire popu-

The Heritage Foundation

lation. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.

- **Consumer and Occupational Health.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Protective Inspection and Regulation.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Community Development.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Miscellaneous Spending.** This category includes labor services, activities to advance commerce, postal service, and libraries. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.

Specific Calculations for General Government Support Services for Other Government Programs.

- **General Government/Administrative Support Functions at the State and Local Levels.** This category consists mainly of administrative services in support of other government functions. It includes tax and revenue collection, lottery administration, budgeting, central administration, legislative functions, trust fund administration, central administration, and legislative functions. These activities do not provide benefits or services to the general public, but rather provide support for other programs that do directly affect the public. For example, tax collection does not directly benefit anyone but is necessary to provide funding for all other programs that do provide benefits and services to the public. Since the purpose of these support functions is to sustain other government programs, the costs for administrative support services was allocated according to the share of overall state and local direct benefits, means-tested benefits, education, and population-based services received by a household.
- **General Government/Administrative Support Functions at the Federal Level.** Like the previous category, this category includes tax collection activity, legislative functions, and other administrative support activities; and like the previous category, these activities do not directly benefit the public, but rather sustain all other government activities. In FY 2004, some 27 percent of total federal spending was allocated to pure public good functions. Therefore, 27 percent of federal general government and administrative support spending was estimated to be in support of pure public good functions. The remaining spending was allocated among households according to the share of all federally funded direct benefits, means-tested benefits, education, and population-based services received by a household.

Specific Calculations for Financial Obligations Relating to Past Government Activities.

- **Federal Financial Obligations.** This category includes interest payments on the federal debt and expenditures on federal employee retirement. These expenditures do not directly benefit the public, but rather sustain all other government activities. In FY 2004, some 27 percent of total federal spending was allocated to pure public good functions. Therefore, 27 percent of federal financial obligations were estimated to be in support of pure public good functions. The remaining spending was allocated among households according to the share of all direct and means-tested benefits, education, and population-based services received by a household.
- **State and Local Financial Obligations.** This category includes interest payments on the state and local debt and expenditures on state and local employee retirement. These expenditures do not directly benefit the public, but rather sustain all other government activities. Spending was allocated among households according to the share of all direct and means-tested benefits, education, and population-based services received by a household.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Specific Calculations for Public Goods Expenditure. This category includes spending on national defense, international affairs, science and scientific research, veterans programs, and natural resources and the environment. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.

- **National Defense.** National defense is a pure public good. Defense expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Veterans Programs.** Spending on veterans programs represents a cost related to past public goods services. These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Science and Scientific Research.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **International Affairs.** These expenditures were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Natural Resources and the Environment.** These expenditures represent an estimate of pure public goods spending on the environment such as preservation of species and wilderness. Parks, recreation, and pollution abatement activities are not included in this category because the cost of those activities will tend to increase as the population increases. The environmental expenditures in this category were assumed to have a uniform per capita value across the entire population. The share of expenditures benefiting low-skill households was assumed to be equal to their share of the total population.
- **Expenditures on Administrative Support Functions That Assist Governmental Public Good Functions.** Some 27 percent of federal government spending in FY 2004 went to public good functions; therefore, it is assumed that 27 percent of federal administrative support spending also was devoted to backing public goods functions.
- **Financial Obligations for Past Public Good Functions.** This category includes interest payments on the federal debt and federal employee retirement costs. These are obligations that result from federal activities in prior years. The public good share of these obligations would be equal to the public good share of total federal spending in prior years. In FY 2004, some 27 percent of federal spending went to public good functions. The analysis assumes that 27 of federal spending in past years also went to public good functions; therefore, the public good share of spending on past financial obligations is assumed to equal 27 percent of the full costs of past financial obligations.

Specific Calculations for Taxes and Revenues

Average payments per low-skill household were calculated for 33 specific tax and revenue categories. The algorithm used for each revenue category is described below, and the calculations for each category are presented in Appendix Table A-5.

Specific Calculations for Federal Taxes and Revenues.

- **Federal Individual Income Tax.** The distribution of federal income taxes was calculated from CPS data. The Census imputes tax payments into the CPS based on a household's income and demographic characteristics and the appropriate federal income tax rules; however, since income is underreported in the CPS, this means that imputed taxes will also be too low. Thus, the imputed tax payments in the CPS were adjusted so that aggregate tax revenues equaled those reported in *Analytical Perspectives, Budget of the U.S. Government, Fiscal Year 2006*.⁵⁴ Adjustments for underreporting of tax

54. Office of Management and Budget, *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006*, pp. 299–323.

The Heritage Foundation

payments in the CPS were made using the procedures used for adjusting benefits for underreporting as described above.

- **Federal Insurance Contribution Act (FICA) Taxes.** Employees were assumed to pay both the “employer” and “employee” share of FICA taxes. Data on the distribution of FICA tax were taken from the CPS. The Census imputes FICA tax values into the CPS based on reported earnings. Adjustment for underreporting was done in the manner previously described.
- **Federal Corporate Income Tax.** There are many conflicting opinions on the incidence of corporate income tax. The tax may be paid by owners, workers, consumers, or a combination of all three. For example, the Congressional Budget Office has traditionally assumed that the burden of this tax was fully borne by the owners of businesses; however, a recent CBO analysis concluded that in a competitive international environment, 70 percent of the cost of this tax was in fact shifted to workers.⁵⁵ As a whole, workers will experience lower wages as a result of the tax.

This study uses the conclusions of this recent CBO analysis, assigning 70 percent of the federal corporate income tax burden to workers and 30 percent to owners; this allocation increases the estimate of the average taxes paid by low-skill households. The distribution of the workers’ share of the tax burden was estimated on the basis of the distribution of earnings reported in the CPS. The share of federal corporate income tax borne by workers in low-skill households was assumed to be proportionate to the share of total earnings reported by low-skill households in the CPS. The distribution of the owners’ share of the tax burden was estimated on the basis of the distribution of property income (dividends, interest, and rent) in the CPS; the share borne by workers in low-skill households was assumed to be proportionate to the share of total property income reported by low-skill households in the CPS.

- **Federal Receipts for Unemployment Insurance.** This tax was assumed to fall on workers. The share paid by low-skill workers was assumed to equal their share of earnings in the CPS.
- **Federal Highway Trust Fund Taxes.** This tax was assumed to fall half on the private owners of motor vehicles and half on businesses. The business share was further assumed to fall half on consumers and half on owners. Overall, the tax was assumed to fall 50 percent on private motor vehicle operators, 25 percent on consumers, and 25 percent on owners of businesses.⁵⁶ The portion of the tax paid by private motor vehicle operators that fell on low-skill households was assumed to equal those households’ share of gasoline consumption as reported in the CEX. The portion of the tax paid by consumers that fell on low-skill households was assumed to be proportionate to those households’ share of total consumption as reported in the CEX. The portion of the tax paid by business owners that fell on low-skill households was assumed to be proportionate to those households’ share of property income (interest, dividends, and rent) as reported in the CPS.
- **Federal Airport and Airways Taxes.** Low-skill households probably use air travel infrequently. They were assumed to pay 2 percent of these taxes and to utilize a corresponding 2 percent of government air travel expenditures.
- **Federal Excise Tax on Alcohol.** This tax was assumed to fall on the consumers of alcohol. The share of the tax borne by low-skill households was assumed to be proportionate to those households’ share of the total consumption of alcohol products as reported in the CEX.
- **Federal Excise Tax on Tobacco.** This tax was assumed to fall on the consumers of tobacco products. The share of the tax borne by low-skill households was assumed to be proportionate to those households’ share of the total consumption of tobacco products as reported in the CEX.
- **Federal Excise Tax on Telephones.** This tax was assumed to fall on telephone users. The share of the tax borne by low-skill households was assumed to be proportionate to those households’ share of the total consumption of telephone products as reported in the CEX.

⁵⁵ Randolph, “International Burdens of the Corporate Income Tax.”

⁵⁶ Based on information provided by the Tax Foundation.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

- **Federal Excise Tax on Transportation Fuels.** This tax was assumed to fall on the consumers of transportation fuels. The share of the tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption of fuels as reported in the CEX.
- **Other Federal Excise Taxes.** These taxes were assumed to fall on consumers in general. The share of tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption as reported in the CEX.
- **Federal Gift and Estate Taxes.** Low-skill households were assumed to pay none of these taxes.
- **Federal Customs, Duties, and Fees.** These taxes were assumed to fall on consumers. The share of tax borne by low-skill households was assumed to be proportionate to those households' share of the total consumption as reported in the CEX.

Specific Calculations for State and Local Taxes and Revenues.

- **State Individual Income Tax.** This tax was estimated in the same manner as the federal individual income tax. State income tax data reported in the CPS are calculated using the tax rules of the individual states.
- **State Corporate Income Tax.** This tax was estimated in the same manner as the federal corporate income tax.
- **State and Local Property Taxes.** Property taxes were assumed to fall partly on businesses and partly on owner-occupied and rented dwellings. The tax falling on businesses was assumed to be partly borne by owners and partly passed on to consumers. Overall, 50 percent of the tax was allocated to households as home owners and renters; the share of this tax paid by low-skill households was assumed to be proportionate to these households' share of payments for shelter costs in the CEX. Another 25 percent of property taxes was assumed to be paid by owners of capital; the share paid by low-skill households was assumed to be proportionate to these households' share of dividends, interest, and rent income in the CPS. A final 25 percent of property tax was assumed to be passed on from businesses to consumers; the share of this burden borne by low-skill households was assumed to be equal to their share of total consumption as reported in the CEX.
- **State and Local General Sales Taxes.** These taxes were assumed to fall on consumers. The share that low-skill households paid was assumed to be proportionate to their share of the consumption of non-exempt goods and services as reported in the CEX. Items routinely exempted from sales tax coverage include food eaten at home, housing expenditure, utilities, fuels, gas and motor oil, public services, health care, education, cash contributions, and personal insurance and pension payments.⁵⁷
- **State and Local Tax on Motor Fuel.** This tax was calculated in the same manner as the federal Highway Trust Fund taxes.
- **State and Local Sales Tax on Alcohol.** This tax was estimated in the same manner as the federal excise tax on alcohol.
- **State and Local Sales Tax on Tobacco.** This tax was estimated in the same manner as the federal excise tax on tobacco.
- **Motor Vehicle License Fees.** The share of these fees paid by low-skill households was assumed to equal these households' share of spending on licenses as reported in the CEX.
- **Public Utilities Tax.** The share of this tax paid by low-skill households was assumed to equal these households' share of total utility expenditures as reported in the CEX.
- **Other Selective State and Local Sales Taxes.** The share of these taxes paid by low-skill households was assumed to equal these households' share of total consumption based on CEX data.

⁵⁷ Based on information provided by the Tax Foundation.

The Heritage Foundation

- **Other State and Local Taxes Including Estate, Stock Transaction, and Severance Taxes.** Low-skill households are assumed to pay few of these taxes.
- **State Taxes for Unemployment Insurance.** These taxes, like FICA taxes, were assumed to fall on workers. The share of taxation borne by low-skill households was assumed to equal their share of earnings reported in the CPS.
- **Other Insurance Trust Fund Revenues.** The share of these revenues paid by low-skill households was assumed to be proportionate to the number of persons in low-skill households as a share of the general population.
- **State Taxes for Workmen's Compensation.** These taxes, like FICA taxes, were assumed to fall on workers. The share of taxation borne by low-skill households was assumed to equal their share of earnings reported in the CPS.
- **Employee Contributions to State and Local Government Retirement Funds.** The distribution of these revenue contributions was assumed to be proportionate to the distribution of state and local employees participating in employer pension plans according to CPS data.
- **State Lottery Receipts.** An important source of government revenue paid by low-skill households is the purchase of state lottery tickets. Households headed by persons without a high school degree appear to pay more to state government through lottery ticket sales than they do through individual income taxes. A major study of the sale of state lottery tickets to different socioeconomic groups shows that per capita spending on state lottery tickets by adult high school dropouts was twice that of other adults.⁵⁸ In the present analysis, lottery spending by households headed by persons without a high school degree was assumed to be twice that of other households. The share of state lottery revenue contributed by low-skill households was calculated as $2h_l/(h_l + h_h)$, where h_l is the number of low-skill households and h_h is the number of households in the total population.
- **Earnings on Investments Held in Employee Retirement Trust Funds.** These state and local revenues represent the property income received by government trust funds as owners of capital. These earnings are not taxes and cannot be allocated among households.
- **State and Local Interest Earnings and Earnings from the Sale of Property.** These revenues represent the property income received by government as owner of capital and other property. These earnings are not taxes and cannot be allocated among households.
- **Special Assessments.** Low-skill households were assumed to pay none of these taxes.
- **Other State and Local Revenue.** This revenue includes dividends on investment, recovery of expenditures made in prior years, and other non-tax revenue. Low-skill households were assumed to fund none of this revenue.

⁵⁸ Charles T. Clotfelter, Philip J. Cook, Julie A. Edell, and Marian Moore, "State Lotteries at the Turn of the Century: Report to the National Gambling Impact Study Commission," Duke University, April 23, 1999.

Appendix B

Pure Public Goods, Private Consumption Goods, and Population-Based Services

Fiscal distribution analysis seeks to determine the government benefits received by a particular group compared to taxes paid. A necessary first step in this process is to distinguish government programs that provide “pure public goods” as opposed to “private goods.” These two types of expenditures have very different fiscal implications.

Economist Paul Samuelson is credited with being the first to develop the theory of public goods. In his seminal 1954 paper “The Pure Theory of Public Expenditure,”⁵⁹ Samuelson defined a pure public good (or what he called in the paper a “collective consumption good”) as a good “which all enjoy in common in the sense that each individual’s consumption of such a good leads to no subtractions from any other individual’s consumption of that good.” By contrast, a “private consumption good” is a good that “can be parceled out among different individuals.” Its use by one person precludes or diminishes its use by another.

A classic example of a pure public good would be a lighthouse: The fact that any particular ship perceives the warning beacon does not diminish the usefulness of the lighthouse to other ships. A typical example of a private consumption good is a hamburger: When one person eats it, it cannot be eaten by others.

Formally, all pure public goods will meet two criteria.⁶⁰

- **Non-rivalrous consumption:** Everyone in a given community can use the good; its use by one person will not diminish its utility to others.
- **Zero-cost extension to additional users:** Once a pure public good has been initially produced, it requires no extra cost for additional individuals to benefit from the good. Expansion of the number of beneficiaries does not reduce its utility to any initial user and does not add new costs of production. As Nobel prize-winning economist James Buchanan explains, with a pure public good, “Additional consumers may be added at zero marginal cost.”⁶¹

The second criterion is a direct corollary of the first. If consumption of a good is truly non-rivalrous, then adding extra new consumers will not reduce utility or add costs for the initial consumers.

The distinction between collective and private consumption goods can be illustrated by considering the difference between a recipe for pie and an actual piece of pie. A recipe for pie is a public consumption good in the sense that it can be shared with others without reducing its usefulness to the original possessor; moreover, the recipe can be disseminated to others with little or no added cost. By contrast, an actual slice of pie is a private consumption good: Its consumption by one person bars its consumption by another. Efforts to expand the number of individuals utilizing the pie slice will either reduce the satisfaction of each user (as each gets a smaller portion of the initial) or entail new costs (to produce more pie).

Examples of Governmental Pure Public Goods. Pure public goods are relatively rare. One prime example of a governmental public good is medical research. If research funded by the National Institutes of Health produces a cure for cancer, all Americans will benefit from this discovery. The benefit received by one person is not reduced by the benefit received by others; moreover, the value of the discovery to each individual would remain the same even if the U.S. population doubled.

Another notable example of a pure public good is defense expenditure. The utility of an Army division or an aircraft carrier lies in its effectiveness in combating foreign threats to America. In most respects, one person’s benefit from defense strength is not reduced because others also benefit. The military effectiveness of an Army division or an aircraft carrier is not reduced just because the size of the civilian population being defended is increased.

59. Paul A. Samuelson, “The Pure Theory of Public Expenditure,” *Review of Economics and Statistics*, Vol. 36, No. 4 (1954), pp. 387–389.

60. A third criterion is non-exclusion from benefit; it is difficult to deny members of a community an automatic benefit from the good. This aspect of public goods is not critical to the fiscal allocation issues addressed in this paper.

61. James M. Buchanan, *The Demand and Supply of Public Goods*, Liberty Fund, Library of Economics and Liberty, p. 5.4.3, at www.econlib.org/library/Buchanan/buchCv5Contents.html (March 6, 2007).

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Finally, individuals may receive psychic satisfaction from the preservation of wildlife or wilderness areas. This psychic satisfaction is not reduced because others receive the same benefit and is not directly effected by changes in the population. By contrast, enjoyment of a national park may be reduced if population increases lead to crowding. In consequence, general activities to preserve species may be considered a public good, while provision of parks is a private good.

Pure Public Goods Compared to Population-Based Goods. Many government services that are dubbed public goods are not true public goods. Economists Thomas MaCurdy and Thomas Nechyba state that “relatively few of the goods produced by [the] government sector are pure public goods, in the sense that the cost of providing the same level of the good is invariant to the size of the population.”⁶² In other words, many government services referred to conventionally as “public goods” need to be increased at added expense to the taxpayer as the population increases, thereby violating the criterion of zero cost extension to additional users.

For example, police protection is often incorrectly referred to as a “public good.” True, police do provide a diffuse service that benefits nearly all members of a community, but the benefit each individual receives from a policeman is reduced by the claims other citizens may make on the policeman’s time. Someone living in a town of 500 protected by a single policeman gets far more protection from that policeman than would another individual protected by the same single policeman in a town of 10,000.

The National Academy of Sciences explains that government services that generally need to be increased as the population increases are not real public goods. It refers to these services as “congestible” goods: If such a program remains fixed in size as the number of users increases, it may become “congested,” and the quality of service will consequently be reduced. An obvious example would be highways. Other examples of “congestible” goods are sewers, parks, fire departments, police, courts, and mail service.⁶³ These types of programs are categorized as “population-based” services in the paper.

In contrast to population-based services, governmental pure public goods have odd fiscal properties. The fact that a low-income person who pays little or nothing in taxes receives benefit from government defense or medical research programs does not impose added cost or reduce the utility of those programs to other taxpayers. Therefore, it is inaccurate to say that the non-taxpayers’ use of these programs imposes a burden on other taxpayers. On the other hand, non-taxpayers or individuals who pay little in taxes are “free riders” on public goods in the sense that they benefit from a good they have not paid for.

62. Thomas MaCurdy, Thomas Nechyba, and Jay Bhattacharya, “An Economic Framework for Assessing the Fiscal Impacts of Immigration,” in James P. Smith and Barry Edmonston, *The Immigration Debate: Studies on the Economic, Demographic and Fiscal Effects of Immigration* (Washington, D.C.: National Academy Press, 1998), p. 16.

63. National Research Council, *The New Americans*, p. 303.

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Table A-1			SR 12
Federal Outlays—Fiscal Year 2004			
Function and Subfunction	Millions of Dollars	Program Type	
050 National Defense:			
051 Department of Defense—Military:			
Military Personnel	113,576	Public Good	
Operation and Maintenance	174,045	Public Good	
Procurement	76,216	Public Good	
Research, Development, Test, and Evaluation	60,759	Public Good	
Military Construction	6,312	Public Good	
Family Housing	3,905	Public Good	
Other	1,708	Public Good	
051 Subtotal, Department of Defense—Military	436,521	Public Good	
053 Atomic Energy Defense Activities	16,625	Public Good	
054 Defense-related Activities	2,762	Public Good	
Total, National Defense	455,908	Public Good	
150 International Affairs:			
151 International Development and Humanitarian Assistance	13,825	Public Good	
152 International Security Assistance	8,369	Public Good	
153 Conduct of Foreign Affairs	7,897	Public Good	
154 Foreign Information and Exchange Activities	1,141	Public Good	
155 International Financial Programs	-4,341	Public Good	
Total, International Affairs	26,891	Public Good	
250 General Science, Space, and Technology:			
251 General Science and Basic Research	8,416	Public Good	
252 Space Flight, Research, and Supporting Activities	14,637	Public Good	
Total, General Science, Space and Technology	23,053	Public Good	
270 Energy:			
271 Energy Supply	-1,555		
272 Energy Conservation	926		
274 Emergency Energy Preparedness	158		
276 Energy Information, Policy, and Regulation	305		
Total, Energy	-166	Population-based Services	
300 Natural Resources and Environment:			
301 Water Resources	5,571	Public Good	
302 Conservation and Land Management	9,758	Public Good	
303 Recreational Resources	2,963	Population-based Services	
304 Pollution Control and Abatement	8,485	Population-based Services	
306 Other Natural Resources	3,948	Public Good	
Total, Natural Resources and Environment	30,725		
350 Agriculture:			
351 Farm Income Stabilization	11,186	Direct Benefit	
352 Agricultural Research and Services	4,254	Public Good	
Total, Agriculture	15,440		
370 Commerce and Housing Credit:			
371 Mortgage Credit	2,659	Direct Benefit	
372 Postal Service	-4,070	Population-based Services	
373 Deposit Insurance	-1,976	Direct Benefit	
376 Other Advancement of Commerce	8,660	Population-based Services	
Total, Commerce and Housing Credit	5,273		

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Table A-1		SR 12
Federal Outlays—Fiscal Year 2004 (continued)		
Function and Subfunction	Millions of Dollars	Program Type
400 Transportation:		
401 Ground Transportation		
Highways and Roads	32,336	Population-based Services
Other Ground Transportation	8,407	Population-based Services
402 Air Transportation	16,743	Population-based Services
403 Water Transportation	6,898	Population-based Services
407 Other Transportation	242	Population-based Services
Total, Transportation	64,626	
450 Community and Regional Development:		
451 Community Development	6,167	Not Applicable
452 Area and Regional Development	2,329	Not Applicable
453 Disaster Relief and Insurance	7,301	Not Applicable
Total, Community and Regional Development	15,797	Duplicates Below
450 Community and Regional Development: Duplicate Accounts		
Community and Regional Development Proportional	13,754	Population-based Services
Community and Regional Development: Public Good (Homeland Security)	2,043	Public Good
Total, Community and Regional Development: Duplicate Accounts	15,797	
500 Education, Training, Employment, and Social Services:		
501 Elementary, Secondary, and Vocational Education	34,357	Educational Benefits
502 Higher Education	25,264	Educational Benefits
503 Research and General Education Aids	3,005	Public Good
504 Training and Employment	7,912	Means-tested
505 Other Labor Services	1,552	Population-based Services
506 Social Services (Including Head Start)	15,855	Means-tested
Total, Education, Training, Employment, and Social Services	87,945	
550 Health:		
551 Health Care Services, Public Health, Mental Health, and Substance Abuse	19,888	Population-based Services
551 Health Care Services, Means-tested	190,204	Means-tested
552 Health Research and Training	27,099	Public Good
554 Consumer and Occupational Health and Safety	2,943	Population-based Services
Total, Health	240,134	
570 Medicare:		
571 Medicare	269,360	Direct Benefit
600 Income Security:		
601 General Retirement and Disability Insurance (Excluding Social Security)		
(Pension Benefit Guarantee, Black Lung and Disabled Miners, Railroad Retirement)	6,573	Direct Benefit
602 Federal Employee Retirement and Disability: Total	88,729	Interest and Other Financial Obligations
602 Federal Employee Retirement and Disability Due to Past Public Good Functions+subtotal	23,868	Public Good
602 Federal Employee Retirement and Disability, All Other: Sub-total	64,861	Interest and Other Financial Obligations
603 Unemployment Compensation (Counted as State Expenditure)		Not Applicable
604 Housing Assistance	36,568	Means-tested
605 Food and Nutrition Assistance	46,012	Means-tested
609 Other Income Security (Supplemental Security Income, Refundable Earned Income Credit, Temporary Assistance to Needy Families, Low Income Energy Assistance, Foster Care, Child Care and Child Development Block Grant)	109,961	Means-tested
Total, Income Security	332,837	

(continued on next page)

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Table A-1			SR 12
Federal Outlays—Fiscal Year 2004 (continued)			
Function and Subfunction	Millions of Dollars	Program Type	
650 Social Security:			
651 Social Security	495,548	Direct Benefit	
700 Veterans Benefits and Services:			
701 Income Security for Veterans	31,654	Public Good	
702 Veterans Education, Training, and Rehabilitation	2,751	Public Good	
703 Hospital and Medical Care for Veterans	26,783	Public Good	
704 Veterans Housing	-1,980	Public Good	
705 Other Veterans Benefits and Services	571	Public Good	
Total, Veterans Benefits and Services	59,779	Public Good	
750 Administration of Justice:			
751 Federal Law Enforcement Activities	19,090	Population-based Services	
752 Federal Litigative and Judicial Activities	9,685	Population-based Services	
753 Federal Correctional Activities	5,509	Population-based Services	
754 Criminal Justice Assistance	11,251	Population-based Services	
Total, Administration of Justice	45,535	Population-based Services	
800 General Government:			
801 Legislative Functions	3,187	Population-based Services	
802 Executive Direction and Management	510	Population-based Services	
803 Central Fiscal Operations	9,339	Population-based Services	
804 General Property and Records Management	228	Population-based Services	
805 Central Personnel Management	217	Population-based Services	
806 General Purpose Fiscal Assistance	7,675	Population-based Services	
808 Other General Government	2,345	Population-based Services	
809 Deductions for Offsetting Receipts	-1,679	Population-based Services	
Total, General Government	21,822	Population-based Services	
General Government in Support of Public Good Functions	5,870	Public Good	
General Government, All Other	15,952	Population-based Services	
900 Net Interest:			
901 Interest on Treasury Debt Securities (Gross)	321,679	Not Applicable	
902 Interest Received by on-budget Trust Funds	-67,761	Not Applicable	
903 Interest Received by off-budget Trust Funds	-86,228	Not Applicable	
908 Other Interest	-4,473	Not Applicable	
909 Other Investment Income	-2,972	Not Applicable	
Total, Net Interest	160,245		
Net Interest Due to Past Public Good Functions	43,106	Public Good	
Net Interest, All Other	117,139	Interest and Other Financial Obligations	
TOTAL OUTLAYS WITH OFFSETTING RECEIPTS	2,305,758		
(Excludes Unemployment Insurance)			
Source: Budget Historical Tables for FY 2006 at www.whitehouse.gov/omb/budget/fy2006/pdf/hist.pdf ; Budget codes 401 details taken from FY2006 Budget Appendix, pp. 792-824			

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	State and Local Expenditures (in millions)	Expenditure Subtotals (in millions)	Federal Grants in Aid to States (in millions)	State and Local Expenditures Less Federal Grants (in millions)
Removing Federal Grants in Aid from State and Local Expenditures				
Total Income Security, Health, and Social Services	532,154.07			
Means-tested Aid and Services		440,859.00	277,849.00	163,010.00
Other		91,295.07	9,835.00	81,460.07
Total Transportation	141,958.53			
Highways		118,178.67	30,689.00	87,489.67
Air Transportation (Airports)		18,030.57	2,958.00	15,072.57
Parking Facilities		1,335.99		1,335.99
Sea and Inland Port Facilities		4,046.65		4,046.65
Transit Subsidies		366.66	20.00	346.66
Total Education and Training	664,561.08			
Higher Education		173,085.92	482.00	172,603.92
Elementary and Secondary		452,054.91	20,522.00	431,532.91
Other Education		30,219.74	14,810.00	15,409.74
Libraries		9,200.51	136.00	9,064.51
Training			4,325.00	-4,325.00
Total Resources and Environment	109,673.71			
Natural Resources		23,298.71	7,423.00	15,875.71
Parks and Recreation		30,467.48	239.00	30,228.48
Sewage		35,534.72		35,534.72
Solid Waste Management		20,372.80		20,372.80
Justice and Public Safety	187,551.12		5,084.00	182,467.12
Veterans	1,503.74		454.00	1,049.74
General Government	67,748.37		9,015.00	58,733.37
Protective Inspection and Regulation	11,498.04			11,498.04
Unallocated Expenditure	100,142.99		14,712.00	85,430.99
Employment Security Administration	4,679.16		2,650.00	2,029.16
Interest on General Debt	81,723.06			81,723.06
Insurance Trust Expenditure				
Unemployment Compensation	43,277.64			43,277.64
Employee Retirement	137,537.44			137,537.44
Workers' Compensation	12,299.80			12,299.80
Other Insurance Trust	4,289.89			4,289.89
Utility Expenditure				
Water Supply	44,806.24			44,806.24
Electric Power	59,298.84			59,298.84
Gas Supply	6,716.95			6,716.95
Transit	44,236.69		7,777.00	36,459.69
Liquor Store Expenditure	4,672.90			4,672.90
TOTAL STATE AND LOCAL OUTLAYS	2,260,330.26			
TOTAL FEDERAL GRANTS IN AID TO THE STATES			408,980.00	1,851,350.26

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Table A-2B						SR 12	
Removing User Fees and Charges from State and Local Expenditures							
State and Local Expenditures Net Federal Grants in Aid	Expenditures Net Federal Grants (from Table 2A) (in millions of dollars)	User Fees and Charges: Type	User Fees and Charges: Amount (in millions of dollars)	State and Local Expenditures Net Federal Grants in Aid and Net Fees and Charges	Final Expenditures (in millions of dollars)		
Total Income Security, Health, and Social Services				Total Income Security, Health, and Social Services			
Means-tested Aid and Services	163,010.00	Housing and Community Development	4,770	Means-tested Aid and Services	158,239.53		
Other Income, Health and Services	81,460.07	Hospitals	72,652	Other Income, Health and Services	8,808.39		
Total Transportation				Total Transportation			
Highways	87,489.67	Highways	8,991	Highways	78,498.76		
Air Transportation (Airports)	15,072.57	Air Transportation (Airports)	13,345	Air Transportation (Airports)	1,727.56		
Parking Facilities	1,335.99	Parking Facilities	1,540	Parking Facilities	-203.93		
Sea and Inland Port Facilities	4,046.65	Sea and Inland Port Facilities	3,107	Sea and Inland Port Facilities	939.84		
Transit Subsidies	346.66			Transit Subsidies	346.66		
Total Education and Training				Total Education and Training			
Higher Education	172,603.92	Institutions of Higher Education	71,780	Higher Education	100,823.83		
Elementary and Secondary	431,532.91	School Lunch Sales (Gross)	6,326	Elementary and Secondary	425,206.94		
Other Education	15,409.74	Other Education Charges	6,314	Other Education	9,095.47		
Libraries	9,064.51	Libraries		Libraries	9,064.51		
Training	-4,325.00			Training	-4,325.00		
Total Resources and Environment				Total Resources and Environment			
Natural Resources	15,875.71	Natural Resources	3,264	Natural resources	12,611.90		
Parks and Recreation	30,228.48	Parks and Recreation	7,982	Parks and recreation	22,246.96		
Sewerage	35,534.72	Sewerage	29,792	Sewerage	5,742.49		
Solid Waste Management	20,372.80	Solid Waste Management	12,083	Solid waste management	8,289.80		
Justice and Public Safety	182,467.12			Justice and Public Safety	182,467.12		
Veterans	1,049.74			Veterans	1,049.74		
General Government	58,733.37			General Government	58,733.37		
Protective Inspection and Regulation	11,498.04			Protective Inspection and Regulation	11,498.04		
Administration and Unallocated Expenditures	85,430.99	Other Charges	46,696	Total Unallocated Expenditure	38,734.62		
Employment Security Administration	2,029.16			Employment Security Administration	2,029.16		
Interest on General Debt	81,723.06			Interest on General Debt	81,723.06		
Insurance Trust Expenditure				Insurance Trust Expenditure			
Unemployment Compensation	43,277.64			Unemployment Compensation	43,277.64		
Employee Retirement	137,537.44			Employee Retirement	137,537.44		
Workers' Compensation	12,299.80			Workers' Compensation	12,299.80		
Other Insurance Trust	4,289.89			Other Insurance Trust	4,289.89		
Utility Expenditure		Utility Revenue		Utility Expenditure			
Water Supply	44,806.24	Water Supply	36,087	Water Supply	8,719.05		
Electric Power	59,298.84	Electric Power	55,980	Electric Power	3,318.36		
Gas Supply	6,716.95	Gas Supply	6,506	Gas Supply	211.20		
Transit	36,459.69	Transit	9,783	Transit	26,676.34		
Liquor Store Expenditure	4,672.90	Liquor Store Revenue	5,698	Liquor Store Expenditure	-1,024.71		
Total State and Local Outlays	1,851,350.26	Total Fees and Charges	402,696	Total State and Local Outlays	1,448,653.82		

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Table A-2C			SR 12
State and Local Outlays Minus Federal Grants in Aid and User Fees and Charges			
State and Local Outlays Net Federal Grants in Aid and Net Fees and Charges	Net Expenditures (in millions of dollars)	Type of Program	
Total Income Security, Health, and Social Services			
Means-tested Aid and Services	158,239.53	Means-tested	
Other Income, Health and Services	8,808.39	Population-based	
Total Transportation			
Highways	78,498.76	Population-based	
Air Transportation (Airports)	1,727.56	Population-based	
Parking Facilities	-203.93	Population-based	
Sea and Inland Port Facilities	939.84	Population-based	
Transit Subsidies	346.66	Population-based	
Total Education and Training			
Higher Education	100,823.83	Educational Benefits	
Elementary and Secondary	425,206.94	Educational Benefits	
Other Education	9,095.47	Direct Benefit	
Libraries	9,064.51	Population-based	
Training	-4,325.00	Educational Benefits	
Total Resources and Environment			
Natural Resources	12,611.90	Population-based	
Parks and Recreation	22,246.96	Population-based	
Sewerage	5,742.49	Population-based	
Solid Waste Management	8,289.80	Population-based	
Justice and Public Safety	182,467.12	Population-based	
Veterans	1,049.74	Public Good	
General Government	58,733.37	Population-based	
Protective Inspection and Regulation	11,498.04	Population-based	
Administraton and Unallocated Expenditure	38,734.62	Population-based	
Employment Security Administration	2,029.16	Direct Benefit	
Interest on General Debt	81,723.06	Interest and Other Costs due to Past Services	
Insurance Trust Expenditure			
Unemployment Compensation	43,277.64	Direct Benefit	
Employee Retirement	137,537.44	Interest and Other Costs due to Past Services	
Workers' Compensation	12,299.80	Direct Benefit	
Other Insurance Trust	4,289.89	Population-based	
Utility Expenditure			
Water Supply	8,719.05	Population-based	
Electric Power	3,318.36	Population-based	
Gas Supply	211.20	Population-based	
Transit	26,676.34	Population-based	
Liquor Store Expenditure	-1,024.71	Population-based	
TOTAL STATE AND LOCAL EXPENDITURES	1,448,653.82		
Summary			
Direct Benefit Total	57,606.60		
Means-tested Total	158,239.53		
Educational Benefits Total	530,801.24		
Population-based Services	481,696.22		
Interest and Other Financial Obligation Due to Past Activities	219,260.50		
Pure Public Good Expenditures	1,049.74		
TOTAL STATE AND LOCAL EXPENDITURES	1,448,653.82		

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Table A-3				SR 12
Government Taxes and Revenues				
Federal Revenue Receipts FY 2004 From Taxes and Related Sources	Aggregate Revenue (in millions of dollars)	Revenue Sub-totals (in millions of dollars)	Average Federal Revenue per Household 14.79 million households (in dollars)	
Individual Income Taxes	808,959		\$7,047	
Corporate Income Taxes	189,371		\$1,650	
Federal Insurance Contributions Act (FICA)	685,334		\$5,970	
Old Age and Survivors Insurance		457,120		
Disability Insurance		77,625		
Hospital Insurance		150,589		
Unemployment Insurance - Federal Receipts	6,718		\$59	
Other Retirement Receipts	8,620		\$75	
Railroad Retirement		2,297		
Railroad Social Security Equivalent Account		1,729		
Federal Employees Retirement Employee Share		4,543		
Non-federal Employees Retirement		51		
Excise Taxes	69,855		\$609	
Alcohol Excise Tax		8,105		
Tobacco Excise Tax		7,926		
Telephone Excise Tax		5,997		
Transportation Fuels Excise Tax		1,381		
Other Taxes		1,157		
Trust Fund Excise Taxes	45,289		\$395	
Highway		34,711		
Airport		9,174		
Other		1,404		
Estate and Gift Tax	24,831		\$216	
Customs Duties and Fees	21,083		\$184	
Other Miscellaneous Receipts	12,913		\$112	
Miscellaneous: Fees for Permits and Regulatory and Judicial Services		8,675		
Miscellaneous: Fines, Penalties, and Forfeitures		3,902		
Other Miscellaneous Federal Receipts		336		
TOTAL FEDERAL RECEIPTS	1,827,684		\$15,922	

Note: Excludes \$32.6 billion in unemployment insurance receipts from state governments and \$19.6 billion in earnings of the Federal Reserve System.

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Table A-3				SR 12
Government Taxes and Revenues (continued)				
State and Local Revenue	Aggregate	Revenue	Average Revenue	
<i>From Taxes and Related Sources</i>	<i>Revenue</i>	<i>Sub-totals</i>	<i>per Household</i>	
	<i>(in millions</i>	<i>(in millions</i>	<i>(in dollars)</i>	
	<i>of dollars)</i>	<i>of dollars)</i>		
Taxes				
Property	318,242		\$2,772	
General Sales	244,891		\$2,133	
Selective Sales	115,738		\$1,008	
Motor fuel		34,944		
Alcoholic beverage		4,986		
Tobacco products		12,626		
Public utilities		21,427		
Other selective sales		41,756		
Individual Income	215,215		\$1,875	
Corporate Income	33,716		\$294	
Motor Vehicle License	18,709		\$163	
Other Taxes	63,766		\$556	
Miscellaneous General Revenue	165,139		\$1,439	
Interest Earnings		53,194		
Special Assessments		6,453		
Sale of Property		1,960		
Lottery Receipts		45,466		
Other General Revenue		58,066		
Insurance Trust Revenue	66,024		\$575	
Unemployment Compensation		38,362		
Workers' Compensation		21,758		
Other Insurance Trust Revenue		5,904		
Employee Retirement Trust Revenue*	365,318		\$3,182	
Employee Contributions		30,786		
Earnings on Investments		315,554		
Other		18,974		
TOTAL STATE AND LOCAL REVENUE	1,606,758		\$13,997	
Note: Excludes \$396 billion in user fees and \$408 billion in federal grants to states and localities.				
TOTAL FEDERAL, STATE, AND LOCAL REVENUE	3,434,442		\$29,919	
<i>From Taxes and Related Sources</i>				
Note: Excludes intra-government transfers to retirement trust funds.				
Sources: Analytical Perspectives, Budget of the United States Government, Fiscal Year 2006; U.S. Census, Survey of Governments, at www.census.gov/govs/estimatel0400ussl_1.html .				

SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending (in millions of dollars)	Aggregate State and Local Spending (in millions of dollars)	Combined Aggregate Spending (in millions of dollars)	Share of Expenditures Received by Households Headed by Persons without a High School Degree (in percent)	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree (in millions of dollars)	Average Expenditures per Household Headed by a Person without a High School Degree (in dollars)
Means-tested Benefits							
Public Aid	Low-skill group share of total program expenditures in the CPS	6,485.0	10,082.0	16,567.0	38.49%	6,376.64	\$361
SSI	Low-skill group share of total program expenditures in the CPS	34,693.0	5,146.0	39,839.0	38.35%	15,278.26	\$865
EITC	Low-skill group share of total program expenditures in the CPS	34,012.0		34,012.0	29.36%	9,985.92	\$565
Food Stamps	Low-skill group share of total program expenditures in the CPS	28,431.0	2,562.0	30,993.0	39.64%	12,285.63	\$695
School Lunch and Breakfast	Low-skill group share of total program expenditures in the CPS	8,531.0		8,531.0	29.01%	2,474.84	\$140
WIC	Low-skill group share of beneficiaries in the CPS	4,899.0		4,899.0	35.98%	1,762.66	\$100
Housing	Low-skill group share of total program expenditures in the CPS	38,881.0	0.8	38,881.8	40.89%	15,898.77	\$900
Energy	Low-skill group share of total program expenditures in the CPS	2,118.0	141.0	2,259.0	31.85%	719.49	\$41
Daycare	Low-skill group share of beneficiaries in the CPS	13,158.0	4,946.0	18,104.0	20.25%	3,666.06	\$207
Indian Health	Low-skill group share of beneficiaries in the CPS	3,706.0		3,706.0	23.44%	868.69	\$49
Training	Low-skill group share of beneficiaries in the CPS	6,131.0	876.0	7,007.0	21.81%	1,528.23	\$86
Medicaid/SCHIP							
Medicaid: Elderly in General Population	Low-skill group share of total program expenditures in the CPS			26,401.0	41.97%	11,080.50	\$627
Medicaid: Non-elderly Disabled Adults in the General Population	Low-skill group share of total program expenditures in the CPS			108,146.0	29.75%	32,173.44	\$1,821
Medicaid: Non-elderly Able-bodied Adults in the General Population	Low-skill group share of total program expenditures in the CPS			35,860.6	35.27%	12,648.03	\$716

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Table A-4

SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending (in millions of dollars)	Aggregate State and Local Spending (in millions of dollars)	Combined Aggregate Spending (in millions of dollars)	Share of Expenditures Received by Households Headed by Persons without a High School Degree (in percent)	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree (in millions of dollars)	Average Expenditures per Household for Persons without a High School Degree (in dollars)
Means-tested Benefits (continued)							
Medicaid: Children in the General Population including Children on SCHIP	Low-skill group share of total program expenditures in the CPS			59,976.8	31.96%	19,168.59	\$1,085
Medicaid: Elderly in Institutional Care	See text			47,691.8	59.90%	28,567.39	\$1,617
Medicaid: Others in Institutional Care	See text			28,857.0	59.10%	17,054.49	\$965
<i>Medicaid/SCHIP Total</i>		179,712.0	127,221.0	306,933.2			
Other Means-tested Aid (Foster Care, Social Services, Child Credit, Medical Care)	Allocated in proportion to the sum of total means-tested expenditures reported individually in the CPS	45,755.0	7,264.7	53,019.7	37.43%	19,844.90	\$1,123
Means-tested Benefit Total		406,512.0	158,239.5	564,751.5		211,382.51	\$1,963
Population-based and Government Support Services							
Transportation							
Highways, Roads, and Parking Facilities	Low-skill group share of gasoline consumption in the CEX	32,336.0	78,294.9	110,630.9	10.3%	11,394.98	\$645
Air Transportation (Airports)	Low-skill households are assumed to receive two percent of all expenditures	16,743.0	1,727.6	18,470.6	2.0%	369.41	\$21
Sea and Inland Port Facilities	Low-skill group share of total consumption in the CEX	6,898.0	939.8	7,837.8	8.5%	666.22	\$38
Other Federal Ground Transportation	Low-skill households are assumed to receive zero percent of expenditures	8,407.0		8,407.0	0.0%		\$0
Transit Subsidies	Low-skill group share of public transportation consumption in the CEX		27,023.0	27,023.0	4.90%	1,324.13	\$75
Other Transportation Sub-total	Unallocated	242.0		242.0	0.0%		\$0
				172,611.3			\$784

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SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending (in millions of dollars)	Aggregate State and Local Spending (in millions of dollars)	Combined Aggregate Spending (in millions of dollars)	Share of Expenditures Received by Households Headed by Persons without a High School Degree (in percent)	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree (in millions of dollars)	Average Expenditures per Household Headed by Persons without a High School Degree (17.67 million households) (in dollars)
Population-based and Government Support Services (continued)							
Justice, Police, and Public Safety	Low-skill group share of the total population	45,535.0	182,467.1	228,002.1	15.49%	35,317.53	\$1,999
Resources, Recreation, and Environment							
Natural Resources	Low-skill group share of the total population	12,611.9	12,611.9	12,611.9	15.49%	1,953.58	\$111
Parks and Recreation	Low-skill group share of the total population	2,963.0	22,247.0	25,210.0	15.49%	3,905.02	\$221
Sewerage	Low-skill group share of the total population	5,742.5	5,742.5	5,742.5	15.49%	889.51	\$50
Solid Waste Management	Low-skill group share of the total population	8,289.8	8,289.8	8,289.8	15.49%	1,284.09	\$73
Public Utility Spending: Expenditures Exceeding User Charges							
Water Supply	Low-skill group share of water consumption in the CEX	8,719.0	8,719.0	8,719.0	11.60%	1,011.41	\$57
Electric Power	Low-skill group share of electricity consumption in the CEX	3,318.4	3,318.4	3,318.4	12.70%	421.43	\$24
Gas Supply	Low-skill group share of natural gas consumption in the CEX	211.2	211.2	211.2	11.40%	24.08	\$1
Pollution Control and Abatement	Low-skill group share of total consumption in the CEX	8,485.0	8,485.0	8,485.0	8.50%	721.23	\$41
Energy	Low-skill group share of the total population	-166.0	-166.0	-166.0	15.49%	-25.71	-\$1
Resources, Recreation, and Environment Sub-total				72,421.8			\$576

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Table A-4

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending (in millions of dollars)	Aggregate State and Local Spending (in millions of dollars)	Combined Aggregate Spending (in millions of dollars)	Share of Expenditures Received by Households Headed by Persons without a High School Degree (in percent)	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree (in millions of dollars)	Average Expenditures per Household for Households Headed by Persons without a High School Degree (17.67 million households) (in dollars)
Population-based and Government Support Services (continued)							
Other Health Related							
	General Health (Mental Health, Substance Abuse, Public Health)	19,888.0	8,808.4	28,696.4	15.49%	4,445.07	\$252
	Consumer and Occupational Health	2,943.0		2,943.0	15.49%	455.87	\$26
	Protective Inspection and Regulation		11,498.0	11,498.0	15.49%	1,781.05	\$101
	<i>Other Health Related Sub-total</i>			43,137.4			\$378
Miscellaneous							
	Other Labor Services	1,552.0		1,552.0	15.49%	240.40	\$14
	Other Advancement of Commerce	8,660.0		8,660.0	15.49%	1,341.43	\$76
	Postal Service	-4,070.0		-4,070.0	15.49%	-630.44	-\$36
	Community Development	13,754.0		13,754.0	15.49%	2,130.49	\$121
	Libraries		9,064.5	9,064.5	15.49%	1,404.09	\$79
	<i>Miscellaneous Subtotal</i>			28,960.5			\$254
General Government/Administrative Support							
	General Government	21,822.0	58,733.4	80,555.4			
	Support of Public Good Functions	5,870.1		5,870.1			
	General Government Less Activities in Support of Public Good Functions	15,951.9	58,733.4	74,685.3	19.28%	14,395.75	\$815

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		SR 12	Aggregate Government Expenditures (continued)					
Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree			Aggregate Federal Spending (in millions of dollars)	Aggregate State and Local Spending (in millions of dollars)	Combined Aggregate Spending (in millions of dollars)	Share of Expenditures Received by Households Headed by Persons without a High School Degree (in percent)	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree (in millions of dollars)	Average Expenditures per Household (in dollars)
Population-based and Government Support Services (continued)								
Unallocated Expenditures		Low-skill group share of total direct, means-tested and education benefits, and other population-based benefits	37,709.9	37,709.9	37,709.9	19.28%	7,268.67	\$411
Other insurance trust		Low-skill group share of total direct, means-tested and education benefits, and other population-based benefits	4,289.9	4,289.9	4,289.9	19.28%	826.89	\$47
General Government Net Public Good Support, sub-total				116,685.1				\$1,272.9
Population-based and Government Support Total			180,121.9	481,696.3	661,818.1		92,916.17	\$5,258
Interest and Other Financial Obligations Associated With Past Service								
Interest Payments on Government Debt		Low-skill group share of total direct, means-tested and other population-based benefits	160,245.0	81,723.1	241,968.1	21.37%	51,696.51	\$2,926
Retirement Benefits for Former Government Employees		Low-skill group share of total direct, means-tested and other population-based benefits	88,729.0	137,537.4	226,266.4	21.37%	48,341.84	\$2,736
Financial Obligations Associated with Past Services and Benefits Total			248,974.0	219,260.5	468,234.5			
Less Financial Obligations for Past Public Goods			66,974.0					
Total Net Financial Obligations: Interest and Other Financial Obligations Associated with Past Service Minus Obligations Associated with Past Public Goods			182,000.0	219,260.5	401,260.5	21.37%	85,729.34	\$4,852

(continued on next page)

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

SR 12

Aggregate Government Expenditures (continued)

	Allocation Algorithms for Expenditures for Households Headed by Persons without a High School Degree	Aggregate Federal Spending (in millions of dollars)	Aggregate State and Local Spending (in millions of dollars)	Combined Aggregate Spending (in millions of dollars)	Share of Expenditures Received by Households Headed by Persons without a High School Degree (in percent)	Aggregate Expenditures Received by Households Headed by Persons without a High School Degree (in millions of dollars)	Average Expenditures per Household for Households Headed by Persons without a High School Degree (17.67 million households) (in dollars)
Pure Public Goods Expenditures							
National Defense and Related Costs	Low-skill group share of the total population	457,951.0		457,951.0	15.49%	70,936.61	\$41,015
Veterans	Low-skill group share of the total population	59,779.0	1,049.7	60,828.7	15.49%	9,422.37	\$533
Science and Scientific Research	Low-skill group share of the total population	574,110.0		574,110.0	15.49%	8,892.96	\$503
International Affairs	Low-skill group share of the total population	26,891.0		26,891.0	15.49%	4,165.42	\$236
Natural Resources and Environment	Low-skill group share of the total population	19,277.0		19,277.0	15.49%	2,986.01	\$169
General Government Services in Support of Public Good Functions	Low-skill group share of the total population	5,870.1		5,870.1	15.49%	909.28	\$51
Interest and Other Financial Obligations for Past Public Good Functions	Low-skill group share of the total population	66,974.0		66,974.0	15.49%	10,374.27	\$587
Pure Public Goods Expenditures Total		694,153.1	1,049.7	695,202.8	15.49%	107,686.92	\$6,094
TOTAL EXPENDITURES		2,305,758.0	1,448,653.9	3,754,411.9		761,287.2	\$43,084
TOTAL EXPENDITURES LESS PURE PUBLIC GOOD EXPENDITURES		1,611,604.9	1,447,604.2	3,059,209.0		653,600.3	\$36,989

Source: See Appendix A.

SR 12

Table A-5

Tax and Revenue Algorithms and Calculations

LGSC (low-skill group share of consumption) means the share of consumption of a given item performed by households headed by persons without a high school diploma. LGSTC (low-skill group share of total consumption) means the share of total consumption of all items performed by households headed by persons without a high school diploma.

	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts (in millions)	Consumption Share of Households Headed by Persons without a High School Degree in CEX (in percent)	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CPS (in percent)	Aggregate Tax Paid by Households Headed by Persons without a High School Degree (in millions)	Taxes Paid per Household by Households Headed by Persons without a High School Degree (in dollars)
Federal Taxes and Revenues						
Federal Individual Income Tax	CPS tax payment figures with adjustment for under-reporting	808,959.0		3.22%	26,048.5	\$1,474
FICA Taxes	CPS tax payments with adjustments	685,334.0		6.47%	44,341.1	\$2,509
Federal Corporate Income Tax	Incidence assumed to be 70 percent on workers and 30 percent on owners	189,371.0				
Federal Corporate Income Tax on Workers	70 percent of total tax times share of earned income in CPS			6.19%	8,205.4	\$464
Federal Corporate Income Tax on Owners	30 percent of total tax times share of dividend, interest, and rental income in CPS			4.15%	2,357.7	\$133
Unemployment Insurance - Federal Receipts	Assume incidence falls 100 percent on workers; share of tax paid by households headed by person without a high school degree equals their share of earned income in the CPS	6,718.0		6.19%	415.8	\$24
Highway Trust Fund	Incidence assumed to fall half on private owners of motor vehicles; one quarter on owners of business; and one quarter on general consumers	34,711.0				
Highway Trust Fund Taxes on Private Vehicle Drivers	One half of total tax times LGSC on gasoline in CEX		10.3%		1,787.6	\$101
Highway Trust Fund Taxes on Business Owners	One quarter of total tax times share of dividend, interest, and rental income in CPS			4.15%	360.1	\$20
Highway Trust Fund Taxes on Consumers	One quarter of total tax times LGSTC in CEX		8.5%		737.6	\$42
Airport and Airway Taxes	Taxes paid by households headed by persons without a high school degree assumed to be two percent of total	9,174.0	2%		183.5	\$10

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The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

Federal Taxes and Revenues <i>(continued)</i>		Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts <i>(in millions)</i>	Consumption Share of Households Headed by Persons with- out a High School Degree in CEX <i>(in percent)</i>	Relevant Income Share Received by Households Headed by Persons with- out a High School Degree in CEX <i>(in percent)</i>	Aggregate Tax Paid by Households Headed by Persons without a High School Degree <i>(in millions)</i>	Taxes Paid per Household by Households Headed by Persons without a High School Degree <i>(in dollars)</i>
Federal Excise Taxes: Alcohol		Total tax times LGSC of alcohol in CEX	8,105.0	6.4%		518.7	\$29
Federal Excise Taxes: Tobacco		Total tax times LGSC of tobacco in CEX	7926.0	17.4%		1,379.1	\$78
Federal Excise Taxes: Telephone		Total tax times LGSC of telephone in CEX	5,997.0	11.4%		683.7	\$39
Federal Excise Taxes: Transportation Fuels		Total tax times LGSC of fuels in CEX	1,381.0	11.2%		154.7	\$9
Federal Excise Taxes: All Other		Total tax times LGSC in CEX	2,561.0	8.5%		217.7	\$12
Federal Retirement Receipts							
Railroad and Other Retirement Receipts		Total receipts times share of railroad earnings in CEX	4,077.0		1.1%	44.8	\$3
Federal Employees Retirement Employee Share		Total receipts times share of federal employee earnings in CEX	4,543.0		2.98%	135.4	\$8
Federal Gift and Estate Tax		Share paid by households headed by persons without a high school degree assumed to be minimal	24,831.0		0%	0.0	\$0
Customs Duties and Fees		Total tax times LGSC in CEX	21,083.0	8.5%		1,792.1	\$101
Miscellaneous: Fees for Permits and Regulatory and Judicial Services		Not Applicable	8,675.0				N.A.
Miscellaneous: Fines, Penalties, and Forfeitures		Not Applicable	3,902.0				N.A.
Other Miscellaneous Federal Receipts		Not Applicable	336.0				N.A.
Federal Total Taxes and Revenues			1,827,684.0			89,363.5	\$5,057

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		SR 12	Tax and Revenue Algorithms and Calculations (continued)			
State and Local Taxes and Revenues	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts (in millions)	Consumption Share of Households Headed by Persons without a High School Degree in CPS (in Percent)	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CPS (in Percent)	Aggregate Tax Paid by Households Headed by Persons without a High School Degree (in millions)	Taxes Paid per Household by Households Headed by Persons without a High School Degree (in dollars)
State and Local Individual Income Taxes	CPS tax payment figures with under-reporting adjustment	215,214.7		4.02%	8,651.6	\$490
State and Local Corporate Income Tax	Incidence assumed to fall 70 percent on workers and 30 percent on owners	33,715.8				
State and Local Corporate Income Tax on Workers	70 percent of total tax times the share of total earnings received by households headed by persons without a high school degree as reported in the CPS			6.19%	1,460.9	\$83
State and Local Corporate Income Tax on Owners	30 percent of total tax times the share of total interest, dividends, and rent received by households headed by persons without a high school degree as reported in the CPS			4.15%	419.8	\$24
Property Taxes	Incidence is assumed to fall half on homes and rented apartments; half on businesses. The business portion is further assumed to fall half on consumers and half on owners.	318,242.5				
Property Taxes on Owner-occupied and Rented Domiciles	One-half of total tax time LGCS of shelter costs		8.9%		14,161.8	\$801
Property Taxes on Owners	One-quarter of total tax times the share of total interest, dividends and rent received by households headed by persons without a high school degree as reported in the CPS			4.15%	3,301.8	\$187
Property Taxes on Consumers	Total Tax Times LGSTC Minus Exemptions	244,891.3	8.5%		6,762.7	\$383
General Sales Taxes	Incidence assumed to fall half on private owners of motor vehicles; one quarter on owners of business; and one quarter on general consumers	34,943.6	6.88%		16,848.5	\$953
Motor Fuel Tax						

(continued on next page)

Table A-5

The Fiscal Cost of Low-Skill Households to the U.S. Taxpayer

SF 12

Tax and Revenue Algorithms and Calculations (continued)

State and Local Taxes and Revenues (continued)	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts (in millions)	Consumption Share of Households Headed by Persons without a High School Degree (in Percent)	Relevant Income Share Received by Households Headed by Persons without a High School Degree (in Percent)	Aggregate Tax Paid by Households Headed by Persons without a High School Degree (in millions)	Taxes Paid per Household Headed by Persons without a High School Degree (in dollars)
Motor Fuel Tax on Drivers of Personal Vehicles	One-half total tax times LGSC of gasoline		10.3%		1,956.8	\$111
Motor Fuel Tax on Consumers	One-quarter of total tax times LGSTC		8.5%	4.15%	777.5	\$44
Motor Fuel Tax on Business Owners	One-quarter of total tax on gasoline times share of interest, dividends, and rents in the CPS going to households headed by persons without a high school degree				362.5	\$21
Tobacco Tax	Total tax times LGSC of tobacco	12,625.8	18.2%		2,297.9	\$130
Alcohol Tax	Total tax times LGSC of alcohol	4,985.7	6.3%		308.4	\$17
Other Selective Sales Tax	Total tax times LGSTC	41,755.9	8.5%		3,716.3	\$210
Motor Vehicle Licenses	Total tax times LGSC for licenses	18,709.0	5.3%		1,010.3	\$57
Public Utilities Tax	Total tax times LGSC for utilities	21,426.6	11.9%		2,699.7	\$153
Other General Taxes State and Local (Mainly Estate, Stock, Transaction, and Severance Taxes)	Assume taxes paid by households headed by persons without a high school degree will be minimal	63,766.5	0%			\$0
Insurance: Trust Revenue						
Unemployment Compensation	Assume incidence falls 100 percent on workers; share of tax paid by households headed by person without a high school degree equals share of earned income in the CPS	38,361.5		6.19%	2,374.6	\$134
Workers' Compensation	Assume incidence falls 100 percent on workers; share of tax paid by households headed by person without a high school degree equals share of earned income in the CPS	21,757.9		6.19%	1,346.8	\$76
Other Insurance: Trust Revenue	Unknown	5,904.4				\$0

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SR 12

Tax and Revenue Algorithms and Calculations (continued)

	Algorithms for Households Headed by Persons without a High School Degree	Aggregate Tax Receipts (in millions)	Consumption Share of Households Headed by Persons without a High School Degree in CECA (in Percent)	Relevant Income Share Received by Households Headed by Persons without a High School Degree in CECA (in Percent)	Aggregate Tax Paid by Households Headed by Persons without a High School Degree (in millions)	Taxes Paid per Household Headed by Persons without a High School Degree (1.74 billion households) (in dollars)
State and Local Taxes and Revenues (continued)						
Employee Retirement Trust Revenue						
Employee Contributions	Total contribution times the share of earnings of state and local employees going to households headed by person without a high school degree	30,785.8		4.18%	1,287.0	\$73
Earnings on Investments	Not applicable	315,553.9				N.A.
Other	Not applicable	18,978.8				N.A.
State and Local Other General Revenue						
Interest Earnings	Not applicable	53,194.3				N.A.
Sale of Property	Not applicable	1,959.6				N.A.
Special Assessments	Not applicable	6,452.7				N.A.
Other General Revenue	Unknown	58,066.0				N.A.
Lottery Receipts	Per capita expenditures assuming double normal use by households headed by persons without a high school degree	45,465.8		2.66%	12,130	\$686
Total State and Local Taxes and Revenues		1,606,757.9			81,874.9	\$4,633
TOTAL FEDERAL, STATE, AND LOCAL TAXES AND REVENUES		3,434,441.9			171,238.5	\$9,689

ARTICLE ENTITLED "ENACTING IMMIGRATION REFORM, AGAIN," BY THE HONORABLE ROMANO L. MAZZOLI AND THE HONORABLE ALAN S. SIMPSON, FORMER MEMBERS OF THE UNITED STATES SENATE, SUBMITTED BY THE HONORABLE SHEILA JACKSON LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS, AND MEMBER, SUBCOMMITTEE ON IMMIGRATION, CITIZENSHIP, REFUGEES, BORDER SECURITY, AND INTERNATIONAL LAW

09.15.2006

Enacting Immigration Reform, Again

Enacting Immigration Reform, Again

By Romano L. Mazzoli and Alan K. Simpson
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The 1986 Immigration Reform and Control Act - IRCA, or the Simpson-Mazzoli bill - is referred to frequently in today's high-decibel immigration debates - and rarely affectionately. As co-authors of that legislation, we think honest perspective is in order.

Today's tough issues are the same as when we chaired our respective immigration subcommittees: controlling illegal entry, the question of what to do with existing undocumented, illegal immigrants, and guest worker programs.

Our effort to craft responsible reform legislation was assisted by the well-documented recommendations of the bipartisan Commission on Immigration Reform, under the capable chairmanship of the Rev. Theodore Hesburgh, then President of Notre Dame University.

We knew that enacting an immigration reform law would require a bipartisan effort. We were Democratic and Republican - a good start. We held unprecedented joint House-Senate hearings - not just in Washington but all over the country. We heard from all sides and points of view.

We quickly realized that if immigration reform was to work and be fair it had to be a "three-legged stool." If one leg failed, so would the entire bill.

"Leg one" was improved security against illegal crossings at the border with Mexico, using the best available technology and additional, better-trained personnel. For the first time in U. S. history, we imposed penalties on employers who knowingly hired undocumented workers.

"Leg two" was the H-2A temporary worker program for agricultural workers, designed to ensure wage and workplace protections, and not to be another exploitative "bracero" program.

"Leg three" was what we called "legalization." We would allow some, but not all, undocumented aliens then living and working here to regularize their unlawful status and begin the long process to earn temporary residency and, eventually, if they chose to continue, to earn permanent residency and citizenship.

Since illegal immigration continues nearly unabated today, legitimate questions can be raised about the effectiveness of IRCA. Although we do have pride of authorship, we also believe that the shortcomings of the act are not due to design failure but rather to the failure of both Democratic and Republican administrations since 1986 to execute the law properly.

Not surprisingly, 20 years after the enactment of Simpson-Mazzoli, the Senate has passed an immigration reform bill composed of three main elements that are modified versions of the three legs of our bill: border security and workplace enforcement, a temporary worker program and legalization.

Would the Senate, knowing IRCA's track record, have settled upon our basic framework for its 2006 bill if IRCA was fatally flawed? We doubt it. From 1981, when our bill was introduced, to 1986, when it became law, we were aided by the expertise of hundreds of policy experts, scholars and advocates. Our comprehensive bill was crafted to curtail illegal immigration, to provide personnel for labor-scarce markets and to give the most worthy of our illegal population a chance to earn legal status.

The foundation of IRCA was enforcement and border security, but to work, it required consistent funding: for agents to investigate workplace violations, for prosecution of employers who broke the law, for more Border Patrol agents, and for installing the latest in high-tech monitoring and surveillance equipment. We saw the need for funding to develop a simple, reliable and tamper-proof

system, a "more secure identifier," using cards or biometrics. Opponents from the right and the left savaged it as "a National ID," although it was not something that had to be carried on one's person but was to be presented only at the time of "new hire" employment or when applying for government benefits.

After two decades, the system is still not in place. Unfortunately, what is in place is the use of several different identifiers, which were meant to be temporary, and a flourishing underground economy engaged in creating fraudulent documents for illegal immigrants.

All administrations since 1986 have allocated funding and personnel resources more generously to the task of securing the border than to enforcing IRCA in the workplace. Why? One answer is that there are never enough federal budget resources. Another is that administrations of both stripes are loathe to disrupt economic activities - i.e. labor supply in factories, farms and businesses. And we know that disruptions in the labor supply are the natural, unavoidable and even desirable consequence of strong border and workplace enforcement.

We believe that our three-legged-stool approach is still relevant and workable if carried out vigorously. We commend the Senate, which, in a worthy bipartisan effort, adopted such a framework this spring. The House bill is basically a tough "enforcement-only" measure.

We earnestly hope that before this Congress adjourns, the House and Senate will compromise, wring out the raw partisanship, and find a way to send President Bush - who has staked so much on enactment of solid immigration reform - a measure structured along the lines of our original bill. There is still time.

Romano L. Mazzoli was a Democratic representative from Kentucky. Alan K. Simpson was a Republican senator from Wyoming.

