

# Brick by Brick

## A Half-Decade of Immigration Enforcement and the Need for Comprehensive Immigration Reform

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C. Stewart Verdery, Jr.

Founder and Partner, Monument Policy Group, Former DHS Assistant Secretary for Border and Transportation Security Policy

June 2010

Center for American Progress



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# Center for American Progress

## Immigration Team preface

The United States has undertaken a massive immigration enforcement initiative over the past five years. The report that follows, written by C. Stewart Verdery, assistant secretary for border and transportation security policy at the Department of Homeland Security from 2003-2005, catalogues the spectrum of measures and the breadth of enforcement resources that have been deployed during this period.

The Center for American Progress believes that strong border enforcement and tough worksite enforcement on law-breaking employers are fundamental components of a rational immigration system. That does not mean, however, that we endorse all of the enforcement tactics that have been adopted over the past five years.

Many of the initiatives that are detailed in this report reflect sensible steps to restore the rule of law. But CAP believes that others—the so-called “287g program,” for example—misallocate resources and have had a destructive effect on communities. From CAP’s perspective, initiatives like the expansion of expedited removal and mandatory detention policies also raise serious concerns of fairness, proportionality, and due process. Moreover, any massive enforcement apparatus struggles to maintain the integrity of established standards and operationalize leadership priorities. So even smartly designed enforcement policies can become deeply flawed when implemented, leading to widespread rights violations and other unintended consequences.

Irrespective of where one comes down on the wisdom of specific enforcement measures, the unprecedented commitment of resources to border and interior enforcement is inarguable. Anti-immigration agitators and politicians who seek to use immigration as a wedge issue argue that we cannot reform our legal immigration system until we have secured the border. The findings contained in this report demonstrate the untenability of this “enforcement-first” line of argument.

Further, the sustained infusion of resources into our enforcement agencies should create confidence in legitimately skeptical legislators and a frustrated public that

the commitment to enforce the nation's immigration laws is real. Those enforcement efforts, however, must be coupled with broad and systematic legal reforms to be effective in restoring order and control to our system. The enforcement will and infrastructure now exist, but we cannot enforce our way to a rational legal system. Large-scale systemic dysfunction will persist until Congress can muster the political courage to enact comprehensive immigration reforms.

CAP has articulated a set of principles that it believes should guide a legislative overhaul of our immigration system. In brief, those principles include:

- **Establish smart enforcement policies and safeguards.** Meaningful reform will restore the rule of law by marrying smart workplace and border enforcement initiatives with legal reforms that embrace 21st century economic and social imperatives. Reform must restore the integrity of our borders and the legality of our workforce. Efforts in recent years to expand immigration enforcement by state and local authorities have resulted in an uneven patchwork of laws and have undermined community policing initiatives.
- **Resolve the status of those illegally present in the United States.** Reform cannot restore the rule of law if it ignores the 12 million residing in the United States without legal status—to do so amounts to amnesty by inaction. It is unrealistic to suggest that the government pursue mass deportation for 12 million people; doing so would require a convoy of more than 200,000 buses that would stretch more than 1,800 miles. CAP research also estimates that mass deportation would cost nearly \$300 billion over five years.
- **Create legal channels that are flexible, serve the U.S. interest, and curtail illegal immigration.** Current family and employment immigration channels are rigid, cumbersome, and outdated. Reform will require dealing with the remnants of the decades of a broken immigration system by facilitating the entry of individuals with applications stuck in backlogs. But we cannot simply focus on addressing the byproducts of the current broken system and not expect new problems to arise. We must establish a 21st century system that replaces illegal immigration and unconscionable backlogs with a flexible framework that advances the nation's dual interest in economic growth and family unity.
- **Protect U.S. workers from globalization's destabilizing effects.** Replacing undocumented immigration with regulated immigration is necessary but not sufficient to protect native U.S. workers and future immigrant workers from

exploitation. Future immigrants must be afforded the full panoply of labor protections to prevent employers from playing native and foreign workers off against each other in a race to the bottom.

- **Foster an inclusive American identity.** The integration of large numbers of immigrants constantly tests, and ultimately strengthens and deepens our national commitment to equality, freedom, and opportunity. The success of immigration reform over the long haul will therefore hinge on our ability to integrate current and future immigrants into the nation's social and cultural fabric by effectively promoting English language learning, civic education, and volunteerism.

# Introduction and summary

As Congress and the Obama administration consider whether the political stars are aligned to pass comprehensive immigration reform, or CIR, interested parties are revisiting the bills that were vigorously debated between 2005 and 2007, and reconsidering many of the same difficult policy decisions Congress was unable to solve. While the failure to finalize immigration legislation in 2005, 2006, or 2007 may have blocked new legalization and immigrant worker programs, the relentless push for more immigration enforcement continued and intensified. As a result, the enforcement capabilities and resources now available to law enforcement are considerably stronger than during the intense debates of the last decade.

Enforcement was a primary concern in previous immigration reform debates, and it will no doubt be a critical concern in future ones. The very first section of the 2007 bill, for example, set forth specific triggers and stated that the benefit portions of the bill could not become effective until the secretary of homeland security certified that several immigration enforcement measures had been established, funded, and were operational.

A lack of confidence in the federal government's capacity and commitment to enforce the immigration laws helped doom the 2007 reform effort. But given the centrality of effective enforcement to the integrity of our immigration system, it is worth evaluating the Department of Homeland Security's progress toward the 2007 bill's benchmarks in preparation for the next comprehensive immigration debate. The benchmarks included:

- Establishing operational control of the Mexican border
- Expanding Border Patrol staffing
- Constructing strong physical and electronic border barriers
- Implementing a "catch and return" policy
- Deploying workplace enforcement tools

This paper demonstrates how much more robust immigration enforcement has become over the last five years, with particular emphasis on the 2007 Senate bill's benchmarks. It concludes that DHS has made great strides in meeting these benchmarks, in addition to undertaking other programs largely aimed at securing international travel but with important impacts on broader immigration enforcement as well. Yet the fact remains that an estimated 11 million unlawful immigrants continue to reside in the United States. Additional budget increases for immigration enforcement programs will not significantly reduce the size of that population absent other changes to immigration laws.

As Congress and the Obama administration deliberate policy changes regarding the undocumented population and reforms to legal immigration channels, these debates must reflect the fact that our federal agencies are far better equipped to enforce immigration laws going forward.

## Key immigration enforcement agencies

**U.S. Customs and Border Protection**, or CBP, is responsible for protecting the United States' sovereign borders at and between official ports of entry, or POEs. CBP also protects economic security by regulating and facilitating the lawful movement of goods and persons across U.S. borders.

**U.S. Immigration and Customs Enforcement**, or ICE, is the largest investigative arm of DHS. ICE prevents terrorist and criminal activity by targeting the people, money, and materials that support terrorist and criminal organizations. ICE also identifies, apprehends, and removes criminal and other illegal aliens from the United States.

**U.S. Citizenship and Immigration Services**, or USCIS, ensures that citizenship and immigration information and decisions on immigration benefits are provided to applicants in a timely, accurate, consistent, courteous, and professional manner. USCIS is also responsible for strengthening national security efforts; enhancing the integrity of our country's legal immigration system by deterring, detecting, and pursuing immigration-related fraud; and combating unauthorized employment in the workplace. Additionally, USCIS provides protection for refugees both inside and outside of the United States in accordance with U.S. law and international obligations.

Some have argued that there should not be any consideration of CIR until the southern border is secure because the drug war in Mexico has escalated and led to incidents of violence on the American side of the border. The reality, however, is that there will always be criminals and inadmissible migrants seeking to take advantage of a lengthy land border. The question for policymakers is what the best strategy is to minimize violence and illegal immigration. The compelling need to fix our broken immigration system has only grown as enforcement has increased to robust levels. Waiting for an airtight border to solve our immigration problems would be an unrealistic, impractical, and unsuccessful strategy.

## 2007 legislative enforcement triggers

Most immigration experts have long urged that our broken borders be solved through a combination of increased enforcement, new temporary and permanent worker programs, and resolving the current unauthorized population. As Congress returned to this issue in the middle of the last decade, however, the Republican-controlled House in 2005 passed an enforcement-only bill,<sup>1</sup> and then refused to negotiate on a Senate-passed comprehensive bill passed in 2006.<sup>2</sup>

As the Senate took up immigration reform once again in 2007, supporters thought that including enforcement “triggers” would build confidence in the bill by ensuring that immigration enforcement capabilities would be significantly enhanced before either a legalization or temporary worker program was launched. Accordingly, once early amendments were adopted, Section 1(a) of S. 1639, the Comprehensive Immigration Reform bill of 2007, stated that the most significant benefit programs—nonimmigrant visa reform, the admission of seasonal agricultural temporary workers, the temporary worker (Y visa) program, and the legalization program (Z visa)—would not become effective until the secretary of homeland security submitted a written certification to the president and Congress, based on analysis by and in consultation with the comptroller general, that each of the following border security and other measures had been established, been funded, and was operational:

1. Operational control of the Mexican border—The secretary of Homeland Security has established and demonstrated operational control of 100 percent of the U.S.-Mexico land border, including the ability to monitor the border with available methods and technology.
2. Staff enhancements for Border Patrol—CBP’s Border Patrol has 20,000 full-time agents reporting for duty who are both hired and trained.
3. Strong border barriers—At least 300 miles of vehicle barriers, 370 miles of fencing, and 105 ground-based radar and camera towers have been installed along the U.S.-Mexico land border, along with deployment of four unmanned aerial vehicles and their supporting systems.

4. Catch and Return—DHS is detaining all removable aliens apprehended illegally crossing the U.S.-Mexico border, except as specifically mandated by federal or state law or humanitarian circumstances, and ICE has the resources to maintain this practice, including the resources necessary to detain up to 31,500 aliens per day annually.
5. Workplace enforcement tools—DHS has established, and is using, secure and effective identification tools to prevent unauthorized workers from obtaining employment in the United States. Such identification tools shall include establishing:
  - a. Strict identification document standards required for presentation to an employer by the alien in the hiring process, including secure documentation that contains a photograph and biometric data, or complies with the document requirements under the REAL ID Act<sup>3</sup>
  - b. An electronic employment eligibility verification system, or EEVS, capable of querying federal and state databases to restrict fraud, identity theft, and the use of false social security numbers in the hiring of aliens by electronically providing a digitized photograph from the alien’s original government-issued document(s) to verify an alien’s identity and work authorization.<sup>4</sup>

On June 28, 2007, the afternoon of the failed cloture vote on S.1639,<sup>5</sup> then Homeland Security Secretary, Michael Chertoff, said, “I have a job to do, which is to enforce the laws. And although they may not be adequate in every respect to the job, I will enforce the laws that we have.”<sup>6</sup> Indeed, his remark foreshadowed another three years of investment in immigration enforcement, which has included planning and implementing not only the enforcement provisions required above, but also additional enforcement programs. This enforcement emphasis has led to stronger immigration controls on our border, in the interior, and overseas. As a result, some of the Senate enforcement benchmarks have been met, others are close to being met, and the nation’s overall enforcement capability is markedly enhanced.

# DHS implementation of the enforcement benchmarks

DHS has requested, and Congress has provided, large and increasing budgets for immigration enforcement programs since 2005 on a bipartisan basis that includes both the Bush and Obama administrations and Republican- and Democratic-controlled Congresses. The department has spent billions on enforcement while making great strides in gaining control over our borders and bringing integrity to our immigration system.

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## Operational control of southwest border

*Benchmark: 100 percent control of the U.S.-Mexico land border*

Since CBP's creation in 2003, the agency has worked hard to gain effective control of the 1,950-mile U.S.-Mexico border by deploying a mix of resources and enforcement operations supported by intelligence activities.



A U.S. Border Patrol agent processes a number of suspected illegal immigrants caught entering the United States.

The CBP workforce grew 35 percent from 40,616 to 54,868 from fiscal year 2005 to fiscal year 2009.<sup>7</sup> CBP's budget also grew from \$6 billion in FY 2004 to \$11.4 billion in FY 2010.<sup>8</sup> The CBP's Border Patrol apprehended almost 1.2 million unlawful immigrants between the ports of entry, or POEs, in FY 2004, and CBP inspectors encountered 643,000 inadmissible aliens at POEs that year.<sup>9</sup> Apprehensions of aliens attempting to enter the U.S. unlawfully peaked at 1.7 million in FY 2005 before declining. The Border Patrol apprehended around 556,000 people in FY 2009 between POEs, a much smaller number, and CBP encountered a smaller number of 224,000 inadmissible aliens at POEs.<sup>10</sup>

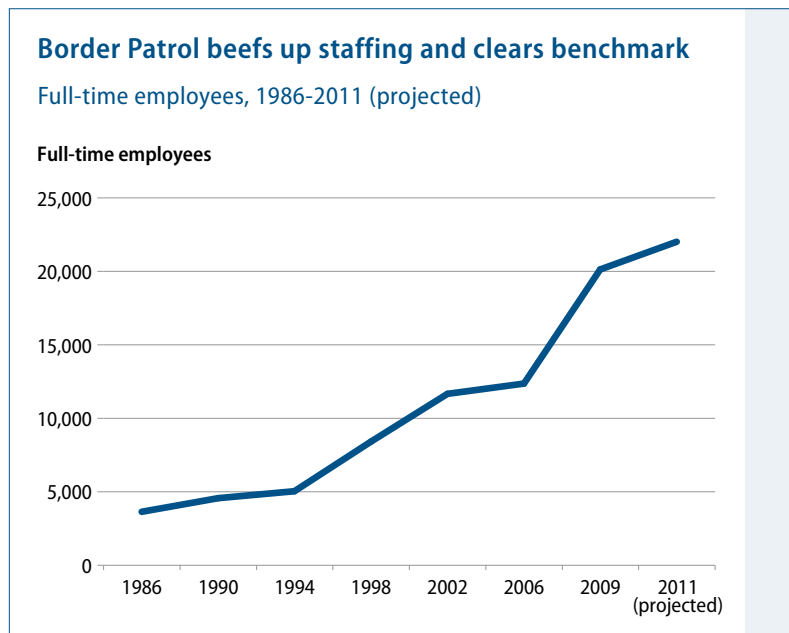
Obviously, the economic crisis and diminished employment opportunities in the United States played a role in the dramatic decline in illegal entries. But these are striking numbers that unquestionably demonstrate a new degree of control at and between the POEs.

CBP had such control of 449 miles of the border by the end of FY 2006. The agency increased the number of miles under effective control from 757 in FY 2008 to 939 miles, or nearly 50 percent by the end of FY 2009.<sup>11</sup> A completely secure border is impossible on our land borders, but the record is clear that the U.S. government has made great strides in gaining operational control of the southern border.

## Border Patrol staffing

*Benchmark: 20,000 full-time agents*

The Border Patrol has experienced a sustained and sizeable growth trend dating back to FY 1995 as the number of agents has more than doubled in the past decade. Building off of a number of 12,349 in FY 2006, we have seen the sharpest rate of increase in the past five years, with the Border Patrol reaching 20,119 at the end of FY 2009. DHS and CBP are currently implementing the FY 2010 budget which would bring the Border Patrol to over 22,000 in 2011.<sup>12</sup>



Source: Doris Meissner and Donald Kerwin, "DHS and Immigration: Taking Stock and Correcting Course" (Washington: Migration Policy Institute, 2009) available at [http://www.migrationpolicy.org/pubs/DHS\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf).

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## Border barriers

*Benchmark: At least 300 miles of vehicle barriers, 370 miles of fencing, and 105 ground-based radar and camera towers installed along the U.S.-Mexico land border, along with deployment of four unmanned aerial vehicles*

Perhaps the most visible commitment to enforcement in recent years has been hundreds of miles of physical barriers along the Southwest border. Physical fencing impedes the progress of people attempting to cross the border between ports of entry. Such delays allow Border Patrol agents to respond and interdict those attempting to cross.

After the 2006 CIR bill failed, Congress passed the Secure Fence Act, which mandated that 670 miles of reinforced fencing be completed on the Southwest border by the end of calendar year 2008. Separate language in the FY 2008 DHS appropriations bill redefined the target to include vehicle barriers, and suspended environmental laws to speed up construction. Secretary Michael Chertoff exercised this administrative flexibility granted by Congress to waive environmental procedures several times to build key components of fencing in Southern California, Arizona, and Texas.

More than 600 miles of fencing were in place by 2009, including fencing and vehicle barriers.<sup>13</sup> As of March 19, 2010 there were approximately 646 miles of fence along the Southwest border, made up of approximately 299 miles of vehicle barriers and 347 miles of pedestrian barriers. Six unmanned aerial vehicles, or UAVs, are also in use—three on each land border.

The U.S. Border Patrol's new unmanned-aerial-vehicle is shown in flight at Fort Huachuca, Arizona. The unmanned drone uses thermal and night-vision equipment to help agents spot illegal immigrants trying to cross the desert into the United States.



The pedestrian barriers have risen in average cost from \$3.5 million per mile to \$6.5 million per mile, according to the Government Accountability Office.<sup>14</sup> Vehicle barriers that have been installed have risen in average cost from \$1 million per mile to \$1.8 million per mile in more rural areas where drive-through smuggling is the main concern, according to the GAO.<sup>15</sup> All in all, Congress has allocated \$2.6 billion for physical barriers since FY 2005.<sup>16</sup>

The border barriers have been a primary component of the Secure Border Initiative, or SBI, which was launched in 2005 with the objective of securing and patrolling portions of the border through modern border technology and infrastructure. The virtual fence, also known as *SBI<sub>net</sub>*, is intended to increase the Border Patrol's ability to avert illegal entries using a combination of motion-detection sensors, remotely operated camera surveillance, ground-based radar, and UAVs.

The bulk of SBI's funding from 2006 through 2008 focused on completing the physical fence in areas of the Southwest border where the Border Patrol determined it was operationally necessary. Since then, CBP has shifted SBI's funding focus more toward technology as the fence has largely been completed.<sup>17</sup> The project, however, has been significantly behind schedule and over budget due to testing problems and environmental assessments.<sup>18</sup>

Homeland Security Secretary, Janet Napolitano, recently ordered a department-wide reassessment of SBI due to the repeated delays in *SBI<sub>net</sub>* and the high cost of the program.<sup>19</sup> DHS also announced it is redeploying \$50 million in Recovery Act funds that were scheduled for *SBI<sub>net</sub>* to alternative currently available stand-alone technology, such as remote-controlled camera systems; remote video surveillance systems, or RVSSs; truck-mounted systems with cameras and radar called mobile surveillance systems or MSSs; thermal imaging devices; ultra-light detection; backscatter units; mobile radios; and camera and laptops for pursuit vehicles to improve the Border Patrol's ability to secure the border.

These technologies have proven their value on the border. CBP has deployed such technology to several specific areas of the border, including RVSSs, which allow personnel to monitor selected areas by displaying pictures at a central dispatch location. The MSSs transmit radar and camera images to a terminal in a truck cab where they are monitored by an operator and unattended ground sensors can detect movement in their vicinity.<sup>20</sup>

The goal of *SBI*net was to network a set of sensors covering a wide area into a common operating picture, versus the individual, stand-alone systems described above. The Border Patrol has found increasing value in the limited sectors of this integrating technology that have been deployed in the Tucson, Arizona area.

Appropriations for SBI have been consistently high, starting with \$1.1 billion in FY 2007 and continuing to \$800 million in FY2010. The current budget request for FY 2011 includes a cut of \$158.3 million due to the *SBI*net reassessment described above. Between fiscal years 2005 and 2009 more than \$3.7 billion was spent on SBI.<sup>21</sup>

The record of building physical and technological infrastructure over the last five years is strong. These deployments represent solid assets that address the American people's desire to deter illegal entry.

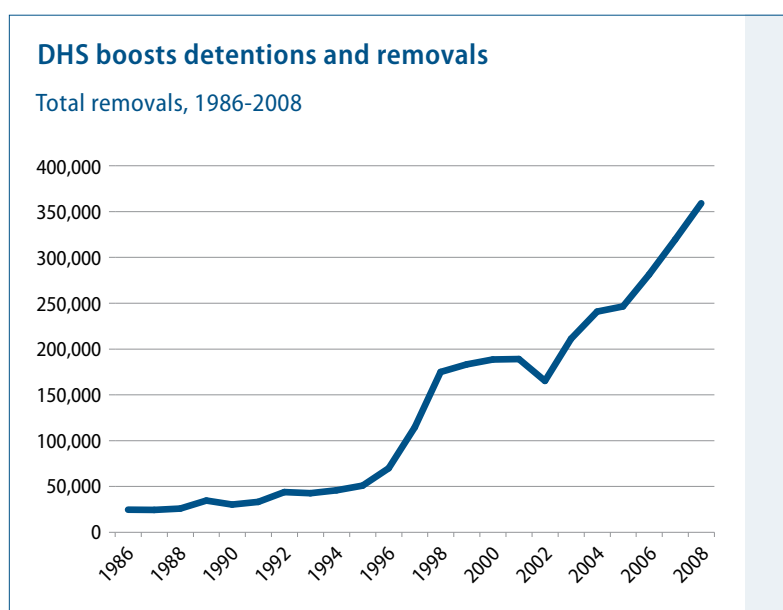
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## Catch and release

*Benchmark: Detaining all removable aliens apprehended illegally crossing the U.S.-Mexico border, with 31,500 detention beds available*

For many years, the federal government's ability to detain and return unauthorized aliens was so inadequate compared to the need that the overwhelming majority of those caught were simply released back into local communities. In recent years, however, a significant commitment to beefing up the government's detention and removal capabilities has yielded record deportation numbers and demonstrates a seriousness about enforcing the law.

DHS expanded its use of expedited removal at POEs in 2004 to include enforcement between the POEs. Expedited removal proceedings result in detaining and removing the unauthorized immigrants as soon as possible—usually



Source: Doris Meissner and Donald Kerwin, "DHS and Immigration: Taking Stock and Correcting Course" (Washington: Migration Policy Institute, 2009) available at [http://www.migrationpolicy.org/pubs/DHS\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf).



A row of beds at the Elizabeth Detention Facility, a Corrections Corporation of America immigration facility in Elizabeth, New Jersey.

without a hearing before an immigration judge. This new policy applied to those immigrants apprehended within 100 miles of the Mexican or Canadian borders within their first 14 days in the United States. The expansion of expedited removal has been somewhat controversial in some quarters due to concerns about whether individuals receive fair consideration of their situations. But it demonstrates the heightened level of seriousness and commitment to enforcement that has taken root over the last several years.

In August 2006, Secretary Chertoff also announced the end of the “catch and release” practice at the U.S.-Mexican border as part of the Secure Border Initiative. Under the prior policy, most illegal crossers apprehended from countries other than Mexico were released into the United States on their own recognizance pending a removal hearing. Most of them did not appear for their court hearings. DHS detained 34 percent of non-Mexican unauthorized immigrants in 2005. Since the end of the “catch and release” practice, approximately 99 percent are being detained.<sup>22</sup>

With this change in policy, ICE Detention and Removal Operations received significant budget and staff increases, and immigrant detention has grown exponentially. Between FY 1994 and FY 1997, for example, the average daily population in

Immigration and Naturalization Service custody—INS previously handled legal and illegal immigration and naturalization—rose from 6,785 to 11,871. This figure reached 21,000 in FY 2004, and by FY 2007, the daily population increased to 30,295 per night. ICE’s FY 2009 budget funds 33,400 detention beds per night.<sup>23</sup>

The increase in detention and removal capacities is a bipartisan accomplishment that meets the goals set forth in the 2007 Senate bill.

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## Workplace enforcement

*Benchmark: Secure identification documents that contain biometrics or comply with REAL ID, and implement an electronic employment verification system that prevents fraud and verifies an alien’s identity and work authorization*

While it has become notably more difficult to enter the United States illegally, DHS has also been strengthening interior enforcement to prevent unauthorized employment in the United States—the greatest pull factor for illegal immigration. Most undocumented aliens come to the United States to work, and the point of employment has long been a critical aspect of immigration enforcement. While DHS has strengthened this enforcement, the government’s ability to mandate electronic employment verification—which would make it easier to identify undocumented workers—requires legislation. Thus, while gains in workplace enforcement have been significant, they have also been constrained by businesses’ underlying desire to maintain its existing workforce until legalization has been enacted.

A voluntary electronic verification program already exists. E-Verify is the DHS employment eligibility verification system and was formerly known as the “Basic Pilot Program.” It became a web-based program in 2004. The Bush administration advocated to expand employer enrollment beginning in July 2006, and it changed the name to “E-Verify” in 2007 to rebrand the program and raise its profile. After employers register with the free, voluntary program, they enter information from a new hire’s Form I-9 into the system: name, date of birth, Social Security number, and the alien ID number for noncitizens. E-Verify automatically searches for the information in the Social Security Administration’s Numident and the U.S. Citizenship and Immigration Services’ Verification Information System and quickly lets employers know if the information is legitimate.

Employer participation in E-Verify has increased significantly since 2004. This growth is partly due to many states enacting legislation that requires some or all employers in the state to use E-Verify, as well as federal rules requiring contractors to do the same. Four states require all employers to use E-Verify, 10 states require program use for state agencies and/or contractors, and six states have pending legislation for required E-Verify use.<sup>24</sup>

U.S. Citizenship and Immigration Services, or USCIS, has overseen increased employer participation in E-Verify from 88,116 companies at the end of FY 2008 to more than 192,000 participating employers at more than 705,000 worksites nationwide today, with an average of 1,000 employers signing up each week. DHS launched the “I E-Verify” campaign in 2009, which highlights employers’ commitment to maintain a legal workforce and reduce the use of fraudulent identity documents through enrollment in E-Verify. DHS also notifies consumers as to which businesses use E-Verify to comply with the law.<sup>25</sup>

E-Verify works well for what it was designed to do—verify employment authorization based on the biographic data put into the system, including name, date of birth, Social Security number, and alien number for immigrants. On the other hand, the program is not designed to find imposters. Identity theft and counterfeit documents are widespread, and defrauders commonly use others’ valid data for work authorization.

Many legislators regularly discuss strengthening E-Verify with biometrics to combat identity fraud, as discussed below. Biometrics are certain unique physiological characteristics that every person has, and they can be measured to definitively identify an individual. The most well-known and widely used biometric is the fingerprint, but other biometrics such as a person’s iris may also be useful to capture, accurately measure, and then match to an established record.<sup>26</sup> Such a program enhancement, including strong privacy protections and safeguards against misuse, should be incorporated into CIR legislation. If eligible unauthorized immigrants were registered for legalization and became authorized for employment, the incentive to defraud E-Verify would dissipate.

DHS uses employer sanctions as an additional employment enforcement tool, and ICE set new records in FY 2005 and 2006 for worksite enforcement. In FY 2005, ICE completed the largest worksite enforcement investigation since 1986, when worksite enforcement became law. And ICE worksite enforcement arrests

reached a level in FY 2006 that was more than seven times greater than in 2002, the last full year of operations for INS.<sup>27</sup>

With the start of the Obama administration, ICE began targeting employers who knowingly hire illegal workers through investigations, prosecution, and imposition of civil and criminal penalties. In fact, ICE employer audits in 2009 led to 1,897 cases and 2,069 Form I-9 inspections targeting employers. It also issued 142 Notices of Intent to Fine, totaling \$15,865,181.<sup>28</sup>

The goals of the Senate bill have not been fully realized since this workplace enforcement benchmark was contingent on new legislation being passed. The improvement and expansion of workplace enforcement, however, does constitute an important change from the debates during the last decade.

# Additional enforcement programs

DHS and the State Department have implemented several other enforcement programs in addition to the “security first” requirements found in the CIR bill as described above. These programs are largely aimed at securing international travel, but they have had important effects on broader immigration enforcement as well.

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## International travel

### US-VISIT

DHS launched the United States Visitor and Immigrant Status Indicator Technology, or US-VISIT, in January 2004. The program is a collaboration between the State Department and CBP to identify individuals who are ineligible for entry into the United States. The State Department takes the fingerprints and photographs of visa applicants at U.S. embassies and consulates overseas. It then uses these biometrics to check criminal and immigration histories of visa applicants to determine visa eligibility. Likewise, CBP inspectors take the fingerprints and photographs of arriving aliens at POEs to check criminal and immigration histories, and, in the case of those with a visa, to ensure the true visa holder is the same person standing in front of the inspector for entry into the United States.

US-VISIT has been extremely successful at identifying criminals and fraudulent immigrants through the use of biometrics. The program initially collected and used two fingerprints, but both the State Department and DHS have transitioned from a 2-print to a 10-print collection capability at 2,600 air, sea, and land inspection lanes. Using 10 prints provides more data to match, which reduces the likelihood of misidentifying a traveler as being on a US-VISIT watchlist and increases opportunities to identify persons of interest.

In enrolling over 111 million travelers, US-VISIT has led to CBP stopping more than 8,000 criminals and immigration violators at POEs based solely on bio-



A man demonstrates the new 10-fingerprint scanner and its output on the computer.

metrics, and the State Department identifying thousands who are ineligible to receive visas to travel to the United States.<sup>29</sup> There is little doubt that the program has deterred countless more. Further, it has helped not only consular and CBP officers adjudicate visa and entry applications, but with the addition of USCIS data in the DHS Automated Biometric Identification System, or IDENT, USCIS benefit adjudicators can now identify immigration benefit fraud through the use of biometrics.

The program also identifies suspected visa overstays and reports them to ICE for investigation and removal. It has received consistent financial support from Congress—appropriations for the program have averaged in the mid-\$300 million annually since FY 2003.<sup>30</sup>

The two travel modes for which US-VISIT has not yet implemented biometric verification are primary entry inspection at land POEs (where CBP asks preliminary questions to either admit a traveler into the United States or refer a traveler to secondary inspection, where CBP asks more in-depth questions, examines documents more thoroughly, and may examine the traveler's luggage/vehicle), and exit for air (traveling through an airport), land (driving, riding, or walking across the U.S.-Mexico or U.S.-Canada border), and sea (departing the United States on a ship) POEs.

## Biometrics at work

A case study in 2008 demonstrates how DHS's use of biometrics is helping disable the use of fraudulent or altered travel documents.

On March 16, 2008, a subject arrived at John F. Kennedy International Airport in New York and applied for admission to the United States with a valid Turkish passport and an unexpired B1/B2 visitor visa. He was referred to supervisors for further inspection because he was a match on the DHS IDENT biometric watchlist for a previous order of removal.

The information gathered during secondary inspection revealed that on November 10, 2003, the subject had been apprehended taking pictures of the Ft. Leonard Wood Missouri Military Base. While in custody in 2003, it was discovered that he had overstayed his authorized period of admission in the United States. The subject was now attempting to enter the United States using the identity of his twin brother and his brother's travel documents. The subject was denied entry and is inadmissible to the United States for willful misrepresentation and not being in possession of valid travel documents.<sup>31</sup>

US-VISIT has tested biometric exit for air and sea POEs, but no final decision has been made at DHS as to who would collect the biometric exit data going forward—CBP, the Transportation Security Administration, or another alternative. DHS has also not requested funding for an exit solution for FY 2011. As for land entry and exit, US-VISIT has considered and tested different methods, including radio frequency identification, but there has not yet been an administrative or congressional impetus to implement US-VISIT for those purposes.

Still, US-VISIT is often cited as one of the most successful government programs implemented after 9/11, despite the land entry and exit gaps. As US-VISIT has demonstrated the value of biometrics, congressional support has grown for adding biometrics to E-Verify and using biometrics for tracking the entry and exit of foreign workers.

### Visa Security Program

Congress had serious concerns with the State Department's visa policies after 9/11, and it quickly required law enforcement officers to review visa applications in Saudi Arabia. This grew into the Visa Security Program, or VSP, in which ICE

assigns DHS officers to the highest-risk visa adjudicating posts to prevent terrorists, criminals, and other ineligible applicants from receiving U.S. visas and maximize the visa process as a counterterrorism tool. ICE currently operates VSP at 14 posts in 12 countries and recommends visa refusals and revocations to State Department based on derogatory information. The FY 2010 budget designated \$7.3 million for VSP expansion. ICE estimates it can deploy to four additional posts overseas with this funding.<sup>32</sup>

### Electronic System for Travel Authorization

The Implementing Recommendations of the 9/11 Commission Act of 2007 required DHS to implement an electronic travel authorization system to enhance the security of the Visa Waiver Program, or VWP, which is available for individuals traveling to the United States for short periods and not to obtain work in the United States. DHS, in turn, set up the Electronic System for Travel Authorization, or ESTA, an automated system that helps the department determine an individual's eligibility to travel to the United States under the VWP and whether such travel poses any law enforcement or security risk.

After a VWP traveler completes an ESTA application form online overseas, they are notified of their eligibility to travel to the United States under the VWP. The application is currently free, but CBP is drafting a fee to cover both the costs of administering the ESTA program and a \$10 travel promotion fee.

CBP began enforced compliance of ESTA in March 2010. It reserves the right to fine air carriers who board VWP travelers without an automated approved ESTA and to deny admission to VWP travelers arriving at U.S. ports of entry without an approved ESTA on file. As of May 2010, 98 percent of VWP travelers are compliant with the ESTA requirement and CBP has not issued any fines upon the air carriers. VWP travelers have submitted over 19 million ESTA applications since the program began in 2008.<sup>33</sup>

### Western Hemisphere Travel Initiative

The Western Hemisphere Travel Initiative, or WHTI, began in January 2008. Under the initiative, CBP inspectors no longer accept verbal declarations of citizenship from travelers entering the United States from Mexico, Canada, and the Caribbean.

## Western Hemisphere Travel Initiative catches imposter

A case study illustrates how the initiative identifies aliens attempting to illegally sneak into the country.

A subject seeking entry at the Blue Water Bridge at Port Huron, MI in April 2010, claimed to be born in Puerto Rico and presented a Puerto Rican birth certificate and two state identification cards to a CBP officer. Michigan is a state that issues a WHTI-compliant enhanced driver's license. Initial examination of the presented documents revealed what appeared to be inconsistencies and the subject was referred to CBP enforcement officers to verify his immigration status.

Further questions revealed that the subject was an imposter. His fingerprints produced three records indicating he was not a U.S. citizen but rather a Mexican national who had been previously deported. CBP arrested the subject on charges of a false claim to U.S. citizenship and an alien present without admission or parole into the United States.

Port Huron Director David Dusellier said, "Prior to the implementation of the Western Hemisphere Travel Initiative, our officers had to review thousands of different entry documents. Now with WHTI, our officers can focus on one of the six WHTI-compliant documents."<sup>34</sup>

All travelers must instead present specified documents to prove both citizenship and identity, such as a passport, passport card, or enhanced driver's license.

During DHS's implementation of this program, it deployed WHTI reader equipment to POEs to authenticate documents presented to CBP inspectors. This deters would-be undocumented immigrants from travelling through POEs claiming to be U.S. citizens through either an oral declaration or use of fraudulent breeder documents such as birth certificates. According to CBP, travelers have a high rate of compliance with the new requirements, and the agency has not seen increased wait times at ports of entry.

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### Interior enforcement

Experts across the political spectrum recognize that merely building border defenses is not enough to credibly deter illegal entry and illegal residence in the United States. Since 2004, the federal government has therefore devoted impressive resources toward being able to identify illegal aliens throughout the United States.

ICE is responsible for interior enforcement. It has received a steady increase in funding and staffing since its inception in 2003. The ICE budget increased from \$3.6 billion in FY 2005 to nearly \$6 billion in FY 2010.<sup>35</sup> ICE staff levels have accordingly grown from 14,600 employees in FY 2005 to over 20,000 in FY 2010.

As stated above, Detention and Removal Operations have been a high priority for these budget and staff increases, and immigrant detention has multiplied from an average daily population of 6,785 in FY 1994, to over 33,000 detainees in FY 2009.<sup>36</sup> With increased detention comes a logical increase in removal proceedings and removals. ICE initiated removal proceedings against 221,000 immigrants in federal, state, and local jails in FY 2008—more than triple the number from FY 2006.<sup>37</sup> And it removed 349,041 noncitizens in FY 2008 compared to 189,026 in 2001 and 50,924 in 1995.<sup>38</sup>

## Secure Communities

For many years, immigration enforcement officers have been able to access an immigrant's criminal history information after fingerprinting them. Law enforcement officers, however, have not had the ability to simultaneously receive both the immigration status of an individual as well as the person's criminal history



Suspects are photographed and fingerprinted by an Immigration and Customs Enforcement officer.

information. Instead, they had to send a separate immigration status query to the ICE Law Enforcement Service Center, or LESC, based on biographic information provided by the individual.

Now, based on interoperability between the FBI Criminal Justice Information System's, or CJIS, Integrated Automated Fingerprint Identification System, or IAFIS database, and IDENT, a fingerprint scan is simultaneously submitted to CJIS and the LESC to produce both a criminal history and the immigration status of an individual.

ICE has built on this capability to develop Secure Communities, a program to fingerprint all individuals booked by law enforcement at federal, state, and local prisons to identify criminal aliens. After identifying immigrants in prison who have been charged with crimes, the immigrants are referred to ICE upon completion of their criminal sentence to undergo immediate removal proceedings. This can prevent serious criminals from returning to our streets and committing additional crimes.

ICE initiated removal proceedings against 221,000 immigrants in federal, state, and local jails in FY 2008—more than triple the number from FY 2006.

## Keeping communities safe

ICE discovers arrest warrant in another state for suspect in custody after querying interoperable databases.

The Temple Terrace Police Department in Hillsborough County, FL arrested Santana Carl Porter on July 4, 2009 for carrying a concealed weapon, opposing an officer, and providing a false name to law enforcement. ICE agents conducted extensive database checks on Porter and discovered the San Leandro, CA Police Department had an active criminal arrest warrant for him for attempting to murder a police officer. According to the ICE Detention and Removal Office Miami Field Office, Porter's wanted status in California may have been missed without the positive identification made available by IDENT/IAFIS interoperability and ICE officers' diligence.

Porter has used multiple aliases during his previous arrests for attempted murder and carrying a concealed weapon. The 21-year-old Jamaican citizen is removable pursuant to Title 8 U.S.C. §1326 and is currently in local custody awaiting extradition to California with an active ICE detainer in place. Upon completion of anticipated charges, Porter will be held in ICE custody pending removal.<sup>39</sup>

ICE is continuing to roll out Secure Communities toward nationwide implementation. The initiative has expanded to localities in 22 states since its inception in October 2008, and it has helped ICE remove roughly 30,000 aliens convicted of a crime.<sup>40</sup> Removals of criminal aliens and all aliens have continued to rise in recent years. ICE removed approximately 135,880 criminal aliens in FY 2009, for example—nearly a 19 percent increase over FY 2008.<sup>41</sup> This focus on criminal aliens has received bipartisan support and significant funding that is likely and appropriate to continue. The department has announced a goal of prioritizing focus on serious or violent Level I criminals and should continue working to maintain and refine that focus so that the “worst of the worst” are accurately and swiftly removed.

### 287(g) agreements

Under section 287(g) of the Illegal Immigrant Reform and Immigrant Responsibility Act of 1996, or IIRIRA, state and local law enforcement officers may be deputized to perform specific immigration enforcement functions after entering into agreements with ICE. These deputized state and local law enforcement officers provide a force multiplier for ICE’s immigration enforcement efforts across the country. ICE currently has 71 agreements in 26 states,<sup>42</sup> and in 2009, it standardized its 287(g) agreements with these law enforcement agencies to prioritize criminal aliens who are a threat to local communities.

The number of 287(g) arrests in 2008 (45,368) was equal to one-fifth of all criminal aliens identified by ICE in prisons and jails nationwide (221,085).<sup>43</sup> 287(g) is also less expensive than other criminal alien identification programs such as Secure Communities and Fugitive Operations. ICE spent \$219 million in 2008, for example, to remove 34,000 fugitive aliens who have absconded before removal. In 2008 it was given \$40 million for 287(g), which produced more than 45,000 arrests of aliens who were involved in state and local crimes.<sup>44</sup> The 287(g) FY 2009 and 2010 budgets were \$54 million and \$68 million, respectively.<sup>45</sup> The program has not been without controversy, however, as a recent Office of Inspector General report highlighted problems with oversight and accountability.<sup>46</sup>

Many jurisdictions that use 287(g) have done so only after a careful study of their available bed space and detention capabilities of ICE in the locality. Recent legislation in Arizona, in contrast, effectively deputizes all Arizona law enforcement officers for immigration enforcement purposes.<sup>47</sup> The law requires Arizona

law enforcement to transfer all detained aliens unlawfully present to ICE custody. Should the law survive expected court challenges, its implementation will quickly face real constraints—limited detention beds and removal officers.

Arizona’s plan to detain aliens unlawfully present in the state could overwhelm the ability of state and federal facilities without a build up of detention and removal resources. This might represent a new version of “catch and release,” thereby undermining the law’s intent.

### Benefit fraud investigations

The Fraud Detection and National Security Directorate, or FDNS, was created within the U.S. Citizenship and Immigration Services, or USCIS, to enhance the immigration system’s integrity and identify persons who pose a threat to national security or public safety. One function of the FDNS is to perform background checks on immigration benefit applicants. The FDNS placed officers at the FBI National Name Check Program in FY 2009 to vet information that may affect an immigrant’s eligibility for benefits.<sup>48</sup>

The FDNS has also launched an Administrative Site Visit and Verification Program. Under a current initiative of this program—funded by the \$500 Fraud Prevention and Detection fee USCIS levies with new H-1B and L-1 visa petitions—USCIS dispatches inspectors from both its FDNS unit and private contractors to perform onsite workplace inspections. Site inspectors visit employers of H-1B and L-1 nonimmigrants to verify information in specific nonimmigrant petitions, such as the existence of a petitioning entity, request relevant documents, photograph the premises, and speak with company representatives to confirm the beneficiary’s work location, hours, salary, and duties.

# Conclusion

DHS and related agencies have spent many billions of dollars over the past five years to increase homeland security and strengthen immigration enforcement. The funding and implementation of enforcement programs have generally proven effective in: making it more difficult to illegally enter the United States, identifying who is entering our country, targeting criminal aliens, verifying immigrants authorized to work, and increasing removals.

The estimated population of unauthorized immigrants residing in the United States during the mid-00s was 12 million. The current estimated population is 10.8 million unauthorized immigrants.<sup>49</sup> Certainly the weak economy has had an impact on this number, but it is clear that the push for stronger immigration enforcement has worked to counter illegal immigration.

Nevertheless, as the economy recovers and the job magnet begins to regain its full strength, we should not proceed to blindly spend many more billions of dollars on immigration enforcement without addressing the millions of people who live and will continue to reside in this country. Total removals in FY 2009, for example, represent only 3 percent of the estimated total number of unauthorized immigrants.<sup>50</sup>

As Congress and the Obama administration prepare to tackle CIR again, they should look to build on this base of strengthened enforcement. The country is in a stronger position to successfully pursue an avenue for otherwise law-abiding and working undocumented aliens to adjust to a lawful status. As this paper shows, many of the enforcement benchmarks set out by the Senate during the last CIR debate have been met, and several additional enforcement programs have been implemented above and beyond the Senate mandates of the 2007 CIR bill. By any measure it is now more difficult to enter the United States illegally.

Those facts do not translate, however, to substantially decreasing the population already here. Accordingly, the next logical step should include a reasonable means

for unlawful immigrants to apply for adjustment of status. Every effort should be taken to prevent, identify, and punish fraudulent applications, and those who are ineligible for such a legalization program should be removed from the United States.

In short, America has invested in immigration enforcement, and the time has come for comprehensive immigration reform to deliver common-sense immigration policy for our economy and our security.

# Endnotes

- 1 *Border Protection, Antiterrorism, and Illegal Immigration Control Act*, H.R. 4437, 109 Cong. (2005), passed 239-182 on a largely party-line vote on December 16, 2005. Among the few Republicans supporting the bill was now-Republican leader John Boehner (R-OH).
- 2 *Comprehensive Immigration Reform Act of 2006*, S. 2611, 109 Cong. (2006), passed by a vote of 62-36 on May 25, 2006. Among the 20 Republicans who supported the bill was now-Republican leader Mitch McConnell (R-KY).
- 3 *Emergency Supplemental Appropriations Act for Defense, the Global War on Terror, and Tsunami Relief*, H.R. 1268, 109 Cong. (2005).
- 4 The bill also included a trigger related to the processing of Z visas, which obviously was never implemented because the bill did not become law:“(6) Processing Applications – DHS has received, and is processing and adjudicating in a timely manner, applications for Z nonimmigrant status under CIR, including conducting all required background and security checks.”
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- 16 Richard M. Stana, “Secure Border Initiative: Technology Deployment Delays Persist and the Impact of Border Fencing Has Not Been Assessed,” Statement, available at <http://www.gao.gov/new.items/d10651t.pdf>.
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- 18 McCutcheon, “Securing Our Borders: Doing What Works to Ensure Immigration Reform is Complete and Comprehensive.”
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## About the author

**C. Stewart Verdery, Jr.**, founder and partner at Monument Policy Group, LLC, has played a major role in a wide range of fields in Washington, D.C. for two decades. From high-ranking government positions to counseling private-sector and political clients, Verdery has affected issues in fields as diverse as technology and telecommunications, homeland security and law enforcement, international trade and commerce, and intellectual property. One of National Journal’s “Political Insiders,” Verdery is a sought-after public speaker and commentator on a wide range of public policy topics, including frequent appearances on networks such as Fox News and CNN.

From 2003 to 2005, he served as the first assistant secretary for policy and planning at the U.S. Department of Homeland Security following his unanimous confirmation by the Senate. At DHS’s Border and Transportation Security Directorate he led efforts to develop and implement policies related to immigration, visas, and travel facilitation; cargo security and international trade; transportation security; and law enforcement. Verdery supervised policy development for agencies such as U.S. Customs and Border Protection and the Transportation Security Administration. He also worked extensively with foreign governments and appeared frequently as a witness in hearings before numerous congressional committees and as a public speaker on topics related to homeland security, travel facilitation, and international trade.

He received his B.A. from Williams College in 1989, his J.D. from the University of Virginia in 1993 for whom he serves as class officer, and graduated from the Woodberry Forest School, where he currently serves on the Board of Advisors.

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