CITY OF BOULDER
CITY COUNCIL AGENDA ITEM

MEETING DATE: July 6, 2010

AGENDA TITLE: Report on the Human Relations Commission's recommendation on a city position on Arizona's Immigration Enforcement Law and Comprehensive Federal Immigration Reform.

PRESENTERS:
Jane S. Brautigam, City Manager
Paul J. Fetherston, Deputy City Manager
Karen Rahn, Director, Housing and Human Services (HHS)
Carmen Atilano, Community Relations and Human Rights Manager, HHS
Carl Castillo, Policy Advisor, City Manager's Office

EXECUTIVE SUMMARY:

On May 4, 2010, City Council asked the Human Relations Commission (HRC) for a recommendation on a city position on two issues:

1. How to respond to the recent Arizona immigration enforcement law (including the possibility of severing business ties with Arizona-based businesses); and
2. Comprehensive federal immigration reform.

In response to this request, on May 17, 2010, the HRC considered the matter and recommended that City Council adopt a resolution, included as **Attachment A**.

On June 28, 2010, Council's Agenda Committee (CAC) recommended that the City Council provide feedback on the draft resolution and then refer the item back to the Human Relations Commission for a more in depth position on Comprehensive Immigration Reform. It was suggested that this be a report to Council under Matters from the City Manager prior to coming back for public hearing.

STAFF RECOMMENDATION:

Per CAC direction, staff recommends that council defer action on the recommendation made by the Human Relations Commission and instead provide feedback on the work conducted so far by the HRC. Staff also recommends that council refer the item back to the Human Relations Commission for a more in depth city position on comprehensive immigration reform.

COMMUNITY SUSTAINABILITY ASSESSMENTS AND IMPACTS:

- **Economic:** In a time of economic recovery, legislation that benefits all workers and families in Boulder is important because a lack of legal status makes workers easy prey for economic abuses by employers that keep wages low and working conditions poor for everyone.
- **Social:** Immigration reform that leads to the legalization of families and gives workers the ability to exercise their rights could raise the standard of living for workers in Boulder.

OTHER IMPACTS:

- **Fiscal**: Adoption of a resolution on immigration reform would not, in and of itself, have an impact on the city budget.

BOARD AND COMMISSION FEEDBACK:

At its May 17, 2010 meeting, the HRC approved by vote of 3-1 (one commissioner seat vacant) a recommendation that City Council approve the resolution included as **Attachment A**.

The dissenting vote by Commissioner Harris expressed his perspective that the HRC recommendation include a more general boycott of Arizona, as supported by majority of individuals at the May 17 public hearing on the matter.

PUBLIC FEEDBACK:

Since the May 4 City Council meeting, a significant amount of public feedback (in the form of e-mails, faxes, letters and phone calls) has been received addressing the preliminary actions taken by both the City Council and city manager on this matter. Copies of the written correspondence, was made available for HRC members prior to their May 17 meeting. An updated copy of this correspondence will be made available for council at Central Records. Public feedback received through May 13, 2010, indicated 498 opposing and 81 supporting preliminary city action taken on this matter.

At the May 17 HRC meeting, 17 individuals participated in the public hearing with 14 supporting an HRC recommendation to City Council for adoption of a resolution on immigration reform and three opposing the recommendation.

BACKGROUND AND ANALYSIS:

At its April 5, 2010 meeting, the HRC heard a request from members of *Boulder VOICE: Voices of Immigrant Children for Education* (Boulder VOICE) that the HRC make a recommendation to City Council to endorse a federal legislative proposal referred to as *The Comprehensive Immigration Reform for America's Security and Prosperity Act of 2009* (CIR ASAP). Boulder VOICE also requested that the city write a letter to Senator Udall and to Senator Bennet expressing support for CIR ASAP and urging prompt action.

The HRC made a decision to communicate to City Council an interest in pursuing community participation on pending federal immigration legislation. The Commission's recommendation was preceded by discussion that it wanted the city to monitor federal immigration reform legislation, and community perspectives in that regard, and to later develop a position. The HRC, however, did not make a recommendation that the city take an immediate position.

On Friday, April 23, 2010, Arizona Governor Jan Brewer signed into law Senate Bill 1070, also known as the "*Support Our Law Enforcement and Safe Neighborhoods Act*". On the same day she issued Executive Order 2010-09 requiring the Arizona Peace Officers Standards and Training Board (Board) to establish training to assure that law enforcement officials and agencies implement SB 1070, "consistent with federal laws regulating immigration, protects the civil rights of all persons and respects the privileges and immunities of United States citizens." The executive order also required clear guidance on what constitutes reasonable suspicion. The Board is to provide a list of the specific forms of identification that provide a presumption that a person is not an alien unlawfully present in the United States. On Friday, April 30, Governor Brewer signed into law HB 2162, amending SB 1070 in an attempt to address concerns about racial profiling and to require, among other things, that a lawful stop, detention or arrest be "in the enforcement of any other law or ordinance of a county, city or town or [of Arizona]." Both of these laws, which are scheduled to become effective July 29, 2010, are integrated into **Attachment B**. An unbiased summary of the major provisions of the law, created by the National Conference of State Legislatures, a "bipartisan" organization, is included as **Attachment C**.

On May 5, 2010, City Manager Brautigam announced a ban on all official city travel to Arizona. This action was taken both to demonstrate the city's opposition to Arizona's new law and to provide for the protection of city officials whose travel to Arizona could subject them to harassment because of their ethnic or racial status. Since announcing her decision, the city manager has determined to limit the ban to non-essential travel, in order to recognize that there may be situations, such as providing assistance to fight wildfires or aid in other natural disasters, as well as investigations by law enforcement officials, that may justify exceptions to a blanket travel ban.

Pursuant to council direction, the city manager also directed a citywide review of the extent to which the city does business with entities having a presence in the state of Arizona. The preliminary conclusions from this review indicate that the city conducts business with a variety of companies that have Arizona connections. Several of them are national companies which merely have lockbox or payment addresses (for centralized collections) that happen to be in Arizona. Others have more direct connections to the state. Among the services provided by these businesses are credit card processing and software and police equipment sales. Given that these services are critical to the city, that the businesses are not themselves responsible for enactment or implementation of Arizona's new immigration enforcement law, and that continuing these relationships does not present the same concerns that exist with travel to the state, staff does not recommend any severing of business ties with Arizona beyond the already implemented ban on non-essential travel. In recommending the attached resolution, HRC agreed with staff's recommendation on this matter.

ACTION BY OTHER GOVERNMENTAL JURISDICTIONS:

Since the enactment of Arizona's immigration enforcement law, several governments and intergovernmental organizations throughout the nation have responded in various ways to express their disapproval. Some have focused primarily on Arizona's new law while others have focused more on the need for comprehensive immigration reform. The following is a non-exhaustive list of such action, with resolutions attached when they were readily available:

1. **City of Austin -** The Austin City Council passed a resolution to end business and travel ties with the state of Arizona.
2. **City of Boston –** Boston's City Council approved a resolution calling for the city to pull investments from Arizona.
3. **City of Columbus** – The mayor of Columbus banned city workers from traveling to Arizona on government business. Columbus' City Council approved a resolution **(Attachment D)**
4. **City and County of Denver** – Denver's City Council passed a proclamation **(Attachment E)** urging swift federal action on comprehensive immigration reform.
5. **City of Flagstaff** – Flagstaff's City Council approved a resolution **(Attachment F)**, authorizing a legal challenge to Arizona's Immigration Enforcement Law.
6. **City of Los Angeles -** The City Council approved a resolution boycotting Arizona-based businesses.
7. **City of Oakland** – Oakland's City Council voted to ban the city government from sending employees to the Arizona on official business and to prevent the city from signing new contracts with Arizona-based businesses.
8. **City or Portland** - Portland's City Council approved a resolution opposing Arizona's law. The resolution the city attorney to assist in legal efforts by the mayors of Flagstaff and Tucson to overturn the Arizona law. The resolution

also allows city lobbyists to push for stronger Oregon laws against racial profiling.

9. **City of San Diego -** The San Diego City Council approved a resolution calling for the repeal of Arizona's law.
10. **City of San Francisco** - San Francisco's Board of Supervisors approved a resolution to boycott Arizona-based businesses.
11. **City of Seattle** – Seattle's City Council approved a resolution (**Attachment G**), supporting comprehensive immigration reform.
12. **City of West Hollywood -** West Hollywood City Council adopted a resolution (press release included as **Attachment H**), that suspended official travel to the state of Arizona and also authorized the development of "additional financial sanctions" until such time as the new law is revoked
13. **County of El Paso** - El Paso's City Council adopted a resolution denouncing Arizona's new law, asking President Obama to move on immigration reform, and boycotting the state of Arizona.
14. **Colorado Association of Chiefs of Police ("CACP")** – CACP approved a position statement (**Attachment I**), calling it a "mistake" to shift the primary duty to enforce immigration law to Colorado police.
15. **Denver Public Schools -** DPS Superintendent banned employee travel to Arizona (press release included as **Attachment J),**
16. **U.S. Conference of Mayors** - At its June 14th meeting, the U.S. Conference of Mayors passed two resolutions (**Attachment K** and **Attachment L**), condemning Arizona's new immigration law and asking Congress for an overhaul of federal immigration policies.

While not created in response to the passage of Arizona's law, staff is also attaching a report created by the University of Denver in December 2009, called "Architecture for Immigration Reform: Fitting the Pieces of Public Policy" (**Attachment M**).

NEXT STEPS:

Pending Council approval of CAC and staff recommendation, the HRC will consider the matter and recommend a more in depth resolution on Comprehensive Immigration Reform for Council's consideration in advance of its approval of the 2011 legislative agenda.

Approved By:

Susan Kohl

Jane. S. Brautigam

Attachment:

A. Proposed Boulder City Council Resolution
B. Arizona SB 1070 and HB 2162
C. Summary of Arizona's Immigration Enforcement Law
D. City of Columbus Resolution
E. City and County of Denver Proclamation
F. City of Flagstaff Resolution
G. City of Seattle Resolution
H. City of west Hollywood Resolution
I. CACP Position Statement
J. Denver Public Schools Press Release
K. U.S. Conference of Mayors Resolution on Arizona law
L. U.S. Conference of Mayors Resolution on Immigration Policies
M. University of Denver Report: "Architecture for Immigration Reform"

Attachment A

Boulder City Council

RESOLUTION NO. _____

A RESOLUTION DENOUNCING IMMIGRATION ENFORCMEMENT LAWS WHICH MAY RESULT IN RACIAL PROFILING AND IN SUPPORT OF COMPREHENSIVE IMMIGRATION REFORM

FINDINGS

The City of Boulder City Council finds as follows:

1. The City of Boulder has been, and remains committed to the protection of civil rights for all people as expressed in the U.S. and the Colorado Constitutions and the City of Boulder Human Rights Ordinance, and to the opposition to any acts of racism, bigotry, harassment and discrimination.

2. The City of Boulder is committed to unbiased policing as expressed in the policies of the Boulder Police Department. The city firmly adheres to the principle that no law enforcement agency, or other city agency, may profile or discriminate against any person solely on the basis of ancestry, race, ethnicity, national origin, color, age, sex, sexual orientation, gender variance, marital status, physical or mental disability, or religion, nor shall city agencies assist other agencies in practices that violate these policies.

3. On April 23, 2010, Arizona Governor Jan Brewer signed Senate Bill 1070, known as the "*Support Our Law Enforcement and Safe Neighborhoods Act.*" On April 29, Governor Brewer signed House Bill 2162, which amended House Bill 1070. These laws, (collectively referred to as "Arizona's Immigration Enforcement Law"), will, among other things, require all local law enforcement officials to investigate the immigration status of a person when there is a reasonable suspicion that the person is in the country unlawfully, if that person was involved in a lawful stop in the enforcement of another law, and to not release that person until their immigration status is determined.

4. While all local and state governments have the right and obligation to provide for the welfare and security of their residents, the enactment of laws of the type enacted by Arizona create the possibility of institutionlizing a practice of racial and ethnic profiling that will infringe upon the civil rights of individuals and families across the U.S., regardless of immigration status, and threaten basic notions of decency, justice, and fairness which are essential elements of the Boulder Human Rights Ordinance and the American way of life.

5. The passage of Arizona's law is indicative of the need for comprehensive immigration reform, which can only be achieved by a partnership between State and Federal Governments.

Draft

Attachment A

RESOLUTION

The City of Boulder City Council does hereby resolve that it:

1. Denounces any policy which is likely to result in racial profiling, place immigrants at risk, and hinder law enforcement officials from obtaining necessary cooperation.

2. Supports the city manager's decision to ban non-essential city travel to the state of Arizona.

3. Welcomes and encourages cooperation on all levels of government to work together to enact immigration policies and laws that provide a clear path to citizenship and equitable access to higher education for immigrant students already being educated in American public schools and to improve border security while safeguarding human and civil rights for all.

4. Directs the City Clerk to transmit copies of this Resolution to all members of the city's Congressional delegation.

5. Includes in its 2010 Federal Legislative Agenda opposition to any legislation, including immigration policy, that promotes racial profiling or discrimination based on race, ethnicity or national origin, and in doing so, commits to include such opposition in further federal legislative advocacy efforts.

Draft

Resolved this 1st day of June, 2010.

_____
Mayor

Attest

_____
City Clerk on behalf of the
Director of Finance and Record

On April 23, 2010, Senate Bill 1070 (sponsored by Senator Russell Pearce) was signed into law. SB1070 was enacted as Laws 2010, Chapter 113. House Bill 2162 made additional changes to Laws 2010, Chapter 113. Below is an engrossed version of SB1070 with the pertinent changes made by the Conference Engrossed HB2162. BLUE text indicates the original language of SB1070 and GREEN text denotes changes made by HB2162.

House Engrossed Senate Bill

State of Arizona
Senate
Forty-ninth Legislature
Second Regular Session
2010

SENATE BILL 1070

AN ACT

AMENDING TITLE 11, CHAPTER 7, ARIZONA REVISED STATUTES, BY ADDING ARTICLE 8; AMENDING TITLE 13, CHAPTER 15, ARIZONA REVISED STATUTES, BY ADDING SECTION 13-1509; AMENDING SECTION 13-2319, ARIZONA REVISED STATUTES; AMENDING TITLE 13, CHAPTER 29, ARIZONA REVISED STATUTES, BY ADDING SECTIONS 13-2928 AND 13-2929; AMENDING SECTIONS 13-3883, 23-212, 23-212.01, 23-214 AND 28-3511, ARIZONA REVISED STATUTES; AMENDING TITLE 41, CHAPTER 12, ARTICLE 2, ARIZONA REVISED STATUTES, BY ADDING SECTION 41-1724; RELATING TO UNLAWFULLY PRESENT ALIENS.

(TEXT OF BILL BEGINS ON NEXT PAGE)

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Be it enacted by the Legislature of the State of Arizona:

Section 1. Intent

The legislature finds that there is a compelling interest in the cooperative enforcement of federal immigration laws throughout all of Arizona. The legislature declares that the intent of this act is to make attrition through enforcement the public policy of all state and local government agencies in Arizona. The provisions of this act are intended to work together to discourage and deter the unlawful entry and presence of aliens and economic activity by persons unlawfully present in the United States.

Sec. 2. Title 11, chapter 7, Arizona Revised Statutes, is amended by adding article 8, to read:

ARTICLE 8. ENFORCEMENT OF IMMIGRATION LAWS

11-1051. Cooperation and assistance in enforcement of immigration laws; indemnification

A. NO OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY LIMIT OR RESTRICT THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS TO LESS THAN THE FULL EXTENT PERMITTED BY FEDERAL LAW.

B. FOR ANY LAWFUL ~~CONTACT~~ STOP, DETENTION OR ARREST MADE BY A LAW ENFORCEMENT OFFICIAL OR A LAW ENFORCEMENT AGENCY OF THIS STATE OR A LAW ENFORCEMENT OFFICIAL OR A LAW ENFORCEMENT AGENCY OF A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE IN THE ENFORCEMENT OF ANY OTHER LAW OR ORDINANCE OF A COUNTY, CITY OR TOWN OR THIS STATE WHERE REASONABLE SUSPICION EXISTS THAT THE PERSON IS AN ALIEN ~~WHO~~ AND IS UNLAWFULLY PRESENT IN THE UNITED STATES, A REASONABLE ATTEMPT SHALL BE MADE, WHEN PRACTICABLE, TO DETERMINE THE IMMIGRATION STATUS OF THE PERSON, EXCEPT IF THE DETERMINATION MAY HINDER OR OBSTRUCT AN INVESTIGATION. ANY PERSON WHO IS ARRESTED SHALL HAVE THE PERSON'S IMMIGRATION STATUS DETERMINED BEFORE THE PERSON IS RELEASED. THE PERSON'S IMMIGRATION STATUS SHALL BE VERIFIED WITH THE FEDERAL GOVERNMENT PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c). A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT ~~SOLELY~~ CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN IMPLEMENTING THE REQUIREMENTS OF THIS SUBSECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION. A PERSON IS PRESUMED TO NOT BE AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IF THE PERSON PROVIDES TO THE LAW ENFORCEMENT OFFICER OR AGENCY ANY OF THE FOLLOWING:

1. A VALID ARIZONA DRIVER LICENSE.

2. A VALID ARIZONA NONOPERATING IDENTIFICATION LICENSE.

3. A VALID TRIBAL ENROLLMENT CARD OR OTHER FORM OF TRIBAL IDENTIFICATION.

4. IF THE ENTITY REQUIRES PROOF OF LEGAL PRESENCE IN THE UNITED STATES BEFORE ISSUANCE, ANY VALID UNITED STATES FEDERAL, STATE OR LOCAL GOVERNMENT ISSUED IDENTIFICATION.

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C. IF AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES IS CONVICTED OF A VIOLATION OF STATE OR LOCAL LAW, ON DISCHARGE FROM IMPRISONMENT OR ON THE ASSESSMENT OF ANY MONETARY OBLIGATION THAT IS IMPOSED, THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION SHALL BE IMMEDIATELY NOTIFIED.

D. NOTWITHSTANDING ANY OTHER LAW, A LAW ENFORCEMENT AGENCY MAY SECURELY TRANSPORT AN ALIEN WHO THE AGENCY HAS RECEIVED VERIFICATION IS UNLAWFULLY PRESENT IN THE UNITED STATES AND WHO IS IN THE AGENCY'S CUSTODY TO A FEDERAL FACILITY IN THIS STATE OR TO ANY OTHER POINT OF TRANSFER INTO FEDERAL CUSTODY THAT IS OUTSIDE THE JURISDICTION OF THE LAW ENFORCEMENT AGENCY. A LAW ENFORCEMENT AGENCY SHALL OBTAIN JUDICIAL AUTHORIZATION BEFORE SECURELY TRANSPORTING AN ALIEN WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES TO A POINT OF TRANSFER THAT IS OUTSIDE OF THIS STATE.

E. IN THE IMPLEMENTATION OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~E.~~ F. EXCEPT AS PROVIDED IN FEDERAL LAW, OFFICIALS OR AGENCIES OF THIS STATE AND COUNTIES, CITIES, TOWNS AND OTHER POLITICAL SUBDIVISIONS OF THIS STATE MAY NOT BE PROHIBITED OR IN ANY WAY BE RESTRICTED FROM SENDING, RECEIVING OR MAINTAINING INFORMATION RELATING TO THE IMMIGRATION STATUS, LAWFUL OR UNLAWFUL, OF ANY INDIVIDUAL OR EXCHANGING THAT INFORMATION WITH ANY OTHER FEDERAL, STATE OR LOCAL GOVERNMENTAL ENTITY FOR THE FOLLOWING OFFICIAL PURPOSES:

1. DETERMINING ELIGIBILITY FOR ANY PUBLIC BENEFIT, SERVICE OR LICENSE PROVIDED BY ANY FEDERAL, STATE, LOCAL OR OTHER POLITICAL SUBDIVISION OF THIS STATE.

2. VERIFYING ANY CLAIM OF RESIDENCE OR DOMICILE IF DETERMINATION OF RESIDENCE OR DOMICILE IS REQUIRED UNDER THE LAWS OF THIS STATE OR A JUDICIAL ORDER ISSUED PURSUANT TO A CIVIL OR CRIMINAL PROCEEDING IN THIS STATE.

3. IF THE PERSON IS AN ALIEN, DETERMINING WHETHER THE PERSON IS IN COMPLIANCE WITH THE FEDERAL REGISTRATION LAWS PRESCRIBED BY TITLE II, CHAPTER 7 OF THE FEDERAL IMMIGRATION AND NATIONALITY ACT.

4. PURSUANT TO 8 UNITED STATES CODE SECTION 1373 AND 8 UNITED STATES CODE SECTION 1644.

~~F.~~ G. THIS SECTION DOES NOT IMPLEMENT, AUTHORIZE OR ESTABLISH AND SHALL NOT BE CONSTRUED TO IMPLEMENT, AUTHORIZE OR ESTABLISH THE REAL ID ACT OF 2005 (P.L. 109-13, DIVISION B; 119 STAT. 302), INCLUDING THE USE OF A RADIO FREQUENCY IDENTIFICATION CHIP.

~~G.~~ H. A PERSON WHO IS A LEGAL RESIDENT OF THIS STATE MAY BRING AN ACTION IN SUPERIOR COURT TO CHALLENGE ANY OFFICIAL OR AGENCY OF THIS STATE

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OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT ADOPTS OR IMPLEMENTS A POLICY ~~OR PRACTICE~~ THAT LIMITS OR RESTRICTS THE ENFORCEMENT OF FEDERAL IMMIGRATION LAWS, INCLUDING 8 UNITED STATES CODE SECTIONS 1373 AND 1644, TO LESS THAN THE FULL EXTENT PERMITTED BY FEDERAL LAW. IF THERE IS A JUDICIAL FINDING THAT AN ENTITY HAS VIOLATED THIS SECTION, THE COURT SHALL ORDER THAT THE ENTITY PAY A CIVIL PENALTY OF NOT LESS THAN ~~ONE THOUSAND~~ FIVE HUNDRED DOLLARS AND NOT MORE THAN FIVE THOUSAND DOLLARS FOR EACH DAY THAT THE POLICY HAS REMAINED IN EFFECT AFTER THE FILING OF AN ACTION PURSUANT TO THIS SUBSECTION.

~~H.~~ I. A COURT SHALL COLLECT THE CIVIL PENALTY PRESCRIBED IN SUBSECTION ~~G~~ H OF THIS SECTION AND REMIT THE CIVIL PENALTY TO THE STATE TREASURER FOR DEPOSIT IN THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND ESTABLISHED BY SECTION 41-1724.

~~I.~~ J. THE COURT MAY AWARD COURT COSTS AND REASONABLE ATTORNEY FEES TO ANY PERSON OR ANY OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE THAT PREVAILS BY AN ADJUDICATION ON THE MERITS IN A PROCEEDING BROUGHT PURSUANT TO THIS SECTION.

~~J.~~ K. EXCEPT IN RELATION TO MATTERS IN WHICH THE OFFICER IS ADJUDGED TO HAVE ACTED IN BAD FAITH, A LAW ENFORCEMENT OFFICER IS INDEMNIFIED BY THE LAW ENFORCEMENT OFFICER'S AGENCY AGAINST REASONABLE COSTS AND EXPENSES, INCLUDING ATTORNEY FEES, INCURRED BY THE OFFICER IN CONNECTION WITH ANY ACTION, SUIT OR PROCEEDING BROUGHT PURSUANT TO THIS SECTION IN WHICH THE OFFICER MAY BE A DEFENDANT BY REASON OF THE OFFICER BEING OR HAVING BEEN A MEMBER OF THE LAW ENFORCEMENT AGENCY.

~~K.~~ L. THIS SECTION SHALL BE IMPLEMENTED IN A MANNER CONSISTENT WITH FEDERAL LAWS REGULATING IMMIGRATION, PROTECTING THE CIVIL RIGHTS OF ALL PERSONS AND RESPECTING THE PRIVILEGES AND IMMUNITIES OF UNITED STATES CITIZENS.

Sec. 3. Title 13, chapter 15, Arizona Revised Statutes, is amended by adding section 13-1509, to read:

13-1509. Willful failure to complete or carry an alien registration document; assessment; exception; authenticated records; classification

A. IN ADDITION TO ANY VIOLATION OF FEDERAL LAW, A PERSON IS GUILTY OF WILLFUL FAILURE TO COMPLETE OR CARRY AN ALIEN REGISTRATION DOCUMENT IF THE PERSON IS IN VIOLATION OF 8 UNITED STATES CODE SECTION 1304(e) OR 1306(a).

B. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

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C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

~~C.~~ D. A PERSON WHO IS SENTENCED PURSUANT TO THIS SECTION IS NOT ELIGIBLE FOR SUSPENSION OF SENTENCE, PROBATION, PARDON, COMMUTATION OF SENTENCE, OR RELEASE FROM CONFINEMENT ON ANY BASIS EXCEPT AS AUTHORIZED BY SECTION 31-233, SUBSECTION A OR B UNTIL THE SENTENCE IMPOSED BY THE COURT HAS BEEN SERVED OR THE PERSON IS ELIGIBLE FOR RELEASE PURSUANT TO SECTION 41-1604.07.

~~D.~~ E. IN ADDITION TO ANY OTHER PENALTY PRESCRIBED BY LAW, THE COURT SHALL ORDER THE PERSON TO PAY JAIL COSTS. ~~AND AN ADDITIONAL ASSESSMENT IN THE FOLLOWING AMOUNTS:~~

~~1. AT LEAST FIVE HUNDRED DOLLARS FOR A FIRST VIOLATION.~~

~~2. TWICE THE AMOUNT SPECIFIED IN PARAGRAPH 1 OF THIS SUBSECTION IF THE PERSON WAS PREVIOUSLY SUBJECT TO AN ASSESSMENT PURSUANT TO THIS SUBSECTION.~~

~~E. A COURT SHALL COLLECT THE ASSESSMENTS PRESCRIBED IN SUBSECTION D OF THIS SECTION AND REMIT THE ASSESSMENTS TO THE DEPARTMENT OF PUBLIC SAFETY, WHICH SHALL ESTABLISH A SPECIAL SUBACCOUNT FOR THE MONIES IN THE ACCOUNT ESTABLISHED FOR THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION APPROPRIATION. MONIES IN THE SPECIAL SUBACCOUNT ARE SUBJECT TO LEGISLATIVE APPROPRIATION FOR DISTRIBUTION FOR GANG AND IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.~~

F. THIS SECTION DOES NOT APPLY TO A PERSON WHO MAINTAINS AUTHORIZATION FROM THE FEDERAL GOVERNMENT TO REMAIN IN THE UNITED STATES.

G. ANY RECORD THAT RELATES TO THE IMMIGRATION STATUS OF A PERSON IS ADMISSIBLE IN ANY COURT WITHOUT FURTHER FOUNDATION OR TESTIMONY FROM A CUSTODIAN OF RECORDS IF THE RECORD IS CERTIFIED AS AUTHENTIC BY THE GOVERNMENT AGENCY THAT IS RESPONSIBLE FOR MAINTAINING THE RECORD.

H. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR, EXCEPT THAT THE MAXIMUM FINE IS ONE HUNDRED DOLLARS AND FOR A FIRST VIOLATION OF THIS SECTION ~~IS:~~ THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN TWENTY DAYS IN JAIL AND FOR A SECOND OR SUBSEQUENT VIOLATION THE COURT SHALL NOT SENTENCE THE PERSON TO MORE THAN THIRTY DAYS IN JAIL.

~~1. A CLASS 3 FELONY IF THE PERSON VIOLATES THIS SECTION WHILE IN POSSESSION OF ANY OF THE FOLLOWING:~~

~~(a) A DANGEROUS DRUG AS DEFINED IN SECTION 13-3401.~~

~~(b) PRECURSOR CHEMICALS THAT ARE USED IN THE MANUFACTURING OF METHAMPHETAMINE IN VIOLATION OF SECTION 13-3404.01.~~

~~(c) A DEADLY WEAPON OR A DANGEROUS INSTRUMENT, AS DEFINED IN SECTION 13-105.~~

~~(d) PROPERTY THAT IS USED FOR THE PURPOSE OF COMMITTING AN ACT OF TERRORISM AS PRESCRIBED IN SECTION 13-2308.01.~~

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~~2. A CLASS 4 FELONY IF THE PERSON EITHER:~~

~~(a) IS CONVICTED OF A SECOND OR SUBSEQUENT VIOLATION OF THIS SECTION.~~

~~(b) WITHIN SIXTY MONTHS BEFORE THE VIOLATION, HAS BEEN REMOVED FROM THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229a OR HAS ACCEPTED A VOLUNTARY REMOVAL FROM THE UNITED STATES PURSUANT TO 8 UNITED STATES CODE SECTION 1229c.~~

Sec. 4. Section 13-2319, Arizona Revised Statutes, is amended to read:

13-2319. Smuggling; classification; definitions

A. It is unlawful for a person to intentionally engage in the smuggling of human beings for profit or commercial purpose.

B. A violation of this section is a class 4 felony.

C. Notwithstanding subsection B of this section, a violation of this section:

1. Is a class 2 felony if the human being who is smuggled is under eighteen years of age and is not accompanied by a family member over eighteen years of age or the offense involved the use of a deadly weapon or dangerous instrument.

2. Is a class 3 felony if the offense involves the use or threatened use of deadly physical force and the person is not eligible for suspension of sentence, probation, pardon or release from confinement on any other basis except pursuant to section 31-233, subsection A or B until the sentence imposed by the court is served, the person is eligible for release pursuant to section 41-1604.07 or the sentence is commuted.

D. Chapter 10 of this title does not apply to a violation of subsection C, paragraph 1 of this section.

E. NOTWITHSTANDING ANY OTHER LAW, IN THE ENFORCEMENT OF THIS SECTION A PEACE OFFICER MAY LAWFULLY STOP ANY PERSON WHO IS OPERATING A MOTOR VEHICLE IF THE OFFICER HAS REASONABLE SUSPICION TO BELIEVE THE PERSON IS IN VIOLATION OF ANY CIVIL TRAFFIC LAW.

~~E.~~ F. For the purposes of this section:

1. "Family member" means the person's parent, grandparent, sibling or any other person who is related to the person by consanguinity or affinity to the second degree.

2. "Procurement of transportation" means any participation in or facilitation of transportation and includes:

(a) Providing services that facilitate transportation including travel arrangement services or money transmission services.

(b) Providing property that facilitates transportation, including a weapon, a vehicle or other means of transportation or false identification, or selling, leasing, renting or otherwise making available a drop house as defined in section 13-2322.

3. "Smuggling of human beings" means the transportation, procurement of transportation or use of property or real property by a

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person or an entity that knows or has reason to know that the person or persons transported or to be transported are not United States citizens, permanent resident aliens or persons otherwise lawfully in this state or have attempted to enter, entered or remained in the United States in violation of law.

Sec. 5. Title 13, chapter 29, Arizona Revised Statutes, is amended by adding sections 13-2928 and 13-2929, to read:

13-2928. Unlawful stopping to hire and pick up passengers for work; unlawful application, solicitation or employment; classification; definitions

A. IT IS UNLAWFUL FOR AN OCCUPANT OF A MOTOR VEHICLE THAT IS STOPPED ON A STREET, ROADWAY OR HIGHWAY TO ATTEMPT TO HIRE OR HIRE AND PICK UP PASSENGERS FOR WORK AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

B. IT IS UNLAWFUL FOR A PERSON TO ENTER A MOTOR VEHICLE THAT IS STOPPED ON A STREET, ROADWAY OR HIGHWAY IN ORDER TO BE HIRED BY AN OCCUPANT OF THE MOTOR VEHICLE AND TO BE TRANSPORTED TO WORK AT A DIFFERENT LOCATION IF THE MOTOR VEHICLE BLOCKS OR IMPEDES THE NORMAL MOVEMENT OF TRAFFIC.

C. IT IS UNLAWFUL FOR A PERSON WHO IS UNLAWFULLY PRESENT IN THE UNITED STATES AND WHO IS AN UNAUTHORIZED ALIEN TO KNOWINGLY APPLY FOR WORK, SOLICIT WORK IN A PUBLIC PLACE OR PERFORM WORK AS AN EMPLOYEE OR INDEPENDENT CONTRACTOR IN THIS STATE.

D. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

E. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~D.~~ F. A VIOLATION OF THIS SECTION IS A CLASS 1 MISDEMEANOR.

~~E.~~ G. FOR THE PURPOSES OF THIS SECTION:

1. "SOLICIT" MEANS VERBAL OR NONVERBAL COMMUNICATION BY A GESTURE OR A NOD THAT WOULD INDICATE TO A REASONABLE PERSON THAT A PERSON IS WILLING TO BE EMPLOYED.

2. "UNAUTHORIZED ALIEN" MEANS AN ALIEN WHO DOES NOT HAVE THE LEGAL RIGHT OR AUTHORIZATION UNDER FEDERAL LAW TO WORK IN THE UNITED STATES AS DESCRIBED IN 8 UNITED STATES CODE SECTION 1324a(h)(3).

13-2929. Unlawful transporting, moving, concealing, harboring or shielding of unlawful aliens; vehicle impoundment; exception; classification

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A. IT IS UNLAWFUL FOR A PERSON WHO IS IN VIOLATION OF A CRIMINAL OFFENSE TO:

1. TRANSPORT OR MOVE OR ATTEMPT TO TRANSPORT OR MOVE AN ALIEN IN THIS STATE, IN FURTHERANCE OF THE ILLEGAL PRESENCE OF THE ALIEN IN THE UNITED STATES, IN A MEANS OF TRANSPORTATION IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

2. CONCEAL, HARBOR OR SHIELD OR ATTEMPT TO CONCEAL, HARBOR OR SHIELD AN ALIEN FROM DETECTION IN ANY PLACE IN THIS STATE, INCLUDING ANY BUILDING OR ANY MEANS OF TRANSPORTATION, IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

3. ENCOURAGE OR INDUCE AN ALIEN TO COME TO OR RESIDE IN THIS STATE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT SUCH COMING TO, ENTERING OR RESIDING IN THIS STATE IS OR WILL BE IN VIOLATION OF LAW.

B. A MEANS OF TRANSPORTATION THAT IS USED IN THE COMMISSION OF A VIOLATION OF THIS SECTION IS SUBJECT TO MANDATORY VEHICLE IMMOBILIZATION OR IMPOUNDMENT PURSUANT TO SECTION 28-3511.

C. A LAW ENFORCEMENT OFFICIAL OR AGENCY OF THIS STATE OR A COUNTY, CITY, TOWN OR OTHER POLITICAL SUBDIVISION OF THIS STATE MAY NOT CONSIDER RACE, COLOR OR NATIONAL ORIGIN IN THE ENFORCEMENT OF THIS SECTION EXCEPT TO THE EXTENT PERMITTED BY THE UNITED STATES OR ARIZONA CONSTITUTION.

D. IN THE ENFORCEMENT OF THIS SECTION, AN ALIEN'S IMMIGRATION STATUS MAY BE DETERMINED BY:

1. A LAW ENFORCEMENT OFFICER WHO IS AUTHORIZED BY THE FEDERAL GOVERNMENT TO VERIFY OR ASCERTAIN AN ALIEN'S IMMIGRATION STATUS.

2. THE UNITED STATES IMMIGRATION AND CUSTOMS ENFORCEMENT OR THE UNITED STATES CUSTOMS AND BORDER PROTECTION PURSUANT TO 8 UNITED STATES CODE SECTION 1373(c).

~~C.~~ E. THIS SECTION DOES NOT APPLY TO A CHILD PROTECTIVE SERVICES WORKER ACTING IN THE WORKER'S OFFICIAL CAPACITY OR A PERSON WHO IS ACTING IN THE CAPACITY OF A FIRST RESPONDER, AN AMBULANCE ATTENDANT OR AN EMERGENCY MEDICAL TECHNICIAN AND WHO IS TRANSPORTING OR MOVING AN ALIEN IN THIS STATE PURSUANT TO TITLE 36, CHAPTER 21.1.

~~D.~~ F. A PERSON WHO VIOLATES THIS SECTION IS GUILTY OF A CLASS 1 MISDEMEANOR AND IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS, EXCEPT THAT A VIOLATION OF THIS SECTION THAT INVOLVES TEN OR MORE ILLEGAL ALIENS IS A CLASS 6 FELONY AND THE PERSON IS SUBJECT TO A FINE OF AT LEAST ONE THOUSAND DOLLARS FOR EACH ALIEN WHO IS INVOLVED.

Sec. 6. Section 13-3883, Arizona Revised Statutes, is amended to read:

13-3883. Arrest by officer without warrant

A. A peace officer ~~may~~, without a warrant, MAY arrest a person if ~~he~~ THE OFFICER has probable cause to believe:

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1. A felony has been committed and probable cause to believe the person to be arrested has committed the felony.

2. A misdemeanor has been committed in ~~his~~ THE OFFICER'S presence and probable cause to believe the person to be arrested has committed the offense.

3. The person to be arrested has been involved in a traffic accident and violated any criminal section of title 28, and that such violation occurred prior to or immediately following such traffic accident.

4. A misdemeanor or a petty offense has been committed and probable cause to believe the person to be arrested has committed the offense. A person arrested under this paragraph is eligible for release under section 13-3903.

5. THE PERSON TO BE ARRESTED HAS COMMITTED ANY PUBLIC OFFENSE THAT MAKES THE PERSON REMOVABLE FROM THE UNITED STATES.

B. A peace officer may stop and detain a person as is reasonably necessary to investigate an actual or suspected violation of any traffic law committed in the officer's presence and may serve a copy of the traffic complaint for any alleged civil or criminal traffic violation. A peace officer who serves a copy of the traffic complaint shall do so within a reasonable time of the alleged criminal or civil traffic violation.

Sec. 7. Section 23-212, Arizona Revised Statutes, is amended to read:

23-212. Knowingly employing unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not knowingly employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer knowingly contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

B. The attorney general shall prescribe a complaint form for a person to allege a violation of subsection A of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly knowingly employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection A of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated subsection A of this section. This subsection shall not be construed to

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prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code section 1373(c). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code section 1373(c). A person who knowingly files a false and frivolous complaint under this subsection is guilty of a class 3 misdemeanor.

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not false and frivolous:

1. The attorney general or county attorney shall notify the United States immigration and customs enforcement of the unauthorized alien.

2. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.

3. The attorney general shall notify the appropriate county attorney to bring an action pursuant to subsection D of this section if the complaint was originally filed with the attorney general.

D. An action for a violation of subsection A of this section shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. The county attorney shall not bring an action against any employer for any violation of subsection A of this section that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection A of this section or section 23-212.01, subsection A.

E. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

F. On a finding of a violation of subsection A of this section:

1. For a first violation, as described in paragraph 3 of this subsection, the court:

(a) Shall order the employer to terminate the employment of all unauthorized aliens.

(b) Shall order the employer to be subject to a three year probationary period for the business location where the unauthorized alien

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performed work. During the probationary period the employer shall file quarterly reports in the form provided in section 23-722.01 with the county attorney of each new employee who is hired by the employer at the business location where the unauthorized alien performed work.

(c) Shall order the employer to file a signed sworn affidavit with the county attorney within three business days after the order is issued. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision shall remain suspended until the employer files a signed sworn affidavit with the county attorney. Notwithstanding any other law, on filing of the affidavit the suspended licenses shall be reinstated immediately by the appropriate agencies. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to subsection G of this section.

(d) May order the appropriate agencies to suspend all licenses described in subdivision (c) of this paragraph that are held by the employer for not to exceed ten business days. The court shall base its decision to suspend under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

(i) The number of unauthorized aliens employed by the employer.

(ii) Any prior misconduct by the employer.

(iii) The degree of harm resulting from the violation.

(iv) Whether the employer made good faith efforts to comply with any applicable requirements.

(v) The duration of the violation.

(vi) The role of the directors, officers or principals of the employer in the violation.

(vii) Any other factors the court deems appropriate.

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2. For a second violation, as described in paragraph 3 of this subsection, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer at the employer's primary place of business. On receipt of the order and notwithstanding any other law, the appropriate agencies shall immediately revoke the licenses.

3. The violation shall be considered:

(a) A first violation by an employer at a business location if the violation did not occur during a probationary period ordered by the court under this subsection or section 23-212.01, subsection F for that employer's business location.

(b) A second violation by an employer at a business location if the violation occurred during a probationary period ordered by the court under this subsection or section 23-212.01, subsection F for that employer's business location.

G. The attorney general shall maintain copies of court orders that are received pursuant to subsection F of this section and shall maintain a database of the employers and business locations that have a first violation of subsection A of this section and make the court orders available on the attorney general's website.

H. On determining whether an employee is an unauthorized alien, the court shall consider only the federal government's determination pursuant to 8 United States Code section 1373(c). The federal government's determination creates a rebuttable presumption of the employee's lawful status. The court may take judicial notice of the federal government's determination and may request the federal government to provide automated or testimonial verification pursuant to 8 United States Code section 1373(c).

I. For the purposes of this section, proof of verifying the employment authorization of an employee through the e-verify program creates a rebuttable presumption that an employer did not knowingly employ an unauthorized alien.

J. For the purposes of this section, an employer that establishes that it has complied in good faith with the requirements of 8 United States Code section 1324a(b) establishes an affirmative defense that the employer did not knowingly employ an unauthorized alien. An employer is considered to have complied with the requirements of 8 United States Code section 1324a(b), notwithstanding an isolated, sporadic or accidental technical or procedural failure to meet the requirements, if there is a good faith attempt to comply with the requirements.

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K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF THIS SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE EMPLOYER MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE SUBSTANTIAL ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN ENTRAPMENT DEFENSE HAS THE BURDEN OF PROVING THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO COMMIT THE VIOLATION.

3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO COMMIT THE VIOLATION.

L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY. THE CONDUCT OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS MAY BE CONSIDERED IN DETERMINING IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

Sec. 8. Section 23-212.01, Arizona Revised Statutes, is amended to read:

23-212.01. Intentionally employing unauthorized aliens; prohibition; false and frivolous complaints; violation; classification; license suspension and revocation; affirmative defense

A. An employer shall not intentionally employ an unauthorized alien. If, in the case when an employer uses a contract, subcontract or other independent contractor agreement to obtain the labor of an alien in this state, the employer intentionally contracts with an unauthorized alien or with a person who employs or contracts with an unauthorized alien to perform the labor, the employer violates this subsection.

B. The attorney general shall prescribe a complaint form for a person to allege a violation of subsection A of this section. The complainant shall not be required to list the complainant's social security number on the complaint form or to have the complaint form notarized. On receipt of a complaint on a prescribed complaint form that an employer allegedly intentionally employs an unauthorized alien, the attorney general or county attorney shall investigate whether the employer has violated subsection A of this section. If a complaint is received but is not submitted on a prescribed complaint form, the attorney general or county attorney may investigate whether the employer has violated subsection A of this section. This subsection shall not be construed to prohibit the filing of anonymous complaints that are not submitted on a prescribed complaint form. The attorney general or county attorney shall

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not investigate complaints that are based solely on race, color or national origin. A complaint that is submitted to a county attorney shall be submitted to the county attorney in the county in which the alleged unauthorized alien is or was employed by the employer. The county sheriff or any other local law enforcement agency may assist in investigating a complaint. When investigating a complaint, the attorney general or county attorney shall verify the work authorization of the alleged unauthorized alien with the federal government pursuant to 8 United States Code section 1373(c). A state, county or local official shall not attempt to independently make a final determination on whether an alien is authorized to work in the United States. An alien's immigration status or work authorization status shall be verified with the federal government pursuant to 8 United States Code section 1373(c). A person who knowingly files a false and frivolous complaint under this subsection is guilty of a class 3 misdemeanor.

C. If, after an investigation, the attorney general or county attorney determines that the complaint is not false and frivolous:

1. The attorney general or county attorney shall notify the United States immigration and customs enforcement of the unauthorized alien.

2. The attorney general or county attorney shall notify the local law enforcement agency of the unauthorized alien.

3. The attorney general shall notify the appropriate county attorney to bring an action pursuant to subsection D of this section if the complaint was originally filed with the attorney general.

D. An action for a violation of subsection A of this section shall be brought against the employer by the county attorney in the county where the unauthorized alien employee is or was employed by the employer. The county attorney shall not bring an action against any employer for any violation of subsection A of this section that occurs before January 1, 2008. A second violation of this section shall be based only on an unauthorized alien who is or was employed by the employer after an action has been brought for a violation of subsection A of this section or section 23-212, subsection A.

E. For any action in superior court under this section, the court shall expedite the action, including assigning the hearing at the earliest practicable date.

F. On a finding of a violation of subsection A of this section:

1. For a first violation, as described in paragraph 3 of this subsection, the court shall:

(a) Order the employer to terminate the employment of all unauthorized aliens.

(b) Order the employer to be subject to a five year probationary period for the business location where the unauthorized alien performed work. During the probationary period the employer shall file quarterly reports in the form provided in section 23-722.01 with the county attorney

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of each new employee who is hired by the employer at the business location where the unauthorized alien performed work.

(c) Order the appropriate agencies to suspend all licenses described in subdivision (d) of this paragraph that are held by the employer for a minimum of ten days. The court shall base its decision on the length of the suspension under this subdivision on any evidence or information submitted to it during the action for a violation of this subsection and shall consider the following factors, if relevant:

(i) The number of unauthorized aliens employed by the employer.

(ii) Any prior misconduct by the employer.

(iii) The degree of harm resulting from the violation.

(iv) Whether the employer made good faith efforts to comply with any applicable requirements.

(v) The duration of the violation.

(vi) The role of the directors, officers or principals of the employer in the violation.

(vii) Any other factors the court deems appropriate.

(d) Order the employer to file a signed sworn affidavit with the county attorney. The affidavit shall state that the employer has terminated the employment of all unauthorized aliens in this state and that the employer will not intentionally or knowingly employ an unauthorized alien in this state. The court shall order the appropriate agencies to suspend all licenses subject to this subdivision that are held by the employer if the employer fails to file a signed sworn affidavit with the county attorney within three business days after the order is issued. All licenses that are suspended under this subdivision for failing to file a signed sworn affidavit shall remain suspended until the employer files a signed sworn affidavit with the county attorney. For the purposes of this subdivision, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer does not hold a license specific to the business location where the unauthorized alien performed work, but a license is necessary to operate the employer's business in general, the licenses that are subject to suspension under this subdivision are all licenses that are held by the employer at the employer's primary place of business. On receipt of the court's order and notwithstanding any other law, the appropriate agencies shall suspend the licenses according to the court's order. The court shall send a copy of the court's order to the attorney general and the attorney general shall maintain the copy pursuant to subsection G of this section.

2. For a second violation, as described in paragraph 3 of this subsection, the court shall order the appropriate agencies to permanently revoke all licenses that are held by the employer specific to the business location where the unauthorized alien performed work. If the employer

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1 does not hold a license specific to the business location where the
2 unauthorized alien performed work, but a license is necessary to operate
3 the employer's business in general, the court shall order the appropriate
4 agencies to permanently revoke all licenses that are held by the employer
5 at the employer's primary place of business. On receipt of the order and
6 notwithstanding any other law, the appropriate agencies shall immediately
7 revoke the licenses.
8 3. The violation shall be considered:
9 (a) A first violation by an employer at a business location if the
10 violation did not occur during a probationary period ordered by the court
11 under this subsection or section 23-212, subsection F for that employer's
12 business location.
13 (b) A second violation by an employer at a business location if the
14 violation occurred during a probationary period ordered by the court under
15 this subsection or section 23-212, subsection F for that employer's
16 business location.
17 G. The attorney general shall maintain copies of court orders that
18 are received pursuant to subsection F of this section and shall maintain a
19 database of the employers and business locations that have a first
20 violation of subsection A of this section and make the court orders
21 available on the attorney general's website.
22 H. On determining whether an employee is an unauthorized alien, the
23 court shall consider only the federal government's determination pursuant
24 to 8 United States Code section 1373(c). The federal government's
25 determination creates a rebuttable presumption of the employee's lawful
26 status. The court may take judicial notice of the federal government's
27 determination and may request the federal government to provide automated
28 or testimonial verification pursuant to 8 United States Code section
29 1373(c).
30 I. For the purposes of this section, proof of verifying the
31 employment authorization of an employee through the e-verify program
32 creates a rebuttable presumption that an employer did not intentionally
33 employ an unauthorized alien.
34 J. For the purposes of this section, an employer that establishes
35 that it has complied in good faith with the requirements of 8 United
36 States Code section 1324a(b) establishes an affirmative defense that the
37 employer did not intentionally employ an unauthorized alien. An employer
38 is considered to have complied with the requirements of 8 United States
39 Code section 1324a(b), notwithstanding an isolated, sporadic or accidental
40 technical or procedural failure to meet the requirements, if there is a
41 good faith attempt to comply with the requirements.
42 K. IT IS AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SUBSECTION A OF
43 THIS SECTION THAT THE EMPLOYER WAS ENTRAPPED. TO CLAIM ENTRAPMENT, THE
44 EMPLOYER MUST ADMIT BY THE EMPLOYER'S TESTIMONY OR OTHER EVIDENCE THE
45 SUBSTANTIAL ELEMENTS OF THE VIOLATION. AN EMPLOYER WHO ASSERTS AN

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ENTRAPMENT DEFENSE HAS THE BURDEN OF PROVING THE FOLLOWING BY A PREPONDERANCE OF THE EVIDENCE:

1. THE IDEA OF COMMITTING THE VIOLATION STARTED WITH LAW ENFORCEMENT OFFICERS OR THEIR AGENTS RATHER THAN WITH THE EMPLOYER.

2. THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO COMMIT THE VIOLATION.

3. THE EMPLOYER WAS NOT PREDISPOSED TO COMMIT THE VIOLATION BEFORE THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS URGED AND INDUCED THE EMPLOYER TO COMMIT THE VIOLATION.

L. AN EMPLOYER DOES NOT ESTABLISH ENTRAPMENT IF THE EMPLOYER WAS PREDISPOSED TO VIOLATE SUBSECTION A OF THIS SECTION AND THE LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY PROVIDED THE EMPLOYER WITH AN OPPORTUNITY TO COMMIT THE VIOLATION. IT IS NOT ENTRAPMENT FOR LAW ENFORCEMENT OFFICERS OR THEIR AGENTS MERELY TO USE A RUSE OR TO CONCEAL THEIR IDENTITY. THE CONDUCT OF LAW ENFORCEMENT OFFICERS AND THEIR AGENTS MAY BE CONSIDERED IN DETERMINING IF AN EMPLOYER HAS PROVEN ENTRAPMENT.

Sec. 9. Section 23-214, Arizona Revised Statutes, is amended to read:

23-214. Verification of employment eligibility; e-verify program; economic development incentives; list of registered employers

A. After December 31, 2007, every employer, after hiring an employee, shall verify the employment eligibility of the employee through the e-verify program AND SHALL KEEP A RECORD OF THE VERIFICATION FOR THE DURATION OF THE EMPLOYEE'S EMPLOYMENT OR AT LEAST THREE YEARS, WHICHEVER IS LONGER.

B. In addition to any other requirement for an employer to receive an economic development incentive from a government entity, the employer shall register with and participate in the e-verify program. Before receiving the economic development incentive, the employer shall provide proof to the government entity that the employer is registered with and is participating in the e-verify program. If the government entity determines that the employer is not complying with this subsection, the government entity shall notify the employer by certified mail of the government entity's determination of noncompliance and the employer's right to appeal the determination. On a final determination of noncompliance, the employer shall repay all monies received as an economic development incentive to the government entity within thirty days of the final determination. For the purposes of this subsection:

1. "Economic development incentive" means any grant, loan or performance-based incentive from any government entity that is awarded after September 30, 2008. Economic development incentive does not include any tax provision under title 42 or 43.

2. "Government entity" means this state and any political subdivision of this state that receives and uses tax revenues.

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C. Every three months the attorney general shall request from the United States department of homeland security a list of employers from this state that are registered with the e-verify program. On receipt of the list of employers, the attorney general shall make the list available on the attorney general's website.

Sec. 10. Section 28-3511, Arizona Revised Statutes, is amended to read:

28-3511. Removal and immobilization or impoundment of vehicle

A. A peace officer shall cause the removal and either immobilization or impoundment of a vehicle if the peace officer determines that a person is driving the vehicle while any of the following applies:

1. The person's driving privilege is suspended or revoked for any reason.

2. The person has not ever been issued a valid driver license or permit by this state and the person does not produce evidence of ever having a valid driver license or permit issued by another jurisdiction. This paragraph does not apply to the operation of an implement of husbandry.

3. The person is subject to an ignition interlock device requirement pursuant to chapter 4 of this title and the person is operating a vehicle without a functioning certified ignition interlock device. This paragraph does not apply to a person operating an employer's vehicle or the operation of a vehicle due to a substantial emergency as defined in section 28-1464.

4. IN FURTHERANCE OF THE ILLEGAL PRESENCE OF AN ALIEN IN THE UNITED STATES AND IN VIOLATION OF A CRIMINAL OFFENSE, THE PERSON IS TRANSPORTING OR MOVING OR ATTEMPTING TO TRANSPORT OR MOVE AN ALIEN IN THIS STATE IN A VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, HAS ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

5. THE PERSON IS CONCEALING, HARBORING OR SHIELDING OR ATTEMPTING TO CONCEAL, HARBOR OR SHIELD FROM DETECTION AN ALIEN IN THIS STATE IN A VEHICLE IF THE PERSON KNOWS OR RECKLESSLY DISREGARDS THE FACT THAT THE ALIEN HAS COME TO, ENTERED OR REMAINS IN THE UNITED STATES IN VIOLATION OF LAW.

B. A peace officer shall cause the removal and impoundment of a vehicle if the peace officer determines that a person is driving the vehicle and if all of the following apply:

1. The person's driving privilege is canceled, suspended or revoked for any reason or the person has not ever been issued a driver license or permit by this state and the person does not produce evidence of ever having a driver license or permit issued by another jurisdiction.

2. The person is not in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

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3. The person is driving a vehicle that is involved in an accident that results in either property damage or injury to or death of another person.

C. Except as provided in subsection D of this section, while a peace officer has control of the vehicle the peace officer shall cause the removal and either immobilization or impoundment of the vehicle if the peace officer has probable cause to arrest the driver of the vehicle for a violation of section 4-244, paragraph 34 or section 28-1382 or 28-1383.

D. A peace officer shall not cause the removal and either the immobilization or impoundment of a vehicle pursuant to subsection C of this section if all of the following apply:

1. The peace officer determines that the vehicle is currently registered and that the driver or the vehicle is in compliance with the financial responsibility requirements of chapter 9, article 4 of this title.

2. The spouse of the driver is with the driver at the time of the arrest.

3. The peace officer has reasonable grounds to believe that the spouse of the driver:

(a) Has a valid driver license.

(b) Is not impaired by intoxicating liquor, any drug, a vapor releasing substance containing a toxic substance or any combination of liquor, drugs or vapor releasing substances.

(c) Does not have any spirituous liquor in the spouse's body if the spouse is under twenty-one years of age.

4. The spouse notifies the peace officer that the spouse will drive the vehicle from the place of arrest to the driver's home or other place of safety.

5. The spouse drives the vehicle as prescribed by paragraph 4 of this subsection.

E. Except as otherwise provided in this article, a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section shall be immobilized or impounded for thirty days. An insurance company does not have a duty to pay any benefits for charges or fees for immobilization or impoundment.

F. The owner of a vehicle that is removed and either immobilized or impounded pursuant to subsection A, B or C of this section, the spouse of the owner and each person identified on the department's record with an interest in the vehicle shall be provided with an opportunity for an immobilization or poststorage hearing pursuant to section 28-3514.

Sec. 11. Title 41, chapter 12, article 2, Arizona Revised Statutes, is amended by adding section 41-1724, to read:

41-1724. <u>Gang and immigration intelligence team enforcement mission fund</u>

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THE GANG AND IMMIGRATION INTELLIGENCE TEAM ENFORCEMENT MISSION FUND IS ESTABLISHED CONSISTING OF MONIES DEPOSITED PURSUANT TO SECTION 11-1051 AND MONIES APPROPRIATED BY THE LEGISLATURE. THE DEPARTMENT SHALL ADMINISTER THE FUND. MONIES IN THE FUND ARE SUBJECT TO LEGISLATIVE APPROPRIATION AND SHALL BE USED FOR GANG AND IMMIGRATION ENFORCEMENT AND FOR COUNTY JAIL REIMBURSEMENT COSTS RELATING TO ILLEGAL IMMIGRATION.

Sec. 12. Severability, implementation and construction

A. If a provision of this act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act that can be given effect without the invalid provision or application, and to this end the provisions of this act are severable.

B. The terms of this act regarding immigration shall be construed to have the meanings given to them under federal immigration law.

C. This act shall be implemented in a manner consistent with federal laws regulating immigration, protecting the civil rights of all persons and respecting the privileges and immunities of United States citizens.

D. Nothing in this act shall implement or shall be construed or interpreted to implement or establish the REAL ID act of 2005 (P.L. 109-13, division B; 119 Stat. 302) including the use of a radio frequency identification chip.

Sec. 13. Short title

This act may be cited as the "Support Our Law Enforcement and Safe Neighborhoods Act".

Sec. 14. Immigration legislation challenges

A. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the attorney general shall act at the direction of the governor in any challenge in a state or federal court to Laws 2010, chapter 113 and any amendments to that law.

B. Notwithstanding title 41, chapter 1, Arizona Revised Statutes, and any other law, through December 31, 2010, the governor may direct counsel other than the attorney general to appear on behalf of this state to defend any challenge to Laws 2010, chapter 113 and any amendments to that law.

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Arizona's Immigration Enforcement Laws: An Overview of SB1070 and HB2162

SB 1070, "Support Our Law Enforcement and Safe Neighborhoods Act," was approved by the Arizona legislature on Monday, April 19 and signed into law by Governor Brewer on Friday, April 23, 2010. SB 1070 includes provisions adding state penalties relating to immigration law enforcement including trespassing, harboring and transporting illegal immigrants, alien registration documents, employer sanctions, and human smuggling.

The trespassing provision appears to be the first of its kind to be enacted in the United States. In the most recent reports by NCSL on state immigration laws, few states have attempted to create a state trespassing violation for unlawful presence. Bills were introduced but failed in Arizona in 2008 and 2009; Texas in 2009; Colorado in 2008; and California in 2007.

On the same day she signed the bill, Governor Brewer issued Executive Order 2010-09 requiring the Arizona Peace Officers Standards and Training Board to establish training to assure law enforcement officials and agencies implement SB 1070 "consistent with federal laws regulating immigration, protects the civil rights of all persons and respects the privileges and immunities of United States citizens." The executive order also requires clear guidance on what constitutes reasonable suspicion. The Board is to provide a list of the specific forms of identification that provide a presumption that a person is not an alien unlawfully present in the United States.

A series of questions have been raised about the implementation and constitutionality of Arizona SB1070. Some implementation concerns include the costs to the state for enforcing federal immigration law, particularly in tight budget times; how "reasonable suspicion of immigrant status" will be interpreted; and the narrow list of documents eligible to demonstrate lawful presence. Court challenges have raised constitutional issues including due process, equal protection under the 14th amendment, the prohibition on unreasonable search and seizure under the 4th amendment, and preemption under the Supremacy Clause of the U.S. Constitution.

On April 29, the last day of legislative session, the legislature approved and the Governor signed HB 2162 that included provisions intended to address the racial profiling concerns. HB 2162 amends SB 1070 to specify that law enforcement officials cannot consider race, color or national origin when implementing the provisions of the original law, except as permitted by the U.S. or Arizona Constitution. The law clarifies the original law's language around "reasonable suspicion" by requiring state and local law enforcement to reasonably attempt to determine the immigration status of a person only while in the process of a lawful stop, detention, or arrest (the original language referred to "lawful contact.") HB 2162 also stipulates that a lawful stop, detention or arrest must be in the enforcement of any other law or ordinance of a county, city or town of this state.

HB 2162 lowers the original fines in SB 1070 for state or local entities sued by legal residents and found guilty of restricting the enforcement of federal law from a minimum of $1000 to $500 for each day the policy is in effect. The law also lowers the fine for individuals that fail to complete or carry an alien registration document from $500 to $100 for the first offense.

The law becomes effective July 29, 2010 (90 days after the end of regular legislative session.)

This summary highlights the major provisions of the laws.

Enforcement of Immigration Law

Prohibits state and local law enforcement from restricting enforcement of federal immigration laws.

Requires state and local law enforcement to reasonably attempt to determine the immigration status of a person involved in a lawful stop, detention or arrest in the enforcement of any other local or state law or ordinance where reasonable suspicion exists that the person is an alien and is unlawfully present, except if it may hinder or obstruct an investigation.

Requires immigration status to be verified with the federal government for anyone that is arrested.

Stipulates that law enforcement cannot consider race, color or national origin when implementing these provisions, except as permitted by the U.S. or Arizona Constitution.

Specifies a presumption of lawful presence with these IDs: Arizona driver license or ID; tribal enrollment card or ID; valid federal, state or local government issued identification, if the issuing entity requires proof of legal presence before

issuance.

Stipulates that these provisions do not implement or authorize REAL ID.

Allows legal residents to sue state or localities that restrict enforcement of federal law. Indemnifies officers unless they acted in bad faith. Violating entities must pay a civil penalty of at least $500 for each day the policy is in effect.

Willful Failure to Complete or Carry an Alien Registration Document

Creates a state violation comparable to federal law in 8 USC 1304(e) or 1306(a) and creates state penalties of jail costs and $100 for a first offense. Stipulates immigration status may be determined by a law enforcement officer authorized by the federal government to verify an alien's immigration status; or U.S. Immigration and Customs Enforcement or U.S. Customs and Border Protection.

NOTE: The federal provisions mentioned in the Arizona law are included here for easy reference.
8 USC 1304(e): Personal possession of registration or receipt card; penalties. Every alien, eighteen years of age and over, shall at all times carry with him and have in his personal possession any certificate of alien registration or alien registration receipt card issued to him pursuant to subsection (d) of this section. Any alien who fails to comply with the provisions of this subsection shall be guilty of a misdemeanor and shall upon conviction for each offense be fined not to exceed $100 or be imprisoned not more than thirty days, or both. **8 USC 1306 (a)**: Willful failure to register. Any alien required to apply for registration and to be fingerprinted in the United States who willfully fails or refuses to make such application or to be fingerprinted, and any parent or legal guardian required to apply for the registration of any alien who willfully fails or refuses to file application for the registration of such alien shall be guilty of a misdemeanor and shall, upon conviction thereof, be fined not to exceed $1,000 or be imprisoned not more than six months, or both.)

Unlawfully Picking Up Passengers for Work

Makes it a class 1 misdemeanor for an occupant of a motor vehicle to hire on a street, roadway or highway if the vehicle blocks or impedes the normal movement of traffic; or to enter a vehicle to be hired and transported; or for an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor.

Stipulates that law enforcement cannot consider race, color or national origin in the enforcement when implementing the provision, except as permitted by the U.S. or Arizona Constitution.

Unlawful Transporting or Harboring Unlawful Aliens

Stipulates that it is unlawful for a person who is in violation of a criminal offense to transport an alien; conceal, harbor or shield an alien; or encourage an alien to come to this state, if the person recklessly disregards the fact the person is here unlawfully. The vehicle may be immobilized or impounded. Provides exceptions for child protective services, first responders, ambulance or emergency medical technicians. Violators are guilty of a class 1 misdemeanor and subject to a fine of at least $1,000.

Stipulates that law enforcement cannot consider race, color or national origin in the enforcement when implementing the provision, except as permitted by the U.S. or Arizona Constitution.

Employer Sanctions

Provides employers with the affirmative defense that they were entrapped, but they must admit the substantial elements of the violation. The employer has the burden of proof to show law enforcement officer induced the violation.

Requires employers to keep a record of employment verification for the duration of the employee's employment or 3 years whichever is longer.

Miscellaneous

Authorizes peace officers in the enforcement of human smuggling laws to lawfully stop a person if they have a reasonable suspicion to believe the person is in violation of any civil traffic law and to arrest a person without a warrant if the officer has probable cause to believe the person has committed any public offense that makes the person removable from the United States.

Penalties and fines under this bill are to be deposited to the Department of Public Safety for the Gang and Immigration Intelligence Team Enforcement Mission Fund.

Resources:

Arizona legislature:

Senate Bill 1070 http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=1070

House Bill 2162 http://www.azleg.gov/DocumentsForBill.asp?Bill_Number=2162

Governor's executive order: http://www.azgovernor.gov/dms/upload/EO_042310_EO201009SB1070.pdf

Prepared by Ann Morse
Program Director
National Conference of State Legislatures
Revised May 3, 2010

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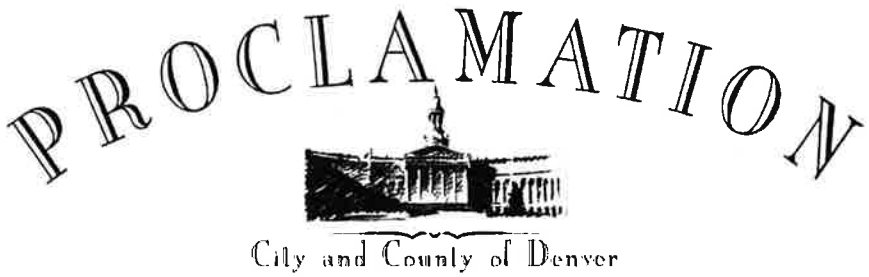
Legislation Number: 0093X-2010
Current Status: Passed **Drafting Date:** 06/16/2010
Version: Matter Type: Resolution

Title
To support comprehensive immigration reform and urge action from Congress and the Ohio General Assembly to support
the needs of Columbus as well as other cities and towns as we integrate immigrants into Ohio and American communities.
Body
WHEREAS, immigration is a federal responsibility and a comprehensive approach to solve our broken immigration
system is necessary to meet the goals of ensuring a thriving and secure community and economy in Columbus and
throughout the State of Ohio and the nation; and
WHEREAS, protecting the human and civil rights of immigrants and citizens is paramount to the success of Columbus,
the State of Ohio and all communities in America as we move forward in the 21st Century; and
WHEREAS, the inability of government at all levels to reach consensus on a solution to immigration has created financial,
cultural and political strains in communities across America; and
WHEREAS, immigration reform must occur in a comprehensive, thoughtful manner that focuses on improving homeland
security, helping integrate immigrants into the community and alleviating the costs of providing services such as public
safety, language services, housing, health, education, and social services; and
WHEREAS, the establishment of a process whereby undocumented immigrants currently living in the U.S. may earn
legalized status through payment of appropriate fees, back taxes, background checks, absence of criminal or gang activity,
consistent work history, and the ability to meet, English and civics requirements will provide a means for communities to
provide greater stability for our newest residents; and
WHEREAS, Congress should increase funding for the State Criminal Alien Assistance Program to provide communities
with the necessary resources they need to detain criminals; and
WHEREAS, this Council supports a Comprehensive Immigration Reform bill that keeps families together, upholds our
values as Americans, promotes economic growth, and provides a long-term solution to the immigration system; now,
therefore

BE IT RESOLVED BY THE COLUMBUS CITY COUNCIL:
That this Council requests that Congress enact comprehensive immigration reform that addresses: (1) border security and
interior enforcement; (2) workplace enforcement; (3) guest workers; (4) legalization of undocumented workers currently in
the U.S.; (5) a path to citizenship for immigrants now in the country; and (6) resources to local and state jurisdictions to
alleviate the local impacts of delivering services to new immigrants.
That this Council requests that Congress provide adequate federal funding to help communities integrate new residents into
their communities.
That this Council urges the Congress of the United States and the Ohio General Assembly to adopt Comprehensive
Immigration Reform legislation that includes the framework outlined in Section 1 of this resolution and further urges their
opposition to legislation that undermines the principles of said Section.
BE IT FURTHER RESOLVED, that a copy of this resolution shall be delivered to the U.S. Speaker of the House,
President of the Senate, members of the Ohio General Assembly, Governor of the state, Ohio Speaker of the House, and
President of the Senate.



Proclamation PR10-0379, Series of 2010
Urging Swift Federal Action on Comprehensive National Immigration Reform

Introduced by Councilmembers Chris Nevitt and Paul D. López

WHEREAS, our national immigration system is broken; and

WHEREAS, until our broken national immigration system is fixed, employers who pay fair wages, offer good benefits, and play by the rules will continue to be undercut by employers who gain unfair market advantage by exploiting immigration status to pay lower wages, avoid taxes, and violate labor laws; and

WHEREAS, until our broken national immigration system is fixed, local law enforcement will continue to be pressured to bear unfair burdens of Federal responsibility, local service providers will continue to feel pressure to compromise their charitable missions, and local communities will continue to feel the corrosive tensions of immigration uncertainty that pit worker against worker and neighbor against neighbor; and

WHEREAS, until our broken national immigration system is fixed, we will continue to be plagued by unlawful entry into the United States and the circumvention of our nation's immigration laws; and we believe that effective and reliable border security must be a central feature of any comprehensive national immigration reform package; and

WHEREAS, our broken national immigration system fails even the most basic tests of economy or humanity, by ignoring the economic realities that propel workers to the United States and the roles they fill in the American economy, and by ignoring the bonds of family that pull immigrant workers together and, too often, tumultuously apart; and

WHEREAS, comprehensive national immigration reform will serve to boost wages for both native-born and legal immigrant workers, increase annual tax revenue for all levels of government, and provide a needed boost to private sector economic activity; and

WHEREAS, immigrants, through hard work and pursuit of better lives for themselves, their families, and their communities, have been integral to the development of Denver, of Colorado, and of the United States, and continue to make valuable contributions to our city, state, and nation in every area of endeavor and sector of the economy; and

WHEREAS, this nation was founded on legal and ethical principles that demand dignity, respect, and equality of treatment for all people, regardless of race, class, color, creed, or country of origin; and

WHEREAS, the culture of these United States, after over two-and-a-quarter centuries, now represents a vast diversity of cultures that were each transported to our country at different times and for different reasons but that have each added their own unique color and quality to the tapestry of American life.

NOW THEREFORE,
BE IT PROCLAIMED BY THE COUNCIL OF THE CITY AND COUNTY OF DENVER:

Section 1. That the Council of the City and County of Denver calls upon President Barack Obama, the United States Congress, and our Colorado congressional delegation, to take swift and responsible legislative action to produce fair, humane, effective, and comprehensive federal immigration reform – reform that enhances American stability, security, and prosperity by: providing for robust border control; enforceable immigration laws; family unification; a rate and system of controlled immigration that matches the needs of our economy; a path to earned legalization, citizenship, and social integration for our existing immigrant workforce and their families; equitable access to higher education for immigrant students already being educated in American public schools; enhanced enforcement of labor laws; and bilateral partnerships with other countries to promote economic development that will reduce the flow of immigrants in the first place.

Section 2. That the Clerk of the City & County of Denver is hereby directed to deliver a certified copy of this proclamation to the Colorado Congressional offices of United States Senator Michael Bennet, United States Senator Mark Udall, and United States Congresswoman Diana DeGette.

PASSED BY THE COUNCIL_____2010

_____PRESIDENT

RESOLUTION NO. 2010-30

A RESOLUTION AUTHORIZING A LEGAL CHALLENGE TO SENATE BILL 1070 AND HOUSE BILL 2162.

WHEREAS, during this time of extreme economic distress when the City of Flagstaff has seen a decline in revenues in excess of 30% over the last three years; an unemployment rate of 8.3% as of March 2010, and a 14% reduction in force to city staff including the elimination of 13 police positions; Senate Bill 1070 constitutes an unfunded mandate by the State of Arizona to carry out federal immigration enforcement responsibilities; and

WHEREAS, Senate Bill 1070 represents an impediment to law enforcement as victims of crimes who are, or who have a family member (spouse, parent, grandparent, etc.) who is unlawfully present in the United States, are unlikely to report crimes despite legal exceptions within the bill thereby impeding the effectiveness of law enforcement officials to enforce laws and arrest perpetrators of the law.

NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF FLAGSTAFF AS FOLLOWS:

SECTION 1. The City Council hereby authorizes legal action challenging SB 1070 (Chapter 113) and HB 2162 (Chapter 211), enacted during the Arizona Forty-ninth Legislature, Second Regular Session, 2010.

SECTION 2. The City Attorney is hereby directed to retain legal counsel best suited for accomplishing this legal objective.

SECTION 3. The City Manager is directed to set up an account to allow interested persons to donate money towards payment of such legal expenses.

PASSED AND ADOPTED by the City Council and approved by the Mayor of the City of Flagstaff this _____ day of _____, 2010.

_____
MAYOR

ATTEST:

_____
CITY CLERK

RESOLUTION NO. 2010-30

APPROVED AS TO FORM:

_____

CITY ATTORNEY

Resolution No. 31214

A RESOLUTION calling for federal-level immigration reform, denouncing Arizona State Senate Bill 1070 (SB1070) as a step in the wrong direction, and requesting that City Departments refrain from sending City employees to the State of Arizona and refrain from entering into new contracts with businesses headquartered in the State of Arizona

Related Legislation File:

Date Introduced and Referred: May 17, 2010	To: (committee): Full Council
Date Re-referred:	To: (committee):
Date Re-referred:	To: (committee):
Date of Final Action: 5.17.10	Date Presented to Mayor: 5.18.10
Date Signed by Mayor: May 24, 2010	Date Returned to City Clerk: May 24, 2010
Published by Title Only ✓ Published in Full Text	Date Returned Without Concurrence:

The City of Seattle – Legislative Department

Resolution sponsored by: Sally Clark

Committee Action:

Date	Recommendation	Vote

This file is complete and ready for presentation to Full Council.

Full Council Action:

Date	Decision	Vote
5.17.10	Adopted	7-0 Excused: Burgess Conlin

AGENDA ITEM # 8B PAGE 37

ATTACHMENT G

Dan Nolte/DN
AZ Reso – Legislative, Immigration Reform, Arizona Legislation, RES
May 5, 2010
Version #3

RESOLUTION 31214

A RESOLUTION calling for federal-level immigration reform, denouncing Arizona State Senate Bill 1070 (Arizona SB1070) as a step in the wrong direction, and requesting that City Departments refrain from sending City employees to the State of Arizona and refrain from entering into new contracts with businesses headquartered in the State of Arizona.

WHEREAS, the Seattle City Council, the Mayor concurring, adopted Resolution 31193 on March 15, 2010, declaring that the City of Seattle recognizes that the immigration system is broken and supports comprehensive federal immigration reform that, among many other values, respects the due process protections of all individuals in the United States; and

WHEREAS, meaningful comprehensive immigration reform would improve enforcement, and provide a path so people have the opportunity to become citizens, and;

WHEREAS, such reform would not criminalize individuals who provide healthcare, education, food or shelter for immigrants; and

WHEREAS, our nation is in need of immigration reform that restores due process for all, and

WHEREAS, the City of Seattle in 2004 adopted Resolution 30672, opposing federal legislation that encourages local enforcement of immigration laws; and

WHEREAS, the City of Seattle in 2003 adopted Ordinance no. 121063, in an effort to build trust between immigrant communities and the Seattle Police Department by requiring that, unless otherwise required by law, or by court order, no Seattle City officer or employee shall inquire into the immigration status of any person, or engage in activities designed to ascertain the immigration status of any person; and

WHEREAS, local governments should meet the health, safety and education needs of all citizens without suspicion that communicating with local officials will lead to arrest; and

WHEREAS, frustration with the slow pace of federal reform has driven some heavily affected communities to take action; and

WHEREAS, the Arizona State legislature passed Arizona SB1070, which Arizona Governor Jan Brewer signed into law on April 23, 2010; and

WHEREAS, Arizona SB1070 requires police "when practicable" to detain people they "reasonably suspect" are in the country without authorization; allows the police to charge immigrants with a state crime for not carrying immigration documents; creates a private right of action to sue cities upon belief that the government has a policy or practice that

restricts immigration law enforcement; and makes it a crime to stop on a public street to attempt to hire a temporary worker; and

WHEREAS, Arizona SB1070 will jeopardize public safety and drive a wedge between law enforcement and ethnic communities; and

WHEREAS, President Barack Obama has stated that Arizona SB1070 threatens "to undermine the basic notions of fairness that we cherish as Americans, as well as the trust between police and their communities that is so crucial to keeping us safe"; and

WHEREAS, civil rights leaders, constitutional rights scholars, government officials, and police chiefs across the county, have raised significant concerns with Arizona SB1070; and

WHEREAS, Arizona cities including Flagstaff, Phoenix, and Tucson are considering taking legal action against Arizona SB1070; NOW, THEREFORE,

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEATTLE, THE MAYOR CONCURRING, THAT:

Section 1. Unless and until Arizona rescinds or significantly amends Arizona SB1070, City Departments should to the extent practicable, and in instances where there is no conflict with law or prior contractual agreements, (1) refrain from entering into any new or amended contracts to purchase goods or services from any company that is headquartered in Arizona, and (2) avoid sending City officials or employees to conferences or events in Arizona.

Section 2. The Seattle City Council requests the National League of Cities to support those Arizona cities opposing Arizona SB1070 in devising reasonable alternatives to Arizona SB1070, alternatives that recognize the need for federal-level reform that assists struggling border communities while respecting the humanity of all the people living and working in these communities.

CITY CLERK

Dan Nolte/DN
AZ Reso – Legislative, Immigration Reform, Arizona Legislation, RES
May 5, 2010
Version #3

Adopted by the City Council the 17th day of May, 2010, and signed by me in open session in authentication of its adoption this 17th day of May, 2010.

President pro tem of the City Council

THE MAYOR CONCURRING:

Michael McGinn, Mayor

Filed by me this 24th day of May, 2010.

City Clerk

(Seal)

Form last revised on 12/11/09

DIS CITY CLERK

Author's Full Name/Typist Initials
File Name – Department, Short Description, Type of Document (e.g., DOF Fourth Quarter Supplemental FISC)
Hard-coded Date
Version #

Form revised February 4, 2010

FISCAL NOTE FOR NON-CAPITAL PROJECTS

Department:	Contact Person/Phone:	DOF Analyst/Phone:
Legislative Dept.	Dan Nolte or David Yeaworth	

Legislation Title:
A RESOLUTION calling for federal-level immigration reform, denouncing Arizona State Senate Bill 1070 (Arizona SB1070) as a step in the wrong direction, and requesting that City Departments refrain from sending City employees to the State of Arizona and refrain from entering into new contracts with businesses headquartered in the State of Arizona.

- **Summary of the Legislation:** The resolution urges city employees in their professional capacity and departments to refrain from visiting the State of Arizona or hiring businesses that are headquartered there, when legally appropriate, until Arizona Senate Bill 1070 has been recinded or significantly altered.

- **Background:** The State of Arizona recently put into law a policy intended to identify illegal immigrants. Many US citizens, constituent organizations, and municipalities feel that the law is too strident and that matters of immigration are best addressed by the federal government not state governments. The intent of the resolution is to encourage the federal government to address the immigration issue with new policy and to have the State of Arizona to recind or soften their law.

- *Please check one of the following:*

____ **This legislation does not have any financial implications.** (*Stop here and delete the remainder of this document prior to saving and printing.*)

_X_ **This legislation has financial implications.** (*Please complete all relevant sections that follow.*)

Appropriations: *This table should reflect appropriations that are a direct result of this legislation. In the event that the project/programs associated with this ordinance had, or will have, appropriations in other legislation, please provide details in the Notes section below.*

Fund Name and Number	Department	Budget Control Level*	2010 Appropriation	2011 Anticipated Appropriation
TOTAL				

**See budget book to obtain the appropriate Budget Control Level for your department.*

Notes:

2010 CITY CLERK

Author's Full Name/Typist Initials
File Name – Department, Short Description, Type of Document (e.g., DOF Fourth Quarter Supplemental FISC)
Hard-coded Date
Version #

Anticipated Revenue/Reimbursement: Resulting From This Legislation: *This table should reflect revenues/reimbursements that are a direct result of this legislation. In the event that the issues/projects associated with this ordinance/resolution have revenues or reimbursements that were, or will be, received because of previous or future legislation or budget actions, please provide details in the Notes section below the table.*

Fund Name and Number	Department	Revenue Source	2010 Revenue	2011 Revenue
TOTAL				

Notes:

Total Regular Positions Created, Modified, Or Abrogated Through This Legislation, Including FTE Impact: *This table should only reflect the actual number of positions affected by this legislation. In the event that positions have been, or will be, created as a result of other legislation, please provide details in the Notes section below the table.*

Position Title and Department	Position # for Existing Positions	Fund Name & #	PT/FT	2010 Positions	2010 FTE	2011 Positions*	2011 FTE*
TOTAL							

** 2010 positions and FTE are total 2010 position changes resulting from this legislation, not incremental changes. Therefore, under 2010, please be sure to include any continuing positions from 2009.*

Notes:

- **Do positions sunset in the future?** *(If yes, identify sunset date):*

Spending/Cash Flow: *This table should be completed only in those cases where part or all of the funds authorized by this legislation will be spent in a different year than when they were appropriated (e.g., as in the case of certain grants and capital projects). Details surrounding spending that will occur in future years should be provided in the Notes section below the table.*

Fund Name & #	Department	Budget Control Level*	2010 Expenditures	2011 Anticipated Expenditures
TOTAL				

** See budget book to obtain the appropriate Budget Control Level for your department.*

Notes:

DIS CITY CLERK

- **What is the financial cost of not implementing the legislation?**

  There is no apparent cost of not implementing the lesgislation.

- **Does this legislation affect any departments besides the originating department?**

  All departments that hire contractors or make out of state visits to conferences or meetings could be affected.

- **What are the possible alternatives to the legislation that could achieve the same or similar objectives?**

  Theoretically, another form of contact such as a letter could achieve the same objectives. However, the strength of the statement in a none legislative form would likely not carry the same weight.

- **Is the legislation subject to public hearing requirements:**

  The legislation is not subject to a public hearing.

- **Other Issues**

  It is possible that an Arizona contractor could provide the lowest bid for work or product needed by the City. At that time, a decision will need to be made if the contractor should or should not be awarded the contract, based on the legal parameters of the legislation.

- **List attachments to the fiscal note below:** *(Please include headers with version numbers on all attachments, as well footers with the document's name (e.g., DOF Property Tax Fisc Att A)*

CITY CLERK

RESOLUTION NO. 10-3995

A RESOLUTION BY THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DENOUNCING ARIZONA'S ANTI-IMMIGRATION LAW WHICH CALLS UPON THE CITY MANAGER TO IMMEDIATELY SUSPEND OFFICIAL TRAVEL TO THE STATE OF ARIZONA AND DEVELOP ADDITIONAL FINANCIAL SANCTIONS UNTIL SUCH TIME AS THE NEW LAW IS REVOKED.

THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD DOES HEREBY RESOLVE AS FOLLOWS:

WHEREAS, On April 23, 2010, Arizona Governor Jan Brewer signed into law Senate Bill 1070 (Pearce) which is the broadest and strictest immigration measure in decades; and

WHEREAS, "Support Our Law Enforcement and Safe Neighborhoods Act," requires police officers at the state, county or city level to question a person about their immigration status if there is "reasonable suspicion" they are in the country illegally; and

WHEREAS, This new law makes being in Arizona without proper documentation a crime under State law and also targets those who hire and knowingly transport immigrant day laborers; and

WHEREAS, This new law aims to identify, prosecute and deport immigrants who will also face fines of up to $2,500 and up to six months in jail; and

WHEREAS, It is believed by many civil libertarians, immigrant-rights groups and opponents that this law will spur racial profiling and harassment; and

WHEREAS, The National Gay and Lesbian Task Force, a longtime advocate for comprehensive immigration reform, calls this new law "draconian and inhumane", and

WHEREAS, President Obama, Latino leaders, MALDEF and the ACLU, among others, have criticized this law; and

WHEREAS, Throughout 25 years of cityhood, West Hollywood has demonstrated a commitment to human rights; and

WHEREAS, West Hollywood has been a destination for immigrant families seeking refuge; and

WHEREAS, With an official ban by the City of West Hollywood on travel to the State of Arizona, and a review of all current and likely future contracts with Arizona-based businesses to examine the feasibility of ascertaining such products and services elsewhere until the law is revoked, we endeavor to stand in solidarity with all those who seek rational and common sense immigration reform in Arizona and the United States.

NOW, THEREFORE BE IT RESOLVED that the City Council of the City of West Hollywood hereby denounces Arizona's anti-immigration law and calls upon the City Manager to immediately suspend official travel to the State of Arizona and develop additional financial sanctions until such time as the new law is revoked.

PASSED, APPROVED AND ADOPTED by the City Council of the City of West Hollywood at a regular meeting held this 3rd day of May, 2010 by the following vote:

AYES:	Councilmember:	Horvath, Land, Prang, Mayor Pro Tempore Duran, and Mayor Heilman.
NOES:	Councilmember:	None.
ABSENT:	Councilmember:	None.
ABSTAIN:	Councilmember:	None

John Heilman

JOHN HEILMAN, MAYOR

ATTEST:

For THOMAS R. WEST, CITY CLERK

Colorado Association of Chiefs of Police, Inc.

CACP IMMIGRATION ENFORCEMENT POSITION

The Colorado Association of Chiefs of Police recognizes the primary role and obligation of the federal government to enforce the nation's varied and complex immigration laws. As sworn police officers, we also recognize our obligation to support federal officers in their efforts to control illegal immigration. If requested by federal officers to provide assistance and support to their reasonable efforts to enforce our nation's laws, Colorado police officers will do so, as we have always done.

We also recognize that police officers in Colorado have no legal authority to act as federal immigration officers. The divisions of responsibility between federal law enforcement and local police officers are based on sound public policy and 200-plus years of American history. Any state legislative mandate that shifts the primary duty to enforce immigration law to Colorado police officers is a mistake in terms of failing to understand the scope, complexity and negative impact such a mandate would have on local law enforcement. In addition to the disturbing public policy implications of such a shift, such legislative action would result in unfunded mandates for local police departments, jails and courts. Any unfunded and legally suspect mandate that directs Colorado police officers to enforce federal law will lessen our collective ability to accomplish our primary mission, which is to enforce state and local law.

We believe that our responsibilities are properly covered by the directive of Senate Bill 90 of 2006, which mandates that Colorado police departments notify Immigration and Customs Enforcement (ICE) when there is probable cause to believe that an arrestee is an illegal immigrant. We embrace Senate Bill 90 as a sensible solution, because it affirms that the obligation to take action against undocumented aliens remains with the federal government.

2170 S. Parker Road • Suite 255 • Denver, Colorado 80231 • 303-750-9764 • Fax 303-750-0085

In addition to our concerns about unfunded mandates and our lack of legal authority, several practical and significant obstacles exist that prevent our officers from performing the duties of federal immigration officers. For the reasons listed below, we believe that if our officers were to redirect their focus from their primary duties to arresting immigration violators, such efforts would be wasteful, ineffective and would substantially worsen the public safety environment in Colorado. Among our concerns are these:

1. Neither an electronic or manual database nor a national registry exists that can provide valid, reliable, accessible, and timely information for officers regarding immigration status.
2. Local police agencies are reliant upon the cooperation and assistance of people in the community to report victimization and/or suspicious circumstances and crimes they witness. Should the police inappropriately become federal immigration compliance and enforcement officers, the already difficult task of gaining the trust and cooperation of illegal immigrants and their families in the overall community safety effort will become virtually impossible. Without cooperative witnesses and victims working with our officers and detectives to solve crime in our communities, crime will rise and our communities will become less safe.
3. Warrantless, probable cause arrest and detention for illegal immigrant status is a questionable legal practice, and no federal criteria exist for determining the elements of probable cause. The complex process utilized by federal immigration authorities (ICE) for determining immigration status is time consuming, requires extensive training, and is not available for all peace officers in Colorado. Because of the complexity of immigration law, these types of arrests by local officers would increase the potential liability to their communities for charges of false arrest.
4. If law enforcement in Colorado were to be required to enforce federal immigration laws through arrest and detention, as well as "no bail" provisions following arrest, these "status" holds for adults would overfill the county jails in many areas of the state. This in turn would necessitate the release of other criminals and would represent a deterioration of community safety at the expense of immigration enforcement.
5. The "status" holds for illegal immigrants who are juveniles would create a huge detention problem for law enforcement. Federal law does not allow criminal justice agencies to "lock up" juvenile status offenders, and the availability of semi-secure, authorized holding facilities for these types of juveniles is very limited and overflowing with other local community juvenile assessment demands.

6. The costs directly and indirectly related to such a mandate would be staggering for cities and towns throughout the state.

The primary mission of police agencies is to provide local communities with public safety services, including emergency response, criminal investigative follow-up, problem solving, traffic safety, order maintenance and crime prevention. In order to meet those community demands, the resources of police agencies are stretched thin dealing with violent criminal acts, property crimes, traffic safety issues, disturbance and disorder concerns, and illegal drug production, distribution, and use, as well as alcohol abuse, all of which compound the burden for the police to maintain safe and desirable communities. The Colorado Association of Chiefs of Police encourages the federal government to more fully address immigration issues. We recognize our obligation to partner and problem-solve with federal and state authorities on this difficult issue. Toward this end, the members of CACP support continued dialogue with these authorities with the goal of achieving a long-term and practical solution to the problem of illegal immigration.

DPS Superintendent's Remarks on Employee Travel Ban to Arizona

The following are remarks made by DPS Superintendent Tom Boasberg during a press conference on April 29, 2010:

Our community is deeply outraged by the new Arizona law. I have heard clearly and passionately from our students, our parents, our teachers, our principals and our community members about their deep concerns. Our community deeply values the rich diversity of the Denver Public Schools and the dignity of each and every member of our community.

We fear that this new law will encourage racial profiling and subject individuals to arbitrary stops and harassment based on their ethnic or racial status. This violates our basic values of human dignity, of non-discrimination, and of equal protection under the law for all. So today, the Denver Public Schools is taking the step of restricting our employees on district-sponsored trips from traveling to Arizona.

We are concerned that under this new law our employees could be subject to arbitrary and discriminatory stops and harassment. We are also deeply concerned that no law like this ever happen in the State of Colorado.

Clearly, what is going on in Arizona reinforces the need for comprehensive immigration legislation at the federal level. We certainly hope that such comprehensive immigration legislation would contain a key priority of the Denver Public Schools and our community-the DREAM Act, which is to ensure that all of our graduates and graduates of public schools throughout this country have the opportunity upon graduating to go to college.

We look forward to working with our Community Advisory Panel to discuss any additional measures the district might take. And I'm deeply grateful to our community leaders and our civil rights leaders for leading this panel: To Nita Gonzales, who is a civil rights leader and the principal of one of our schools, to Paul Sandoval, a former school board member and State Senator, and to Landri Taylor, President of the Urban League of Denver, for agreeing to co-chair the Community Advisory Panel.

And we certainly encourage others-other school districts, other public and private organizations and other individuals-to express with their voices and with their actions their deep concern that this law not take effect and not be replicated anywhere else in the United States.

Posted - Thursday, April 29, 2010

Resolution No.41
Submitted by:
The Honorable Phil Gordon
Mayor of Phoenix
The Honorable Sam Adams
Mayor of Portland, OR
The Honorable Joseph P. Riley, Jr.
Mayor of Charleston
The Honorable Ron Dellums
Mayor of Oakland

OPPOSING ARIZONA LAW SB 1070

1. **WHEREAS,** on April 24 the Governor of Arizona signed into law SB 1070, legislation
which would:
• Make it a state crime to be in the country illegally;
• Require immigrants to have proof of their immigration status;
• Require police officers to "make a reasonable attempt" to determine the immigration status of a person if there is a "reasonable suspicion" that he or she is an illegal immigrant, unless it would hinder or obstruct an investigation, and race, color and national origin are not to be only factors police officers consider;
• Allow lawsuits against local or state government agencies that have policies that hinder enforcement of immigration laws; and
• Target the hiring of illegal immigrants as day laborers by prohibiting people from stopping a vehicle on a road to offer employment and by prohibiting a person from getting into a stopped vehicle on a street to be hired for work if it impedes traffic; and
2. **WHEREAS,** SB 1070 is not scheduled to take effect until July 29, 2010; and
3. **WHEREAS**, SB 1070 was opposed by many mayors, police chiefs, and other local officials in Arizona before it became law and is still opposed by these officials; and
4. **WHEREAS,** many mayors from cities across the nation, officials at state and federal levels, leaders of national organizations, and individual citizens have expressed outrage at the Arizona law and concern for the civil rights violations to which it will lead; and
5. **WHEREAS,** several lawsuits, including those by some Arizona cities, have been filed which challenge the constitutionality of SB 1070 and would enjoin it from taking effect, and those suits are currently pending in court; and
6. **WHEREAS,** officials in several cities across the country and of national organizations have proposed immediate economic sanctions against Arizona because of SB 1070; and
88
7. **WHEREAS,** measures similar to Arizona Law SB 1070 are now being proposed for consideration in several other states; and
8. **WHEREAS,** many acknowledge that it was a lack of Congressional action on immigration reform which lead to passage of SB 1070 in Arizona and may lead to similar actions in other states; and
9. **WHEREAS**, in 2009 The U.S. Conference of Mayors adopted immigration reform policy
which calls for quick passage of comprehensive immigration reform legislation based on five key principles, all of which were embodied in policy previously adopted by the

organization:
• Increased border security and enforcement;
• The protection of human and civil rights of both citizens and non-citizens being detained;
• More support for city and state governments which are disproportionately shouldering the costs of the current broken immigration system;
• The use of new technologies to match up foreign workers with jobs in this country that are going unfilled (guest worker program);
• The elimination of current obstacles to citizenship that have resulted in 10-12 million undocumented residents living in the shadows,

10. **NOW, THEREFORE, BE IT RESOLVED** that The United States Conference of Mayors register its strong opposition to Arizona Law SB 1070; and
11. **BE IT FURTHER RESOLVED** that the Conference of Mayors support the court challenges to Arizona Law SB 1070 brought by Arizona mayors and/or their cities; and
12. **BE IT FURTHER RESOLVED** that given the law would not go into effect until July 29, 2010, the Conference of Mayors encourages officials and organizations considering sanctions delay their implementation until court decisions are rendered and, in the event that SB 1070 prevails, it is clear that it will take effect in Arizona; and
13. **BE IT FURTHER RESOLVED** that the Conference of Mayors oppose the enactment of laws similar to Arizona Law SB 1070 in other states; and
14. **BE IT FURTHER RESOLVED** that the Conference of Mayors call on the Congress toquickly enact bipartisan comprehensive immigration reform legislation which incorporates the Conference's five principles for reform so that our nation will have a sensible, effective federal immigration policy and state officials will not feel compelled to enact their own immigration laws.

Projected Cost: Unknown

Resolution No.42
Submitted by:
The Honorable Antonio R. Villaraigosa
Mayor of Los Angeles

CALLING UPON THE FEDERAL GOVERNMENT TO PASS COMPREHENSIVE IMMIGRATION REFORM THAT PREEMPTS ANY STATE ACTIONS TO ASSERT AUTHORITY OVER FEDERAL IMMIGRATION LAW

1. **WHEREAS,** for many years, The U.S. Conference of Mayors has recognized the economic, social and cultural contributions immigrants make to our communities and
2. **WHEREAS,** at the same time, for too many years, the absence of a sensible, effective and comprehensive national immigration policy in the U.S. has resulted in enormous human and financial costs; and
3. **WHEREAS,** the current lack of a comprehensive immigration policy has resulted in the breaking up of families, the exploitation of undocumented workers by employers, the deportation of workers who provide needed goods and services to their communities, the loss of cooperation by undocumented immigrants with law enforcement in the apprehension of criminals thereby undermining the successful principles of community policing, the further victimization of those suffering from domestic violence and child abuse, and the needless death of hundreds of people attempting to cross the border illegally under hazardous and deadly conditions; and
4. **WHEREAS,** it is the responsibility of municipal leaders to protect the wellbeing and safety of all the people residing in their cities and to respect the rights of and provide equal services to all individuals regardless of national origin or immigration status; and
5. **WHEREAS,** state and local governments, especially law enforcement agencies, incur added costs for enforcement, prosecution and incarceration of individuals related to crimes directly connected to illegal immigration without adequate reimbursement by the federal government; and
6. **WHEREAS,** The U.S. Conference of Mayors has a long-standing opposition to the separation of families by the enforcement of current immigration laws; and
7. **WHEREAS,** the lack of a comprehensive national immigration policy has been divisive to the country and has resulted in misguided legislation such as that recently enacted in the State of Arizona which makes it a state crime to be in the country illegally, requires immigrants to have proof of their immigration status, requires police officers to "make a reasonable attempt" to determine the immigration status of a person if there is a "reasonable suspicion" he or she is an illegal immigrant, targets the hiring of illegal immigrants as day laborers by prohibiting vehicles from stopping to offer employment, 90 and allows lawsuits against local or state government agencies that hinder the enforcement of immigration laws,
8. **NOW, THEREFORE, BE IT RESOLVED** that The U.S. Conference of Mayors call for the immediate repeal of the Arizona immigration law (SB 1070) as being both unconstitutional and un-American; and

9. **BE IT FURTHER RESOLVED** that The U.S. Conference of Mayors call upon the President and the Congress to take immediate action to pass comprehensive national immigration reform legislation that contains the following key principals:

• Providing greater border security and enforcement, with a "zero tolerance" policy against gang members, smugglers, terrorists and undocumented immigrants who commit violent and dangerous felonies while residing in the U.S.;

• Recognizing the human and civil rights of both citizens and non-citizens being detained with a special emphasis on not separating families;

• Strengthening the penalties against employers who knowingly employ undocumented workers and especially those employers who exploit undocumented workers;

• Creating a program for the admission of temporary workers based upon the needs of the economy and over time qualifying for legal permanent residency;

• Providing more fiscal support for city and state governments which are disproportionately shouldering the costs of the current broken immigration system;

• Implementing a pathway to citizenship of the estimated 11-12 million undocumented immigrants that requires a background check, payment of fines or back taxes, proficiency in English and standing in the "back of the citizenship line."

Projected Cost: Unknown

Architecture for Immigration Reform:
Fitting the Pieces of Public Policy

University of Denver • Strategic Issues Program • 2009 Immigration Panel • Final Report

ATTACHMENT M

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UNIVERSITY OF DENVER

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Letter from the Chancellor

The measure of a great university is its commitment to the public good, and the manner in which it acts on that commitment to achieve results that have a real and positive impact. At the University of Denver, we believe that one of our roles is to stimulate a rich and informed public discourse on critical issues in the belief that such discourse will contribute to a just, prosperous and sustainable future for Colorado, our home since 1864.

It is with that goal in mind that the University sponsors the Strategic Issues Program. The program brings together concerned citizens from across the state, convening as a strategic issues panel, to examine the many facets of a single complex issue. Previous panels have examined Colorado's economic future, water issues and Colorado's need for constitutional reform. The reports from these panels have stimulated both further debate and positive actions.

The work of the 2008–2009 strategic issues panel confronted one of our nation's thorniest, most complex and politically charged issues—immigration, both legal and illegal. Depending on one's perspective, the issue is driven by considerations of human rights, respect for the law, business/labor relations, the evolution of the U.S. economy, the educational rights of children, separation of authority between the states and the federal government, the fundamental nature of the relationships between the U.S. and its neighboring countries, or the basic attributes of citizenship itself. The panel was comprised of twenty distinguished citizens whose lives, beliefs and political persuasions span a very broad spectrum. Their work was informed by in-depth research and face-to-face interactions with a vast array of experts in all of the areas noted above. As you read this report, you will find that in spite of the many dimensions of the issue and the disparate perspectives brought to the table by the panel members, a thoughtful, fact-based approach did indeed bring consensus.

We hope that the work of this panel and the ideas brought forth in this report will stimulate similarly civil, thoughtful, fact-based debate among the public at large and its representatives in government, such that this broader conversation might lead to a desperately needed consensus for action.

Robert D. Coombe
Chancellor, University of Denver

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Overview from the Panel Chair

For the United States, immigration has become a perplexing policy puzzle. As a nation, we understand our history and heritage; we know where we have been. We are less sure of where we wish to go.

Nevertheless, solving the dilemma of immigration policy is a task of some urgency and considerable gravity. Immigration affects our national security, shapes the fabric of our society and impacts our economic future. Few topics are more consequential—and few have been more resistant to resolution.

The problem is not a dearth of ideas. Indeed, policy proposals of all stripes are offered every day, from every quarter. Nor is it a shortage of research. In fact, it is difficult to find a topic that has more think tanks, university centers and research organizations analyzing data, producing studies and conducting symposia. Nor is it a lack of advocacy. Few issues have more advocates, pressing more positions, more passionately, than immigration.

Rather, in the panel's view, the difficulty arises from a lack of architecture. What is required is an overarching design that can guide the formation of a comprehensive immigration policy. Such an architecture begins with an understanding of the landscape, proceeds to define purpose and priorities, and establishes clear goals. These things provide a framework within which specific policy recommendations may be ordered.

Creating such an architecture, and organizing policy recommendations within that framework, is the aim of this report.

Taken alone, few of the panel's recommendations are completely original. Most of the proposals have previously been advanced, in one form or another, by others. Indeed, portions of some of the panel's recommendations are already law. Rather than attempting to offer wholly new notions, the panel has tried to glean the best ideas from many sources and bring them together in a meaningful way. The goal has been to provide a sound foundation for policy, a comprehensive view of the issue, a balanced perspective and a logical ordering of ideas.

In formulating recommendations, the panel has attempted to steer a middle course between policy pronouncements so broad as to be platitudes and recommendations so detailed they strain the panel's technical competence. The result is a set of recommendations that are intended to describe the

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desired outcomes of an effective immigration policy rather than try to specify the legislative details. In doing so, however, the panel recognizes that the details are always of great importance and urges care be taken to ensure policy proposals align with intended outcomes.

As with prior University of Denver strategic issues panels, this year's Strategic Issues Panel on Immigration was nonpartisan in nature and composed of accomplished citizens from various segments of the Colorado community. While nonpartisan, the panel brought very diverse views to the subject of immigration. The panel's 20 members were appointed by the chancellor of the University of Denver and the panel's work was funded by the University as part of its ongoing commitment to support the public good.

The approach taken by all University strategic issues panels is one that begins by trying to gain a clear understanding of the problem. To that end, throughout the winter and spring of 2009, the panel met on an intensive basis receiving some 30 presentations from individuals in academia, government, business, labor, law enforcement, education, health care and other fields. The panel heard from immigration advocates and opponents; federal, state and local officials; business executives and community organizers; immigration attorneys; consul from Canada; and others.

Only then, after listening to many perspectives and reviewing an extensive list of readings, did the panel begin its own deliberations. During the summer and into the fall, panel members weighed the research and opinions offered and engaged in discussions based on the information presented and panelists' own views and experience. The panel sought practical solutions rather than ideologically oriented outcomes and used a consensus process to identify underlying issues and develop recommendations.

After much listening, learning and discussion, the University of Denver Strategic Issues Panel on Immigration has reached a consensus on an architecture for immigration policy. That consensus is the subject of this report.

James R. Griesemer, Chair
Strategic Issues Panel on Immigration
University of Denver

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Report of the Strategic Issues Panel on Immigration

GLOBAL MIGRATION

Global migration is shaping the world. It is a force that may be managed, but is not likely to be stopped. Understanding the drivers of global migration is a starting point for developing an effective immigration policy for the United States.

A Shifting World

Immigration is perhaps best understood in the context of interdependent, globally linked economies and societies. In the same way that currency flows around the world seeking higher returns, so people move in search of greater opportunity. Driven by a desire to escape poverty, political upheaval and natural disasters, global migration is a force of extraordinary power. It is the consequence of a host of actions taken over decades, the sum of millions of business, policy and individual decisions made in many places throughout the world.

There are currently some 214 million international migrants. Collectively, they represent more than 3 percent of the entire world population. Between 1990 and 2005, global migrants grew by nearly 40 million and the tide of migration appears to be swelling. Not only are the numbers growing, but the rate of growth is rapidly increasing as well, from 1.3 percent during 1990–1995 to 1.8 percent for 2005–2010. The United Nation's definition of global migrant is broad, encompassing many types of legal migration as well as illegal or undocumented migrants. It does not, however, include refugees who currently number about 16 million persons. Combining the populations of migrants and refugees, migrants represent 93 percent of the total global migrant population and refugees about 7 percent. The growth of global migration is shown in Figure 1.

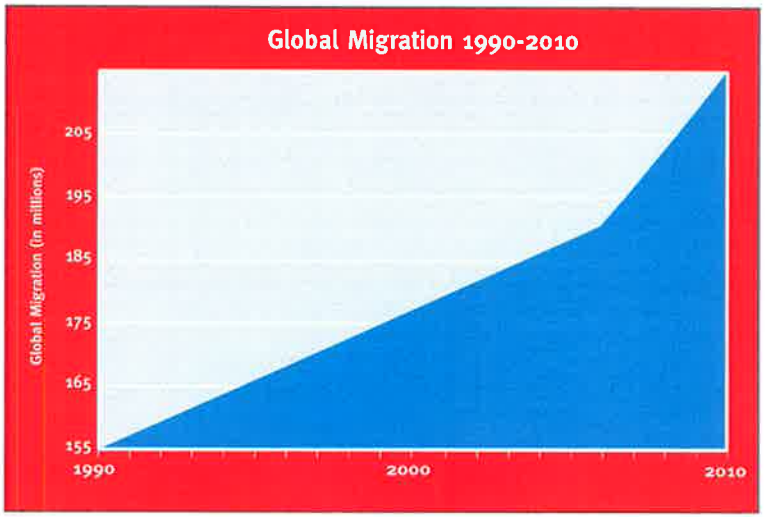

Figure 1 – Growth of Global Migration
(Source: United Nations Department of Economic and Social Affairs)

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Of all global migrants, roughly 60 percent currently live in industrialized nations. But this percentage greatly understates the situation. In recent years more than 90 percent of all migrants have moved to developed countries where economic opportunities are more readily available. Figure 2 graphically illustrates this trend. It shows the total number of migrants in various types of countries, categorized as more, less and least developed. The flow of immigrants to developed nations that offer economic opportunities, and sometimes greater political freedom, is clear.

In terms of regions, North America and Europe experienced the largest percentage increases of global migrants, while other regions remained relatively stable or experienced a reduction of migrants as a percent of population. In absolute numbers, the regions of Europe, Asia and North America have the greatest number of migrants. Figure 3 depicts the number of migrants in the eight major regions of the world and also shows the United States individually. As the chart shows, the United States is on the leading edge of global population shifts with an estimated 42 million migrants in 2009, a number greater than any other nation, representing about 20 percent of all global migrants.

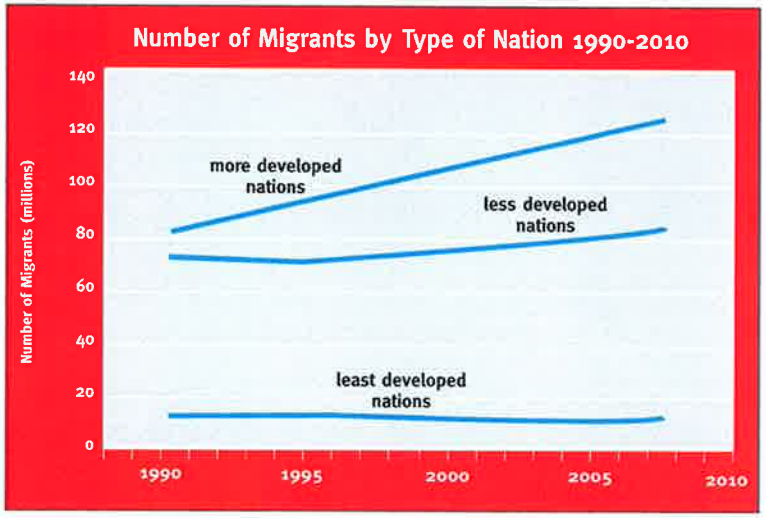

Figure 2 – Migrants by Type of Nation
(Source: United Nations, Department of Economic and Social Affairs, Population Division)

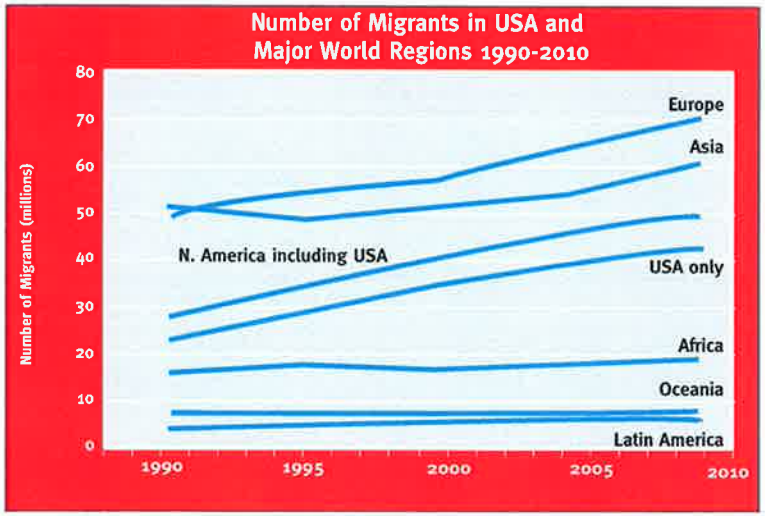

Figure 3 – Number of Migrants by Location
(Source: United Nations, Department of Economic and Social Affairs, Population Division)

Pete Coors
2009 Immigration Panel member

"The question before the United States is **less about halting the flow of global migration** and more about managing it to our advantage."

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Global migration, like the new, intertwined global economy, is a fact of 21st century life that must be recognized. It cannot be wished away. The panel believes that an appreciation for the forces of global economics in general, and global migration in particular, is an appropriate starting point for considering U.S. immigration policy. The question before the United States is less about halting the flow of global migration and more about managing it to our advantage. To that end, ***the panel recommends that global migration be recognized as an opportunity to be capitalized upon to our national benefit, rather than a reality to be ignored.***

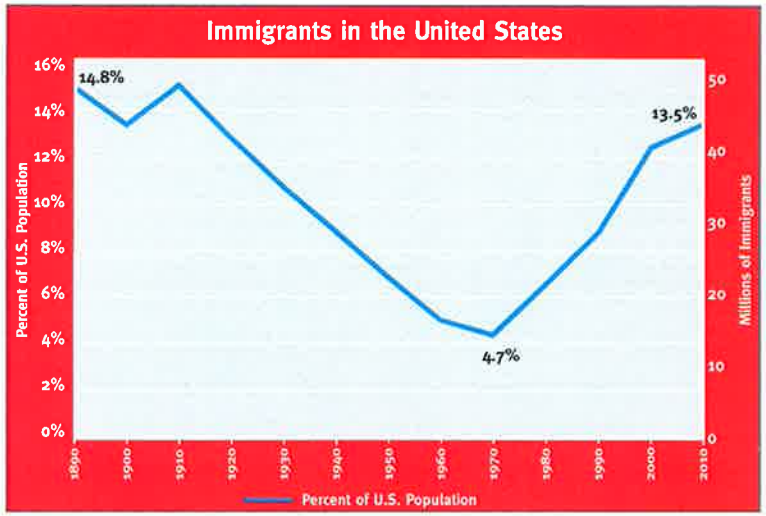

Figure 4 – Immigrants in the U.S.
(Sources: United Nations and Migration Policy Institute)

The Rise of U.S. Immigration

Over a relatively brief period of time, the rising tide of global migration has resulted in remarkable changes to the U.S. immigration picture. In little more than 35 years, the number of foreign born in the United States rose from an estimated 4.7 percent of the population in 1970, to 13.5 percent of the current U.S. population, not far from the all-time high of 14.8 percent reached in 1890. As Figure 4 shows, the flow of immigration into the United States has shifted significantly, falling from a high in 1890 to a low in 1970, and then rising sharply once again to present levels. Given these changes it is no surprise that immigration has re-emerged as a key issue in the United States.

The debate over immigration has resurrected a long-running American dilemma. On one hand, the history, accomplishments and prosperity of the United States are the result of a great national experiment in meritocracy. Imperfect, to be sure, but extraordinary in terms of aggregate achievement, it has been an experiment built largely on immigration. The achievements of the United States are a result of the innovation, inventiveness

Polly Baca
2009 Immigration
Panel member

"The history, accomplishments and prosperity of the United States are the result **of a great national experiment in meritocracy...** an experiment built largely on immigration."

Ellis Island 1918
(Source Library of Congress)

and hard work of a populace, the vast majority of whom had their ancestry in other lands. The irony of immigration lies in our present inability to engage for the future an issue that has so profoundly shaped our past.

Even as we recognize the important role of immigration in our national success, we remain conflicted about the best future course. The question of immigration policy remains one of our most intractable issues. It has become a Gordian knot that even bipartisan attempts of recent years have failed to untie. It is a knot pulled ever tighter on one end by immigration advocates and on the other by immigration opponents.

Yet it is important to consider the choices. The nature of American society in the 21st century and its economic strength, security, and global competitiveness will be influenced by immigration policy. One way or another, either by action or inaction, a course will be set. If we cannot as a nation find a common framework through which to engage the issue of immigration, we will likely be engaged by it without our consent, as the forces of global migration bear upon the United States.

Drivers of Migration

Given the impact of global migration, understanding the factors that drive migration is a necessary first step in developing an effective immigration policy. Migration decisions made by individuals are complex and based on a combination of factors. It is not easy to decide to leave one's family and homeland. The individual is pushed and pulled by many factors.

Lack of opportunity, unemployment, hunger, disease, natural disasters, armed conflict, political repression, previous immigration to a particular country by family and friends, and other factors push the migrant to leave his or her native land. At the same time, economic opportunity, the chance to reunite with family or friends abroad, and greater political freedom pull the individual toward one country or another. Figure 5 illustrates just some of the many factors affecting migration decisions. The harsh realities that make up push factors exist in many places while attractive pull factors tend to be stronger in developed countries. With the difficulties that exist in many countries, it is not surprising that individuals are migrating to developed nations, especially the United States, in great numbers.

While perspectives differ concerning the exact mix of factors, conditions and circumstances that surround migration decisions, there is widespread agreement that the quest for economic opportunity is one of, and most likely the primary

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"The **irony of immigration** lies in our present inability to engage for the future an issue that has so profoundly shaped our past."

driver of migration. What constitutes "economic opportunity" for a migrant turns out to be a complex calculus that includes economic conditions in both the source and receiving countries. In the end, however, many migrants tend to go where they perceive economic opportunity to be the greatest.

Two other important drivers of migration include the desire for family unification and refugee resettlement. Family unification, while producing large numbers of migrants, is better thought of as a consequence of a migration decision made by an initial family member which later results in an understandable desire to reunite the family in a new homeland. Refugee events are also a significant driver of migration as armed conflict, political repression and environmental disasters force refugees from their homes. These forces, creating refugees and those seeking asylum, are very real although they can be difficult to predict and often impossible to control.

Although the desire for family unification produces large numbers of immigrants, and refugee-producing events are powerful motivators of migration, the quest for economic improvement is, on balance, the most important driver of immigration from a policy-development viewpoint. It is significant not only in the sheer numbers of migrants influenced by economic opportunity, but also because, unlike family unification, it is a primary driver of immigration rather than a secondary consequence. Moreover, unlike the factors producing refugees, the quest for economic improvement is a reasonably predictable force that is at least partially within the control of the receiving country. Thus, from the panel's perspective, focusing on economic improvement provides a key point of leverage for both managing immigration and maximizing its potential benefits.

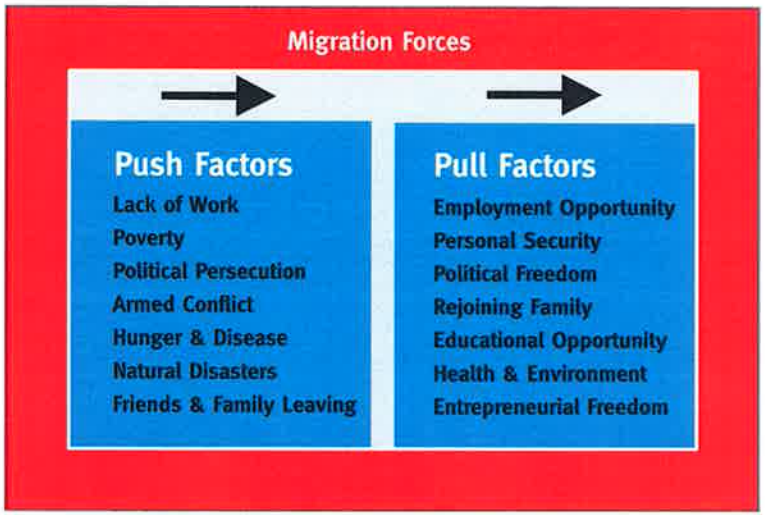

Figure 5 – Migration Forces

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A FOUNDATION FOR POLICY

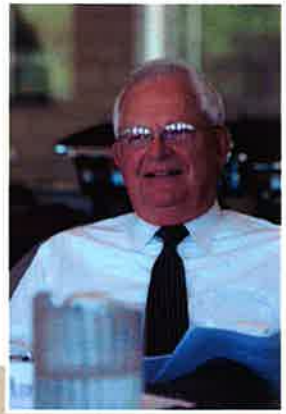
Creating an effective policy begins with a consensus about the broad aims to be achieved. The panel believes that U.S. immigration policy should be grounded in creating economic and social benefits to the nation as a whole while maintaining national security. This premise suggests the broad purpose to be served by immigration policy and provides a foundation for establishing priorities and organizing goals.

Purpose and Priorities

Unclear or conflicting goals are the nemesis of good public policy. Nowhere is this better illustrated than in our own nation's immigration policy, which is a tangled web of statutory and administrative approaches that have been patched together over many years. In truth, it is difficult to speak of an immigration policy as if it were a coherent set of actions leading to defined goals. Rather, today's immigration policy is the result of a series of decisions based upon goals and priorities that seem to shift over time.

In most policy areas there exists a consensus on broad aims to be achieved, even though there may be disagreement on the best means of realizing those goals. In national defense, for example, while there may be disagreement on specific programs or spending levels, all parties agree on the importance of an effective U.S. defense capability. In public health, everyone shares the goal of keeping the public safe from disease, although there are often legitimate differences on the best way of doing so. In these examples, and in many other issue areas, there is general agreement about the broad goals to be achieved.

Not so with immigration, where no shared consensus on fundamental goals yet exists. Without agreement on basic goals, there is the risk that the gridlocked status quo will define our future rather than defining for ourselves the role immigration should play. There is an urgent need to be clear about the ends we seek. With that in mind, ***the panel recommends that the basic purpose of U.S. immigration policy be the creation of economic, social and other benefits to the nation as a whole.***



Don Ament
2009 Immigration Panel member

"Focusing on **economic improvement** provides a key point of leverage for both managing immigration and maximizing its potential benefits."

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Although this recommendation may seem obvious, it carries with it significant implications. The recommendation suggests that immigration policy should be grounded on enlightened self-interest rather than altruism. It means that all immigration-related proposals must clearly demonstrate how they benefit the nation as a whole. The panel's perspective asserts immigration as a means of creating a stronger nation, not simply an end in itself.

If the creation of benefit to the nation as a whole is the overarching purpose of U.S. immigration policy, the first task is to establish goals and the criteria around which policy aims and priorities will be organized. It is important that any such criteria not be sub-rosa, but be clearly articulated. To that end, ***the panel recommends that the criterion for ordering immigration priorities and goals be the relative degree of benefit to the United States as a whole compared with the benefit to prospective immigrants.*** Using this criterion, goals providing greater benefit to the U.S. receive a higher priority, while the goals providing a greater degree of benefit to the individual immigrant receive a lower priority. This relationship is depicted in Figure 6.

Immigration Goals

In the course of its meetings, the panel received presentations from a large number of immigration experts, advocates and public officials, many of whom suggested goals to be achieved through U.S. immigration policy. These included such policy

Figure 6 – Basis for Immigration Priorities

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Marguerite Salazar
2009 Immigration
Panel member

"Immigration policy should be **grounded on enlightened self-interest** rather than altruism."

aims as meeting employer needs for workers; creating a younger, more vital society; protecting the jobs of U.S. citizens; eliminating abuse of immigrant workers; reuniting families; providing for refugees; maintaining national security; improving border security; protecting the current quality of life in the U.S.; attracting the best and brightest to our country; reducing human trafficking; etc.

While the suggested policy goals did not all array themselves into neat categories, most fell into one of five areas: national security, social vitality, economic enhancement, family unification and refugee concerns. Taken together, these areas embrace many of the principal issues and sub-issues of immigration and form a basis on which to establish goals. Each of these five areas is important in its own right. Yet, in a world of limited resources, where not every objective can be equally served, priorities must be established if a coherent and effective policy is to be created. As noted earlier, the criterion used by the panel for establishing priorities among goals is the degree to which a goal provides benefits to the United States as a whole compared with benefits provided to prospective immigrants. This criterion provides a basis to organize five key goals.

1. National security includes maintaining the security of the United States, protecting citizens and guarding national borders. The benefits derived from protecting national security flow

Figure 7 – Immigration Policy Goals

overwhelmingly to the United States as a whole compared to prospective immigrants. For this reason, national security must be the first priority.

2. Social vitality relates to strengthening the social cohesion of the nation while recognizing the benefits of a diverse society. It is about interweaving a wide range of cultures, mores and perspectives into a social fabric that is stronger, more vibrant and more resilient than the sum of its strands. Enhancing social vitality and cohesion is of direct benefit to the U.S. as a whole while providing indirect benefits to prospective immigrants. Social vitality is the second goal.

3. Economic advantage focuses on strengthening the economic viability and global competitiveness of the United States. The panel believes that creating economic advantage for the United States should be a key purpose of immigration policy. Properly structured, immigration policy in this area can create both economic enhancement for the U.S. and economic opportunity for qualified immigrants.

4. Family unification centers on bringing families together after one or more members initially migrate to the United States. After creating economic advantage, family unification should be the next priority for U.S. immigration policy. The benefits here accrue directly to immigrants and their families; however, the nation as a whole benefits from the employment productivity and social strength derived from stable family life.

5. Refugee concerns are an important humanitarian matter offering momentous benefit to the individual refugee, while benefit to the United States may be uneven or indirect. That notwithstanding, relative to other nations the U.S. has had a generous refugee policy. According to OECD (the "Organization for Economic Cooperation and Development"), since 1994 the U.S. has accepted more refugees than all other 30 OECD nations combined. Even though the number of refugees as a percent of international migrants has declined from 12 percent in 1990 to about 7.6 percent today, the conditions endured by many refugees continue to be extremely difficult, even life-threatening. Although refugee policy was not within the panel's scope of

"These policy goals and the basis on which they are prioritized **represent a framework for immigration policy.**"

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study, and is thus not an area in which recommendations are offered, it remains an important part of the immigration policy framework and a priority to be addressed.

Consistent with the criterion for policy priorities described in the preceding section, ***the panel recommends that the goals for United States immigration policy be: national security, social vitality, economic advantage, family unification and refugee relief, in that order.*** These policy goals and the basis on which they are prioritized represent a framework for immigration policy. Goals and the relationship between them are depicted in Figure 7.

It is important to note that these goals are not congruent with current U.S. immigration policy goals, nor do they share the same priorities. Current U.S. policy goals are family unification,

Figure 8 – Recommended and Present Immigration Goals

Steve Halstedt
2009 Immigration
Panel member

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admission of immigrants with needed skills, refugee relief and diversity of admissions by country of origin. This variation in goals and priorities underlies some of the differences between the recommendations in this report and current U.S. policies and practice. The variation in goals is shown in Figure 8.

Federal and State Roles

Identifying a shared purpose, ordering priorities and establishing clear goals are essential prerequisites to successful policy. But policy is not performance and rhetoric is not results. To achieve real results, both policy and implementation must be harmonized among three levels of government: federal, state and local. For immigration policy this is, at the moment, not always the case. At the policy level, there is too little coordination and consistency among federal, state and local legislation. As to enforcement, multijurisdictional cooperation, while improving, still remains disjointed and subject to serious funding concerns. Without effective coordination among all levels of government, creating and implementing a successful immigration policy is likely to remain an elusive goal.

The federal government has plenary power when it comes to establishing immigration policy. This does not mean, however, that states cannot legislate in the area so long as their statutes are consistent with federal law. And legislate they have, for better or worse. In recent years states have become very active, adopting more than 550 immigration-related statutes since 2005. Legislative activism extends to the local level where an estimated 100 cities have enacted or are considering their own legislation relating to immigration. The result is a legislative potpourri dealing with a wide spectrum of immigration and immigrant issues including education, employment, health, human trafficking, law enforcement, legal services, public benefits, voting and other topics.

In the panel's view, legislative inconsistency and policy conflicts are due to the absence of clear federal statutes delineating appropriate governmental roles. As a result, state and local policies, while sometimes supporting federal law, are just as likely to weaken or conflict with federal policy. The failure of the federal government to define its own sphere of exclusive action and designate appropriate domains for state and local legislation

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Colorado Governor Bill Ritter addresses the 2009 Immigration Panel

exacerbates the ineffectiveness of U.S. immigration policy and implementation. While there may be legitimate debate as to the extent to which it is desirable for the federal government to preempt state and local authority, there can be little question about the importance of clear roles and responsibilities among the various levels of government. For that reason, ***the panel recommends that the federal government define by statute appropriate spheres of legislative activity for itself and for the states.*** States, in turn, can take similar action with respect to local governments within their jurisdictions.

In the same way that legislative boundaries between levels of government are unclear, coordination in the implementation and enforcement of immigration policy remains an area ripe for improvement. For example, the idea of sharing law enforcement personnel seems to make a great deal of sense since federal officers represent only about 13 percent of all civilian law enforcement personnel in the U.S. while state and local officers account for the remaining 87 percent. But progress has, frankly, been painfully slow. A variety of issues, including a lack of funding to reimburse state and local governments for their costs, have hampered efforts at cooperation. For example, by October 2009, just over 1075 state and local officers had received training and been certified by the U.S. Immigration and Customs Enforcement (ICE) to assist with immigration enforcement. This group represented barely one-tenth of 1 percent of all state and local law enforcement officers.

In the course of its meetings, the panel received presentations from officials at federal, state and local levels. Presenters consistently identified the need for more effective coordination between federal and state officials in terms of implementation and enforcement of immigration policy. Whatever immigration policies eventually emerge, it is essential that implementation be coordinated among various levels of government. For that reason, ***the panel recommends that Congress establish a shared process of implementation that allocates responsibilities for implementing and enforcing immigration policy among federal, state and local government; balances revenues and costs; and prohibits unfunded federal or state mandates.***

"Without effective coordination among all levels of government, creating and implementing a successful immigration policy is likely to remain an elusive goal."

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IMMIGRATION
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REFORMING THE SYSTEM

In order to consider specific recommendations related to national security, social vitality, economic advantage and family unification, it is necessary to look at the structure and operation of the current U.S. immigration system. For the vast majority of U.S. citizens, employers and immigrants, the immigration system often seems well-nigh incomprehensible. Almost every thoughtful observer, regardless of party affiliation or perspective, believes the American immigration system is broken and in need of fundamental reform. Yet changing the system has proven to be no easy matter, in large part due to its complexity. As the Congressional Research Service noted, "The sheer complexity of the current set of provisions makes revising the law on permanent immigration a daunting task."

The Need for Change

The present U.S. immigration system is built on the foundation of the Immigration and Nationality Act (INA), initially codified in 1952 and since amended many times. Conceptually, the INA establishes two broad categories of legal aliens: immigrants and non-immigrants. Non-immigrants include tourists, students, diplomats, temporary agricultural workers and others here for a specific purpose and a limited period of time. Immigrants, also called legal permanent residents (LPRs), are foreign nationals who come to live permanently in the United States. What begins as a neat theoretical categorization for immigration gains astounding complexity in practice.

Structurally, the immigration system may be thought of as a layered arrangement of visa categories and subcategories with legislatively determined allocations, further limited by country of origin, overlaid with a system of preferences related to family members, employees, diversity, refugees, asylees and several other special preference categories. Depending upon how one counts, the result is a complicated labyrinth of over 40 principal visa categories and more than 195 subcategories for both immigrant and non-immigrant purposes. In most cases, the numeric limits for each category, and often the procedures for calculating those limits, are established by Congress via federal statute.

This structure is further complicated by the fact that certain categories are permitted to exceed their limits, other categories are permitted to use otherwise unused allocations from different categories, and unused visa numbers are allowed to roll down to

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the next preference category—in most, but not all, cases. All of this must occur within the per-country limits except where there are statutorily established exceptions to the limits, such as for family-sponsored immigrants. In actual practice, of course, the system is much more complex than this brief overview depicts.

The mechanics of managing allocations within various categories, all constrained by national origin limits, would be complex enough if the flow was predictable and the system flexible. But neither condition exists. The decision to apply rests with the applicant, not with the U.S. Citizenship and Immigration Services (USCIS). Thus, the applicant flow is variable and essentially uncontrollable. This is compounded by the inflexibility of the system, since only Congress can change the total number of visas allowed. Each year, bills are introduced to change the numbers or tweak allocations between or within categories and subcategories. Those bills that pass simply become another patch on a system that is already hopelessly complex.

The result is a U.S. immigration system that is unpredictable, opaque, and that produces results that are sometimes exactly the reverse of those intended. One stunning example is found in the non-immigrant category of visas that were not intended to result in permanent immigrants; that was the purpose of the immigrant category. In fact, about 80 – 90 percent of all employment-based green cards are now issued to persons from non-immigrant categories. The original, neat distinction between immigrant and non-immigrant categories is now largely irrelevant. The system creates frustrating uncertainty for everyone involved—employers, applicants and family members—with processing backlogs that almost defy imagination. Depending upon one's preference category, waiting times for visas might range from a few months to 22 years.

The United States immigration system requires fundamental rethinking. The U.S. needs a new immigration system that is supportive of national goals, responsive to rapidly changing economic conditions and that produces predictable outcomes. In addition, the system must be comprehensible, transparent and as straightforward as possible. As the U.S. Commission on Immigration Reform noted in its 1995 report: "Immigration policy should not be overly complex, and the mechanisms used … should be efficient and comprehensible." The panel

Carolyn Daniels
2009 Immigration
Panel member

"For the vast majority of U.S. citizens, employers and immigrants, the immigration system often seems **well-nigh incomprehensible.**"

agrees with the commission. Therefore ***the panel recommends that Congress reform the U.S. immigration system in a comprehensive way so that it is supportive of national goals, responsive to rapidly changing economic conditions, produces predictable results and is as simple, comprehensible and transparent as possible.***

A Simplified System

The United States immigration system must be reformed and simplified. In approaching this task it is essential that any reform be done holistically, not via more legislative patches on an already badly listing ship. There are a number of ways the U.S. immigration system might be improved and many suggestions have been offered over the years. Without discounting the value of other approaches, the panel suggests that reform must begin with a dramatic simplification of the visa system. ***The panel recommends that the visa system be simplified into eight broad visa categories: visitor, student, temporary, convertible, family, provisional, representative and refugee, and that immigrant/non-immigrant distinctions be eliminated.*** Qualification for all visas would include a level of security screening appropriate to the type and duration of the visa and visas would be revoked if the individual were convicted of a serious crime.

Visitor visas would be for those entering the country for a period not exceeding nine months. Visitors, businesspersons, trainees and others desiring short-term stays are among those included in this category. There would be no limit on the number of visitor visas that could be issued. Persons holding visitor visas could not bring family members unless those individuals secured their own visas. Visitor visa holders could leave the country and return again within the visa period, but could not renew the visa from within the United States. Persons holding visitor visas would not be eligible to adjust to legal permanent resident (green card) status.

Student visas are intended for students in formal educational programs leading to a degree from an accredited university or other recognized educational institution. Student visas would be valid for a period of five years, but terminate immediately if the student ceased his or her education prior to graduation. Spouse and minor children could receive family visas while the principal's visa remained valid. Student visa holders could leave the country and return again during the visa period. Students

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Kay Norton
2009 Immigration Panel member

"Almost every thoughtful observer, regardless of party affiliation or perspective, believes the **American immigration system is broken** and in need of fundamental reform."

could renew the visa from within the United States only once, and only if they became a qualified graduate student. Persons holding student visas and their family members would not be eligible to adjust to permanent resident status. Students graduating from accredited U.S. universities with master's and doctoral degrees would, however, be eligible for a special one-year extended student visa that would allow graduates time to seek employment and then be eligible for a convertible visa.

In this connection, it is useful to recognize the relationship between student visas and the ability to attract outstanding

Type of Visa (Major Categories)	Duration of Visas	Renewability of Visa/ Conditions for Renewal	Family Allowed	Adjust to Legal Permanent Resident
Visitor	9 months	Yes/Only outside U.S.	No	No
Student	5 years	1 time/Graduate work only	Yes	No
Temporary	1 year	Yes/Only outside U.S.	No	No
Convertible	4 years	2 times/Within U.S.	Yes	Yes
Provisional	5 years	1 time/Within U.S.	Conditional	Yes, with conditions
Family	Limited Term	Same term as principal's visa	n/a	Convertible visa only
Representative	Appointment	Runs with term of appointment only	Yes	No
Refugee		Not addressed in this report		

Figure 9 – Summary of Recommended Visa Categories

workers in science, engineering and other important fields. By educating students here, the U.S. gains an inherent advantage in the global competition for highly skilled workers. For many years, the United States was the unquestioned leader in higher education and enjoyed the luxury of having the brightest and most motivated students flock to our doorstep. For example, the National Academy of Sciences indicates that, since 1990, more than half the U.S. Nobel laureates in the sciences were foreign born.

While still the leader in higher education, U.S. domination is diminishing. In 1989, American universities awarded twice the number of PhDs as those granted by major Asian countries. Just 12 years later Asian universities had closed the gap. A similar story exists in Europe. The United States is paying a heavy price for an immigration system that presents students with a confusing, ad hoc mixture of temporary visas and no convenient way to search for a job in the U.S. after graduation.

Representative visas are for persons representing foreign governments and trade organizations, the media, certain treaty workers and others in similar capacities. These visas would be for the duration of the representation only. Spouse and minor children could receive family visas while the principal's visa remained valid. Visa holders could leave the country and return again during the visa period. Persons holding representative visas and their family members would not be eligible to adjust to either a convertible visa or to permanent resident status.

Refugee visas would be used for refugees approved for immigration, asylum seekers, certain employees of the U.S. government serving abroad and similar persons. Conditions and numerical limits for refugee visas would be established by Congress. Refugee policy was not within the panel's scope of study, and thus recommendations are not offered on refugee visas.

Temporary and convertible employment, family and provisional visa categories are discussed in following sections of this report. Figure 9 provides a brief summary of the panel's recommendations for simplified visa categories.

Immigration Management Commission

Presently, Congress determines the number of visas allowed for each category and subcategory in a highly detailed way. As might be imagined, the process of establishing or changing the visa limits is slow, cumbersome and subject to political

"The U.S. needs a new immigration system that is supportive of national goals, responsive to rapidly changing economic conditions and **that produces predictable outcomes.**"

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compromise. Congressional deliberation is appropriate for crafting broad legislation and for establishing the total number of visas allowable annually under each major category such as those shown in Figure 9. It is far less effective as a means of establishing detailed subcategory-by-subcategory immigration limits that more closely resemble policy implementation than policy formulation. The difference is significant. Imagine if Congress were to set the federal funds rate on the basis of whatever political compromises could be achieved and whenever a majority could be found. Or, visualize a Congressional debate on the efficacy of a new drug and releasing it for public use, or not, based on the political climate at the time.

These are not the best approaches and Congress has, in its wisdom, created institutions such as the Federal Reserve and the Food and Drug Administration to execute its broad policy objectives. The same approach should be taken with respect to immigration visas. This is especially true in the area of employment-related visas where the system must reflect the needs of employers if it is to improve the strength and competitiveness of the U.S. economy. For these reasons, ***the panel recommends that Congress establish only a maximum numeric limit for each major category of visa and that the allocation of visas within each major category be handled by an independent Immigration Management Commission to be created by Congress.***

The Immigration Management Commission (IMC) would have a limited, but vital role. As noted above, Congress would establish an overall numeric limit for major visa categories or could allow a category to be unlimited, such as in the case of visitor, student or family visas. Within those overall limits, the IMC could annually determine the specific number of visas to be allocated within each category (but not between categories) and the priorities related to such allocations. The existence of such a commission would allow the immigration system to respond rapidly to changes in economic conditions. Congress would no longer be called upon to try to manage the details of the immigration system through the legislative process.

The Immigration Management Commission would be a small organization that might be housed within an existing department for efficiency, but would be independent in its decision making. It would have a small staff to conduct analyses and interact with federal and state officials and others with an interest in the process. The commission would not, however, replace the U.S. Citizenship and Immigration Services as the administrator of the immigration system. Rather, the IMC's role

David Trickett
2009 Immigration Panel member

"The **Immigration Management Commission** would have a limited, but vital role...such a commission would allow the immigration system to respond rapidly to changes in economic conditions."

would be to allocate visas tactically, based on current conditions, and to establish visa issuance priorities to be followed by the USCIS in implementing immigration policy. For example, when economic conditions contracted, the IMC could respond in a timely way, through reductions in allocations of employment-related visas. Conversely, when the demand for workers expanded, the commission could respond accordingly. In a similar fashion, if there was a severe shortage of scientists and engineers with expertise in nanotechnology, the commission could increase employment-related visas and encourage student visas in that field as well.

In recommending such an approach, the panel is particularly concerned that the Immigration Management Commission not preside over a centralized, top-down process. What is required, especially with respect to employment-related visa limits, is an employer-driven process. The panel feels strongly that the allocation of employment visas should start with employers, not with a government agency. The process would begin with employers in each state meeting with a designated state agency to identify annual needs for temporary and longer-term positions, giving careful consideration to the availability of U.S. workers willing to fill such jobs. State-level analysis would be followed by formal, face-to-face discussions between state officials and commission members. The goal is a bottom-up, collaborative process that engages employers, states and the federal government and is responsive to economic and other conditions. To this end, ***the panel recommends that the allocation of employment-based visas be based on a collaborative process in which each state presents detailed recommendations to the Immigration Management Commission based upon surveys and face-to-face discussions with employers throughout the state.***

Per-country Limitations

In addition to simplifying the visa structure and the way in which numeric limits are allocated, it is important to consider the matter of per-country immigration limitations. Initially created in 1965 to encourage diversity, per-country limitations require that no country exceed 7 percent of the worldwide level of U.S. immigrant admissions. Per-country limits are not an entitlement; rather they are intended as a barrier against monopolization of the immigration process. The diversity limit is, in effect, overlaid on the many visa categories and

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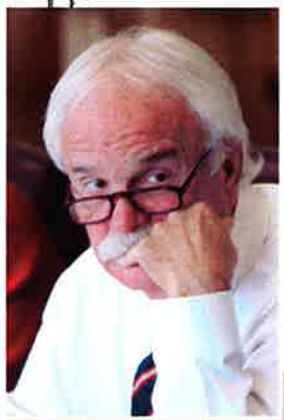

Jerry Williams
2009 Immigration Panel member

"The allocation of employment visas should **start with employers**, not with a government agency."

subcategories and is administered through its own set of complex rules. In spite of several attempts at legislative workarounds, diversity limits continue to be problematic.

Diversity caps can inhibit the goal of using immigration policy to strengthen U.S. economic viability. In 2007, Mexico, China, Philippines and India were among the top countries sending immigrants to the U.S. Thus, a highly educated applicant from India or China, an experienced engineer from Mexico or a skilled worker from any other country that had reached its diversity limit might wait years for a visa. Preventing overwhelming numbers of immigrants to come from just one or two countries is an idea the panel supports, however the current limit has the potential to impede realization of other important goals.

The United States is a highly diverse nation and there is every indication that the country will continue to attract immigrants from throughout the world. The panel does not wish U.S. immigration to be dominated by a single country, but the current limits can thwart immigration policy goals, particularly in the area of employment. Therefore, ***the panel recommends that per-country diversity limits be increased from 7 percent to 10 percent of the worldwide level of U.S. immigrant admissions and that waivers not be granted to any country to exceed 10 percent.*** Taking this step would not increase the total number of immigrants, since the maximum limit for each major category would continue to be established by Congress.

The desire to achieve diversity has also led to the creation of an annual diversity lottery through which 50,000 visas are granted each year. The only requirements are that the applicant be from an eligible country and have either a high school education or equivalent, or two years of experience in a profession that requires at least two years of training. The 50,000 diversity visas represent about one-third of all the visas available annually for skilled workers seeking to immigrate to the United States. The demand for skilled worker visas has dramatically outstripped the supply during most of the past decade. The panel believes that special measures are no longer required to foster diversity. Therefore, ***the panel recommends that the annual diversity lottery be eliminated and its visa allocation be transferred to the convertible visa category.***

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NATIONAL SECURITY

Maintaining the security of the United States and the safety of its citizens is a fundamental requirement. Near the top of national security concerns is the matter of border security.

Border Security

The rise in illegal immigration and a heightened concern about drug smuggling, crime and terrorism have combined to increase the focus on U.S. border security. The responsibility for border enforcement rests with the U.S. Bureau of Customs and Border Protection (CBP). Over the past decade, the U.S. Border Patrol has seen its budget more than triple and its number of personnel nearly double. The addition of personnel and equipment, creating the most extensive air and marine resources of any law enforcement agency in the world, is improving border security. The growth of appropriations for the border patrol is shown in Figure 10.

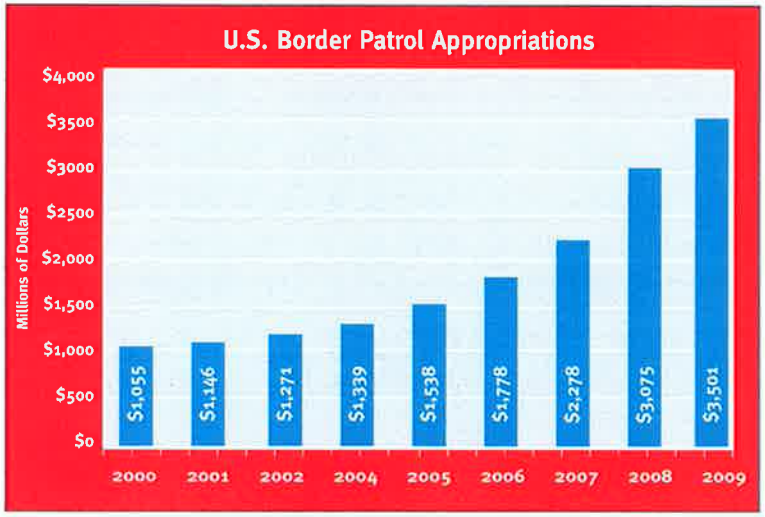

Figure 10 – Growth of U.S. Border Patrol Appropriations
(Source: Congressional Research Service)

In addition to significant increases in funding, personnel and equipment, the CBP has expanded the construction of physical barriers along the Mexican border as part of its Secure Borders Initiative. Construction of border barriers goes back to 1990, but in recent years the border infrastructure construction program has greatly accelerated. Enhancements to border security go well beyond fencing and walls and now include sensors, light towers, mobile night vision scopes, remote video surveillance systems, directional listening devices, and unmanned aerial vehicles.

It is difficult to determine with precision just how successful these increases in border security have been. For example, a 14 mile fence built nearly a decade ago near San Diego seems to have proven effective in terms of reducing the number of illegal

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border crossings in that sector. That said, there is evidence that the flow of illegal immigration has adapted to the San Diego fence by shifting to the more remote areas of the Arizona desert. Nevertheless, as increased border security is extended to encompass some 700 miles along the southwest U.S. border, it is very likely that illegal border crossings will become increasingly difficult and expensive.

In addition to illegal immigration concerns, there is an urgent need to deal with violence, drug smuggling, human trafficking and potential terrorist activity in border areas. Indeed, CBP's top priority is now to keep terrorists and their weapons from entering the United States. Given the fundamental importance of border security for controlling illegal immigration, criminal and terrorist activities, ***the panel recommends that the United States continue efforts to strengthen the security of the U.S. border and that Congress fund the Bureau of Customs and Border Protection at levels required to maintain effective border enforcement.*** The panel views these steps, along with continued collaboration with Canada and Mexico in border enforcement efforts, as essential to the maintenance of U.S. border security.

The Central Role of Employers

Efforts by the Bureau of Customs and Border Protection to secure U.S. borders against illegal immigration through enforcement, fences, video surveillance and other techniques are essential, but not absolute. A key challenge is the length of the United States border. According to the U.S. Geological Survey, the U.S. border with Mexico is just under 2,000 miles long and the border with Canada is about 4,000 miles not including Alaska, which adds an additional 1,500 miles. The U.S. seacoast is much longer, with the most conservative estimate putting the length at 12,500 miles. Given this vast expanse of land borders and seacoasts, it seems highly unlikely that immigration will be controlled by border security alone.

As noted earlier, the opportunity for economic improvement is a primary driver of migration. Hence, a key step in reducing illegal immigration is to remove the economic incentive to migrate. In this respect, U.S. employers have a central role to play in managing immigration. Although sometimes cast in the role of villains, in fact, employers are central to creating an effective immigration policy for one principal reason—they control the jobs. Migrants seeking economic opportunity are unlikely to move to a country where employment is unavailable. As a result, ***the panel recommends that employers be recognized as key allies in implementing immigration policy and that***

Richard Ballantine
2009 Immigration Panel member

"Employers are central to creating an effective immigration policy for one principal reason—**they control the jobs**"

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they be given the tools and protections necessary to support immigration policy.

For more than 20 years, federal law has required all employers to examine documents presented by new hires to verify identity and work authorization, and to complete and retain employment eligibility verification forms (I-9). There is general agreement that the I-9 process has been undermined by fraud, both document fraud, where prospective employees present counterfeit or invalid documents, and identity fraud, where prospective employees present valid documents issued to other individuals. Even if employers are willing and motivated to comply with the law, as the great majority seem to be, the inability to positively and reliably verify immigration status is a major stumbling block to managing illegal immigration through employers.

In addition to being subject to fraud by job applicants, the I-9 process is complex for employers to administer, especially those who do not use immigrant labor on a regular basis. Currently there are more than 20 documents that employees can present to employers to establish their identity and employment eligibility. For many employers, especially small businesses and those who use the process only occasionally, understanding the procedures can be difficult. In addition, record-keeping requirements give rise to errors and omissions, putting the employer in potential legal jeopardy for non-compliance.

To improve the identification process, in 1997 Congress established a pilot program for electronic verification of employment status. This Web-based program, now called E-Verify, allows the employer to send required I-9 data (name, date of birth, Social Security number, immigration/citizenship status, etc.) to the U.S. Citizenship and Immigration Services via the Internet where the information is verified against the Social Security and other databases. Plagued by problems and inaccuracies in its early years, the accuracy of the E-Verify system is now much improved.

All federal contractors and many state contractors are already required to use the system. In addition, as of May 2009 more than 122,000 employers of all types were enrolled in E-Verify, with an average of 1,000 employers joining the program each week. In spite of its recent impressive growth, less than 15 percent of non-agricultural employers are currently using the system. In 2008, E-Verify was used in fewer than 13 percent of all non-farm hires. Although there is much to commend the E-Verify system in terms of simplicity of use, speed and

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Ved Nanda
2009 Immigration Panel member

"Without a means of positive identification, it makes **very little difference what immigration policies are adopted** because they can't be effectively enforced."

a high level of accuracy, its potential to significantly reduce illegal immigration will not be reached until it is used, and can be relied upon, by all employers. For this reason ***the panel recommends that E-Verify, or a similar program, be made permanent; that employers be required to use the system with secure identification cards to verify employment eligibility of all employees; that employers using the system in good faith be held harmless from enforcement actions; and that employers failing to use the system be subject to significant sanctions.***

Universal use of E-Verify or a successor system is an essential first step in controlling illegal immigration but it will not, by itself, solve the problem of illegal immigration. E-Verify has only limited ability to detect counterfeit documents and even lower probability of detecting identity fraud when an individual presents valid documents that were actually issued to another person. The current system places the responsibility to identify counterfeit documents primarily upon the employer, inappropriately in the panel's view. In order to control the employment of illegal migrants successfully, another step is required.

Employment Identification Card

Preventing the employment of illegal aliens requires three things: a secure, reliable means of identifying individuals, a way to verify their status and a system that is actually used by employers. E-Verify or a similar system can handle verification, if the means of identification is accurate. The problem is, and has been, that the U.S. does not yet have a secure, reliable and universal means of identification.

The idea of a national card for identifying citizens and non-citizens has become the third rail of immigration politics. But in truth, without a means of positive identification, it makes very little difference what immigration policies are adopted because they can't be effectively enforced. A means of positive identification is essential to prevent the employment of illegal immigrants.

If a source of identification exists that is extremely difficult or impossible to counterfeit, a system like E-Verify can be highly effective. Using a secure identification card, the employer would simply scan the prospective employee's card into a scanner and await confirmation. The cost to the employer of acquiring a scanner is likely to be small and, in any event, far less than the time and expense of processing multiple documents and retaining records as employers must do today. After completing the process of ID card verification, the employer should be held

"A secure identification card **would be required for employment,** just as a passport is required for international travel."

harmless from enforcement actions for that hire, thus creating a positive incentive for employer compliance. Such a system would help realize the potential of employers as powerful allies in the effort to control illegal immigration.

To be effective, the identification card must be issued by the U.S. government and be as tamper-proof as possible. This, of course, raises understandable privacy concerns. However, after listening to experts and advocates on all sides, the panel has concluded that the benefits of a carefully designed identification card for employment outweigh potential privacy issues. For years, would-be architects of immigration policy have gone through contortions trying to avoid the use of a universal employment identification card. But, in the end, immigration policy must be implemented, not just discussed. And implementation requires positive identification via a card that is government-issued, technologically advanced and extremely difficult to counterfeit. That is, a secure identification card.

There are many potential approaches to creating a secure identification card. The card could permit visual identification through a photo, fingerprint and physical description. It could also contain machine-readable data and biometric information that could be scanned and sent to the E-Verify database for confirmation. In addition, for U.S. citizens and permanent residents, the card might also include the individual's Social Security number, thus creating at little additional cost a secure Social Security card, an idea which has long been discussed in Congress. In the case of immigrants, in addition to identification information, the card could include a taxpayer ID number to help assure that required taxes were paid.

A secure identification card is the cornerstone of an effective immigration management program. Whatever its exact characteristics, a secure identification card would be required for employment, just as a passport is required for international travel. Therefore, after careful consideration, ***the panel recommends that the United States establish a secure identification card to be used by all employers, along with E-Verify, to ascertain the employment eligibility of all prospective and current employees.***

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SOCIAL VITALITY

United States immigration policy must support the social vitality and cohesion of the nation. Social vitality embraces diversity, not for its own sake, but for the flow of new ideas, varying perspectives, innovation and entrepreneurship that it brings to American society. The goal of strengthening social vitality is of direct benefit to the U.S. as a whole while providing indirect benefits to the prospective immigrant.

A Common Language

Nothing is more important to the strength and viability of a society than a common language. In the panel's view, there is no contradiction between appreciating the benefits of a national community built upon a panorama of cultures, while at the same time recognizing the inestimable value of English as the binding thread of our social fabric. Anyone seeking to join American society as a permanent resident or citizen needs to be proficient in English.

In addition to serving as the basic force of social cohesion, English is the path to economic advancement. In the United States some 1.3 million college educated immigrants, nearly 20 percent of all highly skilled immigrants in the country, are unemployed or working in unskilled jobs because of inadequate English language proficiency. Conversely, immigrants who speak English occupy more skilled positions and earn much higher salaries than non-English speakers or those with only limited English language ability. It is not surprising therefore that, in overwhelming numbers, persons of all backgrounds, income levels, language abilities and political party affiliations believe that teaching English to the children of immigrant families in the U.S. is very important.

English proficiency is a basic force of social cohesion and a prerequisite to full participation in American society. For those reasons, ***the panel recommends that English language training classes be funded by the federal government and made widely available to participants at an affordable cost, and that no person be granted permanent resident or citizen status without demonstrating a level of proficiency in the English language as defined by Congress.***

Linda Childears
2009 Immigration Panel member

"English proficiency is a **basic force of social cohesion** and a prerequisite to full participation in American society."

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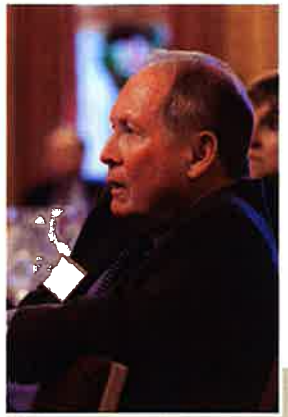
Existing Illegal Immigrants

It is estimated that between 10 million and 12 million individuals live in the U.S. illegally, of which more than 8 million work in the labor force. Employment opportunity is a primary driver for illegal migrants whose movement tends to be responsive to economic conditions. Some entered the country as unauthorized aliens while others initially entered the U.S. legally, on visas that have since expired. Currently, about 4 percent of the entire population of the United States resides here illegally.

Whatever the means of entry, there is little doubt that illegal immigration continues. Without in any way excusing illegal activity, many of those making presentations to the panel noted that the existing immigration system, with its convoluted processes and lack of responsiveness to the labor market realities, might encourage such behavior. Whether one chooses to call this group "undocumented persons" or "illegal aliens," the fact remains that a great many individuals are living outside the boundaries of established American society, an inherently unhealthy situation. For social, economic, security and familial reasons it is an issue that must be addressed.

The panel sees compelling reasons to bring illegal immigrants into a legal status. From a security perspective, these include the ability to identify persons who may pose security, criminal or medical risks to society. Economically, legalization presents an opportunity to expand the productivity and realize the potential of workers whose opportunities are limited by their illegal status. The chance to become a part of the community while acquiring English language skills and civics education strengthens society by creating shared values as immigrants are brought into the mainstream of American life. Finally, creating a pathway to legal status for those who qualify strengthens families by removing the threat of family breakup through selective deportation.

While the benefits of bringing illegal immigrants into some type of legal status may be significant, the problem involves a great many individuals, and it is structurally complex. Illegal immigrants are not a homogeneous group, but are composed of single men and women as well as families with children, some of whom may be U.S. citizens. The situation becomes especially complex in mixed-status families, defined as those with at least



Del Hock
2009 Immigration
Panel member

"The panel sees compelling reasons to **bring illegal immigrants into a legal status.**"

one unauthorized immigrant parent and one U.S.-born child. Figure 11 shows the estimated makeup of such families by age group and immigration status.

Given the nature of the problem, the idea of rounding up and deporting some 10 million to 12 million individuals and their family members makes interesting talk-show chatter but strains credibility in terms of feasibility and logistics, whatever one's moral perspective on the issue. Similarly, broad-stroke plans that would grant amnesty with few requirements seem equally far-fetched. The panel believes that neither legalistic retribution theories nor unbridled humanitarianism provide a sound foundation for dealing with illegal immigrants.

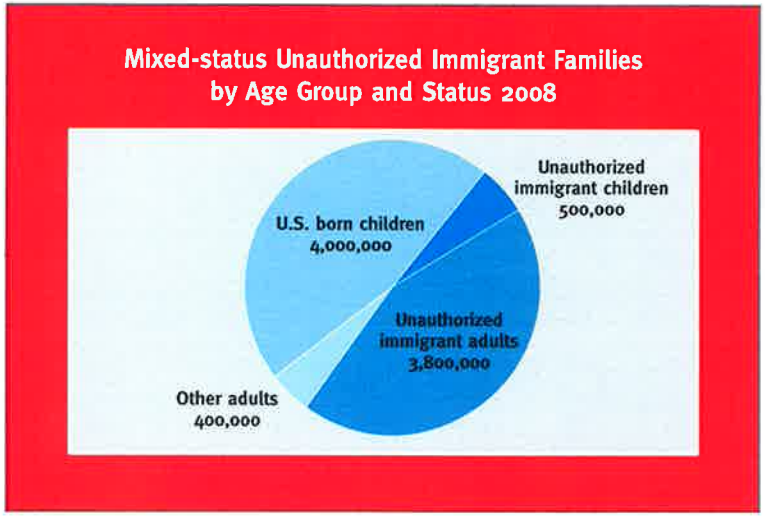


Figure 11 – Makeup of Mixed-Status Families
(Source: PEW Hispanic Center)

Many citizens have suggested that it is not appropriate to consider allowing illegal immigrants to legalize their status until U.S. borders are secure. The concern is, quite logically, that creating a route to citizenship for existing undocumented immigrants simply encourages more individuals to enter the country illegally. The panel shares this concern and also recognizes the significant strides made in border security in recent years. These advances in border security, coupled with the recommended employment identification card and the mandatory use of E-Verify by employers, set the stage for a policy to address existing illegal immigrants.

The strategy proposed by the panel is based upon three premises. First, improved security is making illegal border crossing increasingly difficult and expensive. Second, denying illegal immigrants jobs, through the use of a secure identification card

"The panel believes that neither **legalistic retribution theories nor unbridled humanitarianism** provide a sound foundation for dealing with illegal immigrants."

and a database confirmation system such as E-Verify, removes the primary incentive for illegal immigration: employment. Third, existing regulations limiting public services available to undocumented immigrants provide a limitation on benefits for those who choose to remain in an illegal status. Offering illegal immigrants a one-time opportunity to gain provisional legal status, with possible permanent legal residency thereafter, is a clear incentive to bring millions of persons out of the shadows and into full participation in society.

Creating a Provisional Legal Status (PLS) program for illegal immigrants raises legitimate concerns that such a program, whatever its merits, will simply serve to attract more undocumented migrants. For this reason, the sequencing of several recommendations in this report is important. The panel believes that legislation establishing a secure identification card, mandating the use of E-Verify or a similar system by employers, and the creation of a Provisional Legal Status program all be enacted together, but implemented in phases as part of a comprehensive immigration reform package.

Before offering provisional legal status it is important that the primary incentive for immigration—employment—not be available to undocumented immigrants. Thus, a secure identification card and use of a verification database for all hires need to be in operation before a provisional visa plan for illegal immigrants is implemented. Specifically, implementation of the PLS program would begin after E-Verify was mandated and issuance of secure identification cards had been initiated, although not necessarily completed. These measures, coupled with the improvements in border security, will make it both physically difficult to enter the country illegally and economically unattractive to remain. Conversely, creating a pathway to legal permanent residence without the recommended staging has the potential to worsen, not lessen, the problem of illegal immigration. This sequence of activities is shown in Figure 12.

As illegal border crossings become more difficult, dangerous and expensive, and as it becomes extremely difficult or impossible to get a job without verification of a secure identification card, illegal immigrants will face the dilemma of either remaining

"Implementation of the **Provisional Legal Status program** would begin after E-Verify was mandated and issuance of secure identification cards had been initiated."

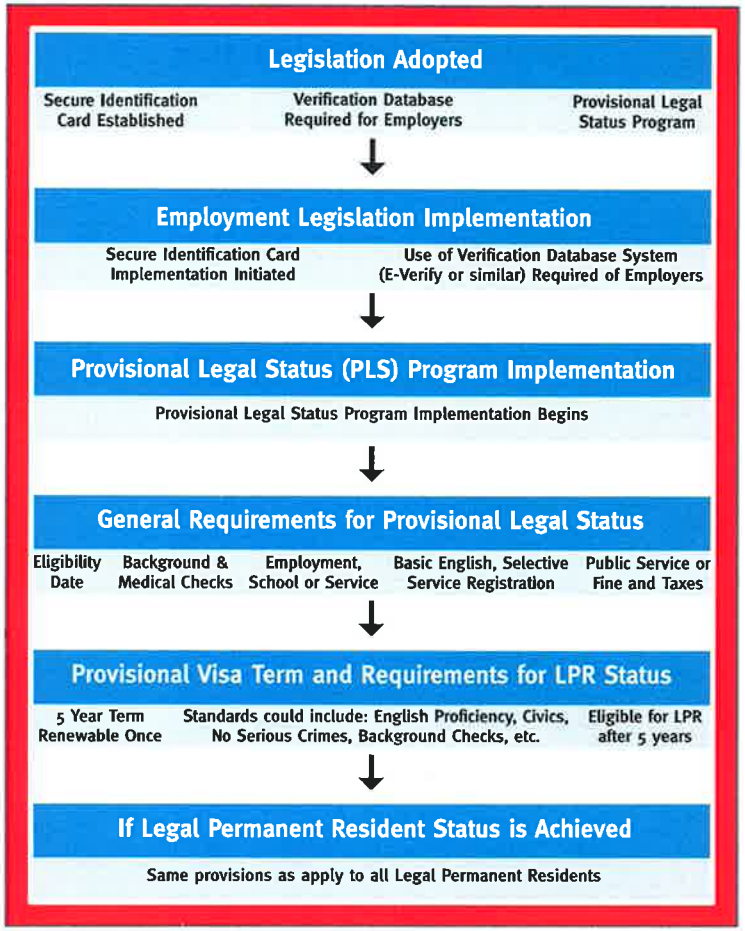


Figure 12 – Provisional Visa Process for Illegal Immigrants

in the U.S., unemployed and with few benefits, or returning to their own country. The panel believes these conditions will provide a strong incentive for undocumented persons to present themselves for participation in a Provisional Legal Status program. For the reasons described above, ***the panel recommends that, contemporaneous with the creation of a secure identification card and mandatory use of an employment verification system, Congress create a time-limited Provisional Legal Status (PLS) program for persons illegally in the U.S. and that the PLS program be implemented after employment verification has been required of all employers and issuance of secure identification cards has begun.***

The Provisional Legal Status program would permit illegal immigrants who were physically present in the United States as of a specific date and who met other eligibility standards to register for a provisional visa. Standards for eligibility could require the individual to: pass criminal, national security and medical background examinations; be employed, in school or involved in unpaid community service; speak basic English; participate in civics classes; register for selective service, if appropriate; and

Barbara Bauer
2009 Immigration Panel member

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pay all taxes due. In addition, participants could be required to pay a fine or provide a significant amount of unpaid community service managed and documented by the immigrant's local government. Provisional visa holders meeting requirements could achieve legal permanent resident status after five years. Illegal immigrants not applying under the PLS program within the deadline would be subject to deportation. With these criteria in mind, ***the panel recommends that illegal residents residing in the United States on a date certain and meeting eligibility standards: be required to register for a provisional visa; be permitted to obtain a government-issued employment identification card; be allowed to seek or continue employment or education at any location; and, upon meeting requirements, be given the opportunity to eventually achieve legal permanent resident status.***

Provisional visas would be issued to persons meeting the eligibility requirements of the Provisional Legal Status program. For persons of working age a special secure identification card authorizing employment would be made available at the time of visa issuance. Illegal adult immigrants would be required to apply for provisional visas for themselves and for their minor children who qualified under the program. Provisional visas for minor children would be valid as long as the parent's provisional visa remained valid and after the parent obtained LPR status. Upon reaching the age of majority, such children would be required to apply for their own provisional visas.

Provisional visas would be valid for a period of five years and could be renewed only once. Provisional visas would not require employer sponsorship and would not count toward per-country diversity cap calculations. If an individual had not met the requirements for legal permanent residency by the end of the renewal period (10 years after initial issuance) the visa would expire, the person would not be eligible for employment or education in the U.S., and would be required to leave the country. If the holder of a provisional visa were convicted of a serious crime the provisional visa would be terminated and the individual would be deported without any opportunity for future entry into the United States. Figure 12 depicts the overall Provisional Legal Status process.

Public Services to Illegal Immigrants

The desirability of providing various public services to illegal immigrants and the cost of doing so has been the subject

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Dick Koeppe
2009 Immigration
Panel member

of endless debate and innumerable studies. From a policy perspective the situation is complex because it involves both state and federal statutes and important judicial decisions such as Plyler v. Doe which effectively guaranteed K–12 education to both legal and illegal immigrants. In general, under the federal Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA) passed in 1996, illegal immigrants are prohibited from receiving federal and most state benefits, excluding emergency health care and disaster relief, immunizations against communicable diseases, subsidized school lunches and certain community services such as soup kitchens, or short-term shelters.

Cost estimates for providing services to immigrants, as well as studies of tax revenue generated by immigrants, tend to vary widely due to individual state situations and significant methodological differences. A recent report by the National Conference of State Legislatures examined more than 20 studies related to immigrant costs, revenues and economic impact on states. Some studies concluded that the net fiscal impact of immigrants on the state budget was positive, while others concluded the opposite. All studies did agree that the economic (as opposed to budgetary) impact of immigrants upon the gross state product was positive.

Based on the prior recommendation that a Provisional Legal Status program be created allowing qualified illegal immigrants to achieve a legal status, ***the panel recommends that federal, state and local public benefits for illegal immigrants be strictly limited to those currently required by law and that such benefits not be expanded in the future by any level of government.***

ECONOMIC ADVANTAGE

The strategic use of immigration policy to build economic strength and create global competitive advantage for the United States represents an exceptional opportunity. Educated, experienced and skilled workers are the raw material of a knowledge-based society. Strengthening the U.S. education system to produce citizens who are well educated and possess the skills necessary to serve in key positions in business, education, government and non-profits is, of course, a vital step. At the same time, the United States needs to make every effort to attract the best and the brightest from throughout the world.

It is difficult to overstate the importance of immigrant talent to maintaining U.S. leadership in a highly competitive global economy. Traditionally, our excellent higher education system, political freedoms and business-friendly environment have helped the United States maintain a competitive edge. For example, over the past 15 years immigrants have started 25 percent of all U.S. public companies that were backed by venture capital. These companies employ hundreds of thousands of American workers, often in high-tech, high-paying fields such as software, semiconductors and biotechnology. Companies started by immigrants read like a who's who of high-tech leaders: Intel, Sun Microsystems, eBay, Yahoo! and Google.

There is, however, no assurance that our traditional competitive advantage in attracting extraordinary global talent will continue. Indeed, there is reason for concern. The U.S. is not the only country to discover that human capital is the critical ingredient of economic success. Major industrialized countries around the world are actively pursuing trained scientists, engineers, entrepreneurs and those possessing the education, experience and skills to strengthen their global competitiveness. The United States needs be on an aggressive talent hunt, working hard to improve our educational and training systems to maximize talent development at home while actively recruiting the best and brightest from abroad. A strategic immigration policy focused on enhancing national economic strength and creating global competitive advantage offers great potential for the United States. It is an opportunity that we ignore at our own peril.

Attracting Skilled Workers

No aspect of immigration is more important than the ability to attract the world's most talented individuals to the U.S. for employment—and no part of the system is more broken. Attracting the best and brightest is not the main priority of current U.S. immigration policy. The main priority is family reunification. The degree to which this affects immigrant

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"The strategic use of immigration policy **to build economic strength and create global competitive advantage** for the United States represents an exceptional opportunity."

admissions is clearly illustrated in Figure 13. Of the 1.1 million immigrant admissions to the U.S. in 2007, a typical year, only 15 percent were employment-based while 65 percent were family-based. Even this understates the situation, because of the 15 percent employment-based visas, about 60 percent were for family members of employment visa holders, further reducing visas actually used for employment. The lack of emphasis on employment visas is illustrated by the fact that of some 70 non-immigrant visa categories, only about 15 are primarily designed for employment. As if that were not enough, current per-country limitations can further constrain employment-based immigration from some countries offering the greatest potential for skilled workers.

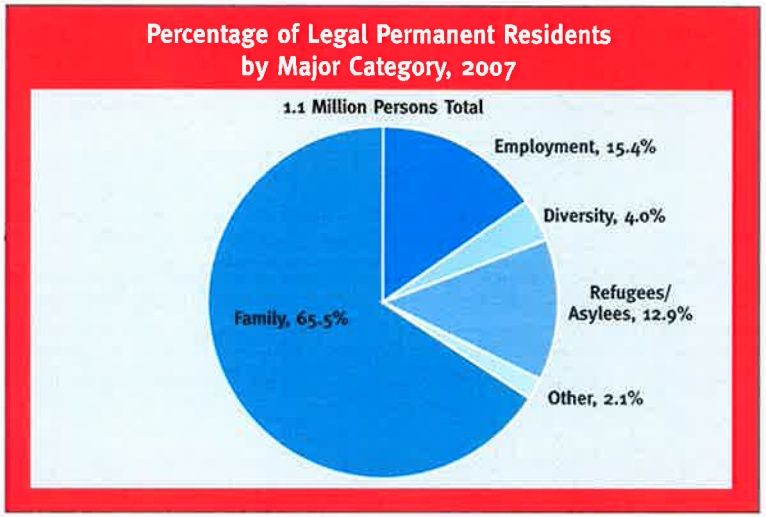

Figure 13 - Legal Permanent Residents by Major Category, FY2007
(Source: Congressional Research Service)

The present allowable limit for immigrant (green card) visas for all types of skilled workers is 140,000, far below the actual demand for skilled workers during every year of the present decade through 2008. To some degree, this shortfall has been made up through the use of temporary, non-immigrant work-related visas, currently estimated to be in the range of 600,000 per year. To be sure, the demand for skilled immigrant workers will ebb and flow with economic conditions, which is why the panel recommends the creation of an Immigration Management Commission process with the ability to determine actual demand and respond accordingly. At the same time, it is essential that the overall numeric limit on employment-related visas for skilled workers, which is established by congress and difficult to change, be set high enough to accommodate the demands of a strong economy. With this in mind, ***the panel recommends that the total number of employment-based visas authorized by Congress be increased significantly, to be allocated annually by the Immigration Management Commission based on economic conditions.***

Kim Patmore
2009 Immigration
Panel member

"The United States needs be on an **aggressive talent hunt,** working hard to improve our educational and training systems to maximize talent development at home while actively recruiting the best and brightest from abroad."

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The objective of a reformed employment-based system is not simply to admit as many workers as possible or undercut wages and opportunities for U.S. workers. Rather, the goal is to provide a reliable, market-responsive means of attracting the talent needed by U.S. employers. To realize the potential for enhancing U.S. economic strength and global competitiveness, ***the panel recommends creation of a convertible visa category for immigrants with superior education, experience, skills and talent that would allow individuals to change employers and, if eligible, adjust to permanent resident status.***

Convertible employment visas would be dual-purpose in nature. They would be available to individuals possessing highly desirable qualifications such as advanced degrees, professional experience, entrepreneurial ability, technical and physical skill, extraordinary talent, etc. Convertible visas would allow such workers and their families to live and work within the U.S. and, upon meeting the requirements for legal permanent residency, convert to permanent resident status. Recent graduates from accredited U.S. universities with master's and doctoral degrees would be eligible for a special one-year extended student visa providing time to seek employment, after which they would be eligible to apply for a convertible visa.

Convertible visas would have a term of four years, renewable twice from within the United States. Employer sponsorship would be required for initial application, but not for extensions. After two years with the sponsoring employer, the holder of a convertible visa could change employers. The ability to change employment is important: it will insure that visa holders receive pay and benefits at market levels, because they will leave if inadequately compensated. It also provides the opportunity for both employers and visa holders to assess the success of the relationship.

Spouse and minor children could receive family visas so long as the principal's convertible visa remained valid. Visa holders could leave the country and return again during the visa period. Persons holding convertible visas would be eligible to adjust to legal permanent resident status after five years, without requiring employer sponsorship. As with all legal permanent residents, if the holder of a convertible visa was granted LPR status, his or her immediate family members would be eligible to apply for LPR status as well.

The convertible visa is intended to be very attractive to workers who can make important contributions to the U.S. economy and to our global competitiveness. The visa is intended to

Peter Schuck addresses the 2009 Immigration Panel

"The convertible visa is intended to be very attractive to workers who can make **important contributions** to the U.S. economy and to our global competitiveness."

significantly reduce the bureaucratic red tape now associated with hiring a highly qualified immigrant worker. Currently an employer must operate within visa limits that are inadequate in terms of allowable numbers, must find an applicant that meets the correct preference categories (and is not from an oversubscribed country) and then must convince the Department of Labor (DOL) that a shortage exists for the skill category or that no domestic worker is available. The process is complicated, cumbersome and ineffective.

The panel proposes a process for convertible visas that is market-responsive in terms of recruitment. As long as visas were available employers would simply advertise for the position. If the best-qualified applicant happened to be an immigrant, that individual could be hired. The applicant could not be paid less than others in the organization doing similar work and would be entitled to the same benefits and protections. These provisions would be subject to audit. Employers violating these standards could be fined and lose the ability to hire immigrant workers for a period of time.

Temporary Workers

A strong economy requires both skilled workers as well as those needed for seasonal and short-term assignments. Currently, short-term agricultural workers enter through the H-2A visa program and other seasonal workers use the H-2B visa program. Employers are required to pay workers the higher of the federal or state minimum wage, and those employing agricultural workers must provide housing, transportation and other benefits.

Obtaining an H-2 visa requires application to the Department of Labor which must certify that capable U.S. workers are not available and that the employment of alien workers will not adversely affect the wages and working conditions of U.S. workers. As part of this labor certification process, employers must attempt to recruit U.S. workers and cooperate with state employment departments. With respect to agriculture in Colorado, testimony by those experienced in using the program suggests that the bureaucratic nature of the process, counterpoised against the time-sensitive nature of agricultural production makes temporary agriculture visa programs difficult to use. Presumably that experience exists in other states as well. For businesses using seasonal workers, such as the resort industry, a similar situation seems to exist although larger resort operators may have greater capability to navigate the system.

In presentations to the panel, some suggested that temporary worker programs as currently structured were cumbersome and

bureaucratic to use. On the other hand some labor advocates contend that these programs provide insufficient protections for U.S. workers. While few people seem entirely happy with either H-2 program, there is clearly a high demand for temporary workers as shown in Figures 14 and 15.

In recent years a number of ideas have been suggested to improve the use of temporary immigrant labor. Many of these are offered under the rubric of "guest worker" programs, although definition of the term varies considerably from proposal to proposal. While there is probably no perfect way to resolve the dilemma of temporary workers, the panel favors a flexible system that would rely upon collaboration between employers, the states and the Immigration Management Commission. One model for such an approach can be found in the Canadian immigration system, which relies heavily upon a partnership between the national government and Canada's provinces and territories.

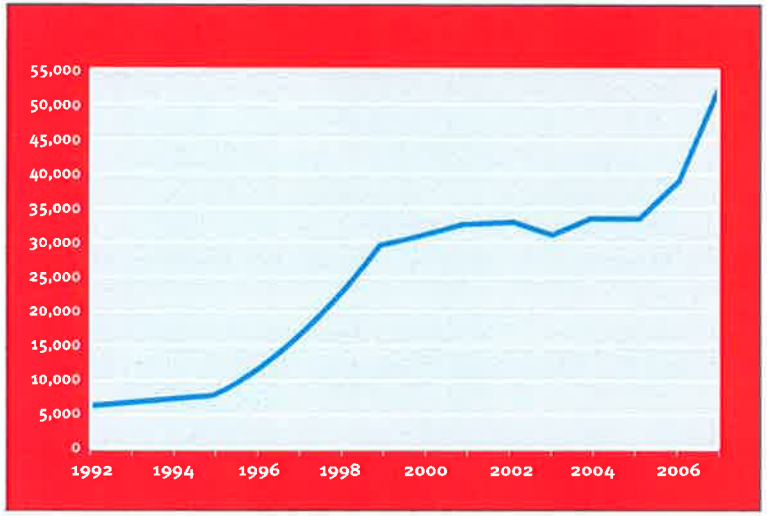

Figure 14 –H-2A Program Growth
(Source: Congressional Research Service)

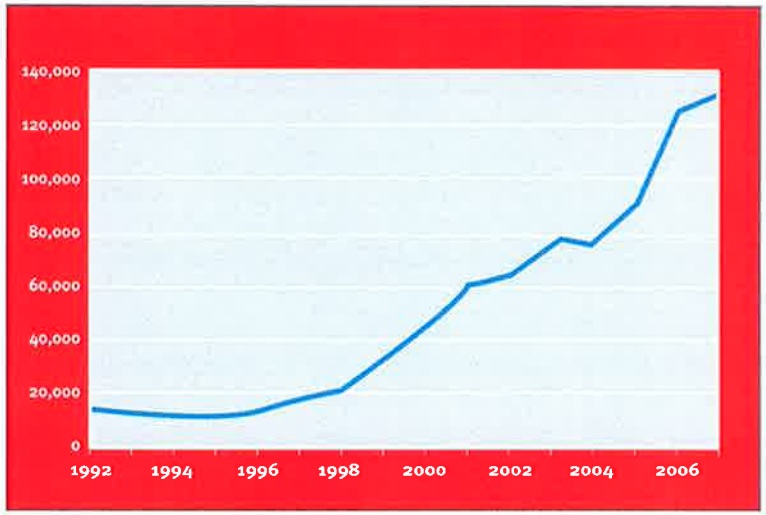

Figure 15 –H-2B Program Growth
(Source: Congressional Research Service)

A similar approach could be taken with temporary employment visas using the Immigration Management Commission process described earlier in this report. States would begin by contacting employers to determine the number of agricultural and other seasonal workers required. Based on employer needs, state governments would annually certify to the Immigration Management Commission the number of short-term employees needed. After conferring with each state, the commission would establish the number of temporary visas to be allocated to each state for the coming year. The total number of visas authorized by the commission could not exceed the overall number of employment-based visas established by Congress.

Once the number of temporary visas for each state was established, employers would be free to begin soliciting applications for workers. Employers might contract with foreign workers directly or they could use approved private agencies operating inside or outside of the United States. Whatever the process, individuals seeking temporary visas would be required to have employer sponsorship before applying for a visa. The visa, along with the required secure identification card could be issued by the U.S. embassy or consulate in the worker's home country. Before hiring the employee, the employer would be required to scan the employee's identification card through the employment verification database system. This not only verifies the legitimacy of the employee, but also identifies the employer, who would be required to uphold pay, benefit and working-condition standards appropriate for the position.

Temporary employment visas would be issued for a period up to one year, a limitation that would be contained in the data on the individual's secure identification card. Those holding temporary visas could not be accompanied by family members, nor would they be eligible to adjust to permanent resident status. Holders of temporary employment visas could leave the country and return again within the visa period. During the one-year term of the temporary employment visa the individual could change employers. As with the convertible visa, the ability to legally change employers while the visa was active is intended to help assure that visa holders receive pay and benefits at market levels. Temporary visas would be renewable but could not be renewed from within the United States, so workers would be required to leave the U.S. to renew. With these criteria in mind, ***the panel recommends the creation of a temporary employment visa for seasonal and short-term workers to be established consistent with the standards described in this report.***

Wayne Murdy
2009 Immigration Panel member

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FAMILY UNIFICATION

Family unification is an important goal of U.S. immigration policy. The individual immigrant and his or her family benefits from unification and the United States benefits from having strong families. The panel strongly supports family unification but believes that the historical approach has been founded on a faulty premise. Traditionally, family unification has been positioned so as to compete with employment-based and refugee immigration. The panel considers this zero-sum approach to be inappropriate.

Rather, the panel believes that family unification should be viewed primarily as a consequence, not a competitor of employment and refugee immigration. Of the major visa categories recommended by the panel, only family members of convertible visa holders who had themselves become legal permanent residents could apply for permanent resident status. Family members of those holding visitor, student, temporary and representative visas would not be eligible for permanent residence. Thus, the family members of current U.S. citizens and LPR's, including those who obtained LPR status from convertible visas, would be eligible for legal permanent resident status. Depending upon the conditions established by Congress for refugee visas, family members from that visa category might be eligible for LPR status as well. With this perspective on family visas in mind, ***the panel recommends that family-based immigration not be subject to a numerical cap but instead be managed through the number of employment and refugee visas issued.***

As the foregoing recommendation makes clear, the panel believes it is more effective to manage family-member immigration through other visa categories rather than having family unification compete with employment-based or refugee immigration. At the same time, the panel believes that removing the limit on family visas is a reasonable step *only if* the definition of "family" is limited to members of the immediate family. Therefore, ***the panel recommends that for all purposes, "family members" be defined to include only the spouse, unmarried minor children and parents and that all temporary and permanent family visas and adjustment of status actions be limited only to the members of the immediate family as identified in this recommendation.***

The panel recognizes that this recommendation would no longer permit immigration of (1) adult children, (2) married sons or daughters, (3) the children of married sons or daughters, (4)

Ronald Williams
2009 Immigration
Panel member

brothers and sisters and (5) and the children of brothers and sisters. The panel believes that extended family immigration is not consistent with the goals on which the recommendations in this report are founded. Extended family members wishing to immigrate to the United States should do so by applying in their own names under an appropriate visa category.

It is important to note that the panel considers the recommendations regarding family unification in this section to be linked. If the definition of "family" is not limited to members of the immediate family as defined herein, the panel does not recommend that restrictions on the number of family visas be removed. Taken together, however, the panel feels that these recommendations provide strong support for family unification.

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CONCLUSION

If there were a simple answer to the question of immigration, the issue would have been resolved long ago. Even the term "immigration," with its singular tone, belies the complexity of the topic. Immigration is not one issue, but rather a host of interconnected issues. It is more like a puzzle to be assembled—where the pieces must correctly relate to one another—than a single question to be answered.

An effective immigration policy is about applying enlightened self-interest to capture a national opportunity. It is about creating benefit to the United States in a highly competitive global economy. In the process of benefitting the United States there is also the ability to provide opportunity to talented people from other countries who can contribute to a stronger, more vital American society. Immigration policy need not be a win-lose game between the nation and prospective immigrants.

Achieving these benefits requires more than simply adding new legislative patches to a sagging and inefficient system. It requires an overall architecture for immigration policy, grounded in a shared purpose with clear goals, priorities, and governmental roles and responsibilities. Within that framework, an effective policy requires strategies to address structural reform of the system and a number of specific issues that constitute key elements of immigration policy. These elements include border security, the role of employers, a national identification card, employment verification, supporting a common language, a plan for dealing with illegal immigrants, a mechanism for attracting persons with extraordinary talent, a process for temporary workers, family unification and others.

It is this architecture and these elements that the DU Strategic Issues Panel on Immigration has addressed. Findings and recommendations on these topics are reflected throughout this report and summarized in the following section. It is the panel's hope that its work will help inform the public discussion on immigration policy.

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Richard Robinson
2009 Immigration
Panel member

Summary of Panel Recommendations

The Environment of Immigration

Recommendation 1: Perspective on Immigration
The panel recommends that global migration be recognized as an opportunity to be capitalized upon to our national benefit, rather than a reality to be ignored.

A Foundation for Policy

Recommendation 2: Purpose of Immigration Policy
The panel recommends that the basic purpose of U.S. immigration policy be the creation of economic, social and other benefits to the nation as a whole.

Recommendation 3: Immigration Priorities
The panel recommends that the criterion for ordering immigration priorities and goals be the relative degree of benefit to the United States as a whole compared with the benefit to prospective immigrants.

Recommendation 4: Immigration Goals
The panel recommends that the goals for United States immigration policy be: national security, social vitality, economic advantage, family unification and refugee relief, in that order.

Recommendation 5: Federal, State and Local Legislation
The panel recommends that the federal government define by statute appropriate spheres of legislative activity for itself and for the states.

Recommendation 6: Shared Implementation Responsibility
The panel recommends that Congress establish a shared process of implementation that allocates responsibilities for implementing and enforcing immigration policy among federal, state and local government; balances revenues and costs; and prohibits unfunded federal or state mandates.

Immigration System Reform

Recommendation 7: Characteristics of Immigration Reform
The panel recommends that Congress reform the U.S. immigration system in a comprehensive way so that it is supportive of national goals, responsive to rapidly changing economic conditions, produces predictable results and is as simple, comprehensible and transparent as possible.

Recommendation 8: Simplified Visa Categories
The panel recommends that the visa system be simplified into eight broad visa categories: visitor, student, temporary, convertible, family, provisional, representative and refugee, and that immigrant/non-immigrant distinctions be eliminated.

Recommendation 9: Immigration Management Commission
The panel recommends that Congress establish only a maximum numeric limit for each major category of visa and that the allocation of visas within each major category be handled by an independent Immigration Management Commission to be created by Congress.

Recommendation 10: Employment Visa Process
The panel recommends that the allocation of employment-based visas be based on a collaborative process in which each state presents detailed recommendations to the Immigration Management Commission based upon surveys and face-to-face discussions with employers throughout the state.

Recommendation 11: Per-country Diversity Limits
The panel recommends that per-country diversity limits be increased from 7 percent to 10 percent of the worldwide level of U.S. immigrant admissions and that waivers not be granted to any country to exceed 10 percent.

Recommendation 12: Per-country Diversity Lottery
The panel recommends that the annual diversity lottery be eliminated and its visa allocation be transferred to the convertible visa category.

National Security

Recommendation 13: Border Security
The panel recommends that the United States continue efforts to strengthen the security of the U.S. border and that Congress fund the Bureau of Customs and Border Protection at levels required to maintain effective border enforcement.

Recommendation 14: Role of Employers
The panel recommends that employers be recognized as key allies in implementing immigration policy and that they be given the tools and protections necessary to support immigration policy.

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Summary of Panel Recommendations, continued

Recommendation 15: E-Verify Program
The panel recommends that E-Verify, or a similar program, be made permanent; that employers be required to use the system with secure identification cards to verify employment eligibility of all employees; that employers using the system in good faith be held harmless from enforcement actions; and that employers failing to use the system be subject to significant sanctions.

Recommendation 16: Employment Identification Card
The panel recommends that the United States establish a secure identification card to be used by all employers, along with E-Verify, to ascertain the employment eligibility of all prospective and current employees.

Social Vitality

Recommendation 17: English Language
The panel recommends that English language training classes be funded by the federal government and made widely available to participants at an affordable cost; and that no person be granted permanent resident or citizen status without demonstrating a level of proficiency in the English language as defined by Congress.

Recommendation 18: Illegal Immigrants: Policy Timing
The panel recommends that, contemporaneous with the creation of a secure identification card and mandatory use of an employment verification system, Congress create a time-limited Provisional Legal Status (PLS) program for persons illegally in the U.S. and that the PLS program be implemented after employment verification has been required of all employers and issuance of secure identification cards has begun.

Recommendation 19: Illegal Immigrants: Policy Outline
The panel recommends that illegal residents residing in the United States on a date certain and meeting eligibility standards: be required to register for a provisional visa; be permitted to obtain a government-issued employment identification card; be allowed to seek or continue employment or education at any location; and, upon meeting requirements, be given the opportunity to eventually achieve legal permanent resident status.

Recommendation 20: Illegal Immigrants: Public Services
The panel recommends that federal, state and local public benefits for illegal immigrants be strictly limited to those currently required by law and that such benefits not be expanded in the future by any level of government.

Economic Advantage

Recommendation 21: Number of Employment-based Visas
The panel recommends that the total number of employment-based visas authorized by Congress be increased significantly, to be allocated annually by the Immigration Management Commission based on economic conditions.

Recommendation 22: Convertible Visa for Skilled Workers
The panel recommends creation of a convertible visa category for immigrants with superior education, experience, skills and talent that would allow individuals to change employers and, if eligible, adjust to permanent resident status.

Recommendation 23: Temporary Visas
The panel recommends the creation of a temporary employment visa for seasonal and short-term workers to be established consistent with the standards described in this report.

Family Unification

Recommendation 24: Family-based Immigration
The panel recommends that family-based immigration not be subject to a numerical cap but instead be managed through the number of employment and refugee visas issued.

Recommendation 25: Limitation on Eligible Family Members
The panel recommends that for all purposes, "family members" be defined to include only the spouse, unmarried minor children and parents and that all temporary and permanent family visas and adjustments of status actions be limited only to the members of the immediate family as identified in this recommendation

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