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THE CENTRISTS AGAINST THE IDEOLOGUES: WHAT ARE THE FALSEHOODS THAT DIVIDE AMERICANS ON THE ISSUE OF COMPREHENSIVE IMMIGRATION REFORM?†

ROBERT GITTELSON*

At first glance, many people with moderate interest in the ongoing debate over Comprehensive Immigration Reform (CIR) assume the divisiveness inherent in this issue to be one of right versus left. It is an understandable oversimplification, considering that in today's uncompromising climate, most political issues can be divided along those lines. However, upon further review, a more accurate assessment would be to state that this issue is better defined as one that divides the moderate middles of both parties from their more radical fringes at either end of the spectrum. Unfortunately, while the "centrists against the ideologues" theory is far more descriptive than "right versus left," it still really understates the true nature of the conflict.

To really capture the essence of the division, I've developed a theory that is sure to be extremely controversial, so I'm certain that I'm on to something. I've concluded that the real problem, more than anything, is that this issue is divided along a very simple axis—namely, the informed versus the misinformed.

I feel that it is necessary to immediately recognize an important distinction. Misinformed is an entirely different concept than uninformed. Uninformed implies ignorance, and I am not so arrogant as to imply that everyone who is against immigration reform is ignorant. However, I am saying that, based on my knowledge of the arguments presented by the people that I've argued and debated this issue with time and again, there are many, many people out there who have heard a preponderance of flatly wrong information that has consistently been publicly disseminated by the opponents of CIR, and have swallowed it hook, line, and sinker.

† On September 30, 2008, the *Notre Dame Journal of Law, Ethics & Public Policy* hosted a panel discussion entitled "Yearning to Breathe Free: Immigrants and the American Dream." A version of this paper was presented at that event.

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Sure, there are people out there who have allowed their prejudices about immigrants (both overt and/or subliminal) to color their decision-making process, but I feel that these people are in the vast, yet vocal, minority. I also have learned the hard way that it is unproductive to attempt to persuade these people, as no amount of knowledge will sway them anyway. Therefore, I direct this theory to the fair-minded among us, and hope that there are enough Americans of that persuasion to tip the balance.

So what exactly are these “myths” that the restrictionists or nativists have been propagating? Well, there are several, and they have pervasively made their way into the mainstream of this debate, primarily through right wing radio, and through the preponderance of restrictionist blogs and websites. There are four myths in particular that I will attempt to debunk in this article. First, that CIR is bad for our national security. Second, that illegal immigrants are a net burden on our tax base. Third, that CIR is just another code word for amnesty, and if it passes, it will make the problem of illegal immigration worse, because it will encourage more illegal immigrants to sneak into our country. And finally, that since these immigrants took it upon themselves to come here illegally, the United States has no moral or ethical responsibility to allow them to stay, or specifically to legalize their status to remain in the United States.

I. CIR AND NATIONAL SECURITY

To begin, the myth that CIR is bad for our national security assumes that CIR advocates are for “open borders” anarchy, and if it passes, CIR will open the floodgates, and millions of illegal immigrants, including terrorists, drug dealers, and “reconquistas”—Mexicans advocating the repatriation of the land the U.S. won in the Mexican-American War—will overwhelm our army and steal back the southwest. To this charge, I say to the restrictionists, read the bill, and get a grip on reality. The first word in the phrase “comprehensive immigration reform” is *comprehensive*. The inclusion of that word is the key to the plan. By comprehensively reforming the way that we deal with immigration, in all of its facets and mechanizations, the plan by design will reform the security interests and protocols of the United States in order to accommodate a multi-pronged attack against the true forces facilitating the problem of illegal immigration.

Initially, the plan will exponentially secure the border by the completion of a border fence. While a fence alone will most certainly not, in and of itself, solve the problem of illegal entry, it is arguably the best way to start. Furthermore, the CIR bills to date, such as the STRIVE Act, state from the outset that the Secretary of Homeland Security must certify to Congress that specific benchmarks have been implemented in border security and workplace enforcement *before* anything can be done to

initiate new guest worker programs, or to begin any type of mass regularization of the legal status of any undocumented residents.¹

Specifically, here are some of the enforcement requirements that would be implemented before any “amnesty”—a label restrictionists have used to describe the earned legalization requirements in the bill that really is a non-descriptive oversimplification of the lengthy and arduous process—can begin to be implemented:

1. vastly increased border enforcement personnel on both the southern and northern borders;²
2. assistance to Homeland Security from the Department of Defense that requires both agencies to submit plans to Congress detailing their efforts to coordinate their resources to secure the borders;³
3. the strengthening of infrastructure for border control (constructing roads, vehicle barriers, etc.) to achieve operational control of our borders;⁴
4. improvements and additions to our ports of entry;⁵
5. requiring DHS to acquire and maintain unmanned aerial vehicles and related surveillance technologies;⁶
6. the creation of criminal penalties for evading inspection at the borders;⁷
7. requiring DHS to develop and submit to Congress a national strategy for border security and a comprehensive plan for surveillance of the international land and maritime borders of the U.S., and to submit to Congress a report on improving the exchange of information on North American security;⁸
8. requiring the governments of the U.S., Canada, and Mexico to work with the governments of Central America to improve security south of our border, specifically relating to gang and drug activity, and other law enforcement assistance;⁹
9. fraud prevention, by mandating that DHS produce biometric enhancements and train its officers in document fraud detection. Would require that documents be machine readable, tamper resistant, and incorporate a biometric identifier, and would create new

1. See, e.g., Security Through Regularized Immigration and a Vibrant Economy (STRIVE) Act of 2007 § 5, H.R. 1645, 110th Cong. [hereinafter STRIVE Act].

2. *Id.* § 101(b).

3. *Id.* § 101(e)(2).

4. *Id.* § 103.

5. *Id.* § 104.

6. *Id.* § 106.

7. *Id.* § 136.

8. *Id.* § 112.

9. *Id.* § 121.

authorities for collecting biometric information from all immigrants and enforcing related penalties;¹⁰

10. law enforcement relief for states and localities, authorizing DHS to award grants to law enforcement agencies that provide border related assistance. The Justice Department would also be allowed to reimburse state and local prosecutors for federally initiated and referred drug cases;¹¹

11. increased penalties related to gang activities, failure to depart, and alien smuggling;¹²

12. increased criminal penalties for immigrant drunk driving;¹³

13. increased penalties to employers who hire unauthorized immigrant workers;¹⁴

14. making firearms sales to or possession by undocumented immigrants a federal crime;¹⁵

15. increased federal detention space;¹⁶

16. more ICE agents;¹⁷

17. enhanced penalties and reform of passport, visa, and document fraud offenses;¹⁸

18. increased criminal penalties associated with the illegal reentry of aliens with criminal records;¹⁹

19. mandated detention of criminal aliens to ensure their removal upon completion of their sentences;²⁰

20. tightening of voluntary departure requirements;²¹

21. reaffirmation of the inherent authority for immigration enforcement by state and local police in order to enforce criminal provisions of the immigration laws;²²

22. mandatory address reporting requirements for all aliens;²³

23. expanded expedited removal provisions;²⁴

24. expansion of the aggravated felony definition for deportable offenses.²⁵

10. *Id.* §§ 133–35.

11. *Id.* §§ 141–42.

12. *Id.* § 234.

13. *Id.* § 214.

14. *Id.* § 234(c)(1)(G).

15. *Id.* § 204.

16. *Id.* § 217.

17. *Id.* § 101(c).

18. *Id.* § 221.

19. *Id.* § 236.

20. *Id.* § 201.

21. *Id.* § 202.

22. *Id.* § 213.

23. *Id.* § 212.

24. *Id.* § 206.

25. *Id.* § 233.

After reading the above partial list of enforcement enhancements, a logical question should be, “Why aren’t we doing these things right now?” The answer is that we can’t. We can’t, because if we were to mandate these provisions without simultaneously addressing the status of the millions of undocumented immigrants who are already an integral part of our economy and society, it would devastate our fragile economy just as we are in the midst of a dangerous recession. It would also initiate the so-called “enforcement through attrition strategy” and all of the cruel repercussions inherent in that short-sighted scheme—made infamous by Mark Krikorian of the Center for Immigration Studies²⁶—that facilitated the downfall of the presidential candidacy of Governor Mike Huckabee, who was unfortunate enough to have endorsed the plan as the centerpiece of his short-lived campaign.²⁷ Remember, it is important to note that the fringes of both parties are against CIR, and the fringe on the left feels that these enforcement mandates go too far in securing our borders and securing our country, to the detriment of our undocumented population and their families.

However, the above list of security enhancements is only a part of the overall security ramifications of CIR. For example, as everyone—including our enemies all over the world—knows, our military manpower is strained to the limit. Our troops are on a seemingly endless loop of deployments, with no imminent relief in sight. Our military recruiting officers are struggling to meet the vital new quotas for fresh servicemen and women, and scandals have started to come to light of instances where we have waived or lowered our induction standards.²⁸ We are also offering record high bonus inducements to lure potential recruits to join the armed forces.²⁹ CIR can really help us in this regard, with the potential addition of millions of military age, able-bodied men and women, should CIR allow them to legalize their status. This would not only increase the potential pool of new recruits; it would allow the military to once again raise standards, and—because of the laws of supply and demand—they could save much-needed revenue by lowering the bonuses that they are currently offering due to the short supply of potential seamen, soldiers, and airmen.

26. See Mark Krikorian, *Re: Immigration: Ten Points for a Successful Presidential Candidate*, NAT’L REV., May 23, 2005, at 33.

27. See Huckabee for President 2008: Unofficial Blog, <http://huckabee.wordpress.com/2007/12/09/mike-huckabee-immigration-plan/> (Dec. 9, 2007, 09:09 A.M.). The posting acknowledges that “[t]his plan is partially modeled on a proposal by Mark Krikorian” (citations omitted).

28. See, e.g., Fred Kaplan, *Dumb and Dumber: The U.S. Army Lowers Recruitment Standards . . . Again*, SLATE, Jan. 24, 2008, <http://www.slate.com/id/2182752/>.

29. Military.com, *Military Benefits: Enlistment and Reenlistment Bonuses*, <http://www.military.com/benefits/military-pay/enlistment-and-reenlistment-bonuses#1> (last visited Feb. 24, 2009).

The long-term benefit to our country through the addition of these potential recruits is that these young men and women would receive valuable training for advancement in life in whatever career path they should choose. They would be able to take advantage of the laws governing accelerated citizenship for immigrants who serve in the military, and, of course, our country—and by extension the entire world—would be safer because of this provision of CIR.

In the alternative, should we fail to pass CIR, and instead opt to deport or force attrition on these millions of economic refugees through an enforcement-only approach to our current undocumented immigrant difficulties, what would be the net result? Forgetting for now the devastating effect on our own economy, and the worldwide reproach and loss of moral authority that we would frankly deserve should we act so callously and thoughtlessly, there is another important political imperative to our passing CIR that affects our national security, and the security and political stability of our neighbors in our hemisphere. That is the very real threat of communism and/or socialism.

First of all, the primary reason why millions of undocumented economic refugees migrated to the United States is because the economies of their home countries were unable to support them. They escaped extreme poverty and oppression, and risked literally everything they had, including their lives and their freedom, to come to this country to try to work hard and support themselves and their families. Deporting our illegal immigrant population back to primarily Latin America would boost the communist and socialist movements in that part of our hemisphere, and if the anti-immigrationists only understood that fact, they might rethink their “line in the sand” position on what they insist on calling “amnesty.”

Communism thrives where hope is lost. The economies of Latin American nations are struggling to barely reach a level of meager subsistence for the population that has remained at home; Mexico, for example, has already lost 14% of their able-bodied workers to U.S. migration.³⁰ Without the billions of dollars in remissions from these nations’ expatriates working in the United States that go back to help support their remaining family members, the economies of many of these countries, most of whom are in fact our allies, would certainly collapse, or at least deteriorate to dangerously unstable levels. The addition of millions of unemployed and frustrated deported people who would go to the end of the theoretical unemployment lines of these already devastated economies would surely cause massive unrest and anti-American sentiment.

30. Philip Martin, *NAFTA and Mexico-U.S. Migration*, Remarks at Consejo Nacional de Población, Mexico City (Dec. 16, 2005), http://giannini.ucop.edu/Mex_USMigration, at 10 tbl.3.

The issue of Comprehensive Immigration Reform is not simply a domestic issue. In our modern global economy, everything that we do, as the leaders of that global economy, affects the entire world, and most especially our region of the world. If we were to naively initiate actions that would lead to the destabilization of the Mexican and many Central and South American governments, while at the same time causing serious harm to our own economy (but I digress . . .), it would most assuredly lead to disastrous economic and political consequences.

By the way, I'm not simply theorizing here. In point of fact, over the past few years, eight countries in Latin America have elected leftist leaders. Just last year, Guatemala swore in their first leftist president in more than fifty years, Alvaro Colom.³¹ He joins a growing list. Additional countries besides Guatemala, Venezuela,³² and Nicaragua³³ that have sworn in extreme left wing leaders in Latin America recently include Brazil,³⁴ Argentina,³⁵ Bolivia,³⁶ Ecuador,³⁷ and Uruguay.³⁸ This phenomenon is not simply a coincidence; it is a trend. The political infrastructure of Mexico is under extreme pressure from the left.³⁹ Do we really want a leftist movement on our southern border? If our political enemies such as the communists Chavez in Venezuela and Ortega in Nicaragua are calling the shots in Latin America, what kind of cooperation can we expect in our battle to secure our southern border?

Conversely, should we enact CIR, we would be taking an important step forward toward our own economic security, which really cannot be separated from our physical security, as they represent two sides of the same coin. For instance, if CIR is implemented, it would increase our tax base by bringing the majority of undocumented workers who are part of the underground economy out of the shadows and into our base of taxpayers. More importantly, it would require any pre-existing unre-

31. See Patzy Vasquez, *Guatemala's Colom Takes Office*, CNN.COM, Jan. 15, 2008, <http://www.cnn.com/2008/WORLD/americas/01/15/guatemala.president/index.html>.

32. See Clifford Krauss, *New President in Venezuela Proposes to Rewrite the Constitution*, N.Y. TIMES, Feb. 4, 1999, at A8.

33. See James C. McKinley Jr., *Ortega Redux: A History Smolders on Cold War Embers*, N.Y. TIMES, Nov. 11, 2006, at A3.

34. See Larry Rohter, *Leftist Handily Wins Brazilian Presidential Race*, N.Y. TIMES, Oct. 28, 2002, at A1.

35. See Larry Rohter, *Argentina Looks to a New Leader*, N.Y. TIMES, May 25, 2003, at 1-14.

36. See Joel Brinkley, *U.S. Keeps a Wary Eye on the Next Bolivian President*, N.Y. TIMES, Dec. 21, 2005, at A3.

37. See Juan Forero, *Latin America's Political Compass Veers Toward the Left*, N.Y. TIMES, Jan. 19, 2003, at 1-14.

38. See Larry Rohter, *Tiptoeing Leftward: Uruguayan Victor's Moment of Truth*, N.Y. TIMES, Nov. 2, 2004, at A8.

39. See, e.g., Martin Walker, United Press Int'l, *Walker's World: The Dangerous Border*, Feb. 25, 2009, available at http://www.metimes.com/Security/2009/02/25/walkers_world_the_dangerous_border/2888/.

ported or under-reported tax debts, together with interest and penalties, to be paid over time.⁴⁰ However, those tax funds will pale in comparison to the much more substantial revenues that will be generated by the inherent economic stimulus that would be initiated through the addition of millions of undocumented workers into our legitimate employment ranks, not to mention the guest workers⁴¹ that could be seasonally added through CIR to our labor productivity calculations. These immigrants would not only increase our productivity as an overall economy, allowing us to compete more effectively against foreign competition, but by adding these workers into the above-ground economy, they will have greater disposable income that will be spent domestically, thereby adding to the overall economic stimulus. Once our tax revenue has increased due to these added taxpayers and the accompanying growth in our GDP, we could actually consider lowering our tax rates, which would further stimulate our economy (supply side economics⁴²). We could then also consider increasing our defense spending as well, which is why I can say that CIR could enhance our physical security through an economic stimulus.

II. CIR AND TAXES

This leads me to the second myth that I'd like to tackle, that being that our illegal immigrants are a net burden on our tax base. This is perhaps the most disingenuous myth in the restrictionist's arsenal. I've heard tons of erroneous propaganda to this effect. Often they cite the "costs of illegal immigration" as totaling in the billions of dollars.⁴³ Well, they are half right. Illegal immigrants do cost taxpayers billions of dollars in social services. However, it is disingenuous to stop the argument there. It's like saying that it costs Toyota \$15,000 to build a car. Yes, there is a cost associated with building a car, just as there is a cost associated with illegal immigration. On the other hand, if Toyota sells that car for \$25,000, then there is actually a gross profit of \$10,000, which is an entirely different and much more accurate way to look at the picture. The same is true with illegal immigrants in this country. The vast majority pay income taxes. Many pay property taxes, some pay corporate taxes, and all of them pay sales taxes.

The vast majority of the academic and government studies have concluded that illegal immigrants actually pay more taxes into the system than they receive in benefits, although to be fair, there have been a few

40. See, e.g., STRIVE Act, *supra* note 1, § 645(d).

41. See generally *id.* tit. IV.

42. See generally JUDE WANNISKI, THE WAY THE WORLD WORKS: HOW ECONOMIES FAIL—AND SUCCEED (1978).

43. That immigrants are a net burden to taxpayers was made a popular belief through a series of studies by Rice University economics professor Donald L. Huddle.

studies commissioned by anti-immigration organizations such as the Heritage Foundation⁴⁴ and the Center for Immigration Studies,⁴⁵ which have not surprisingly reached an opposite conclusion. According to Francine Lipman, a tax law professor at Chapman Law School,

“[E]very empirical study of illegals’ economic impact demonstrates the opposite . . . : undocumented actually contribute more to public coffers in taxes than they cost in social services.” Moreover, undocumented immigrants contribute to the U.S. economy by investing and consuming goods and services; filling millions of “essential worker” positions resulting in subsidiary job creation, increased productivity and lower costs of goods and services; and making unrequited contributions to Social Security, Medicare and unemployment insurance programs. Eighty-five percent of eminent economists surveyed have concluded that undocumented immigrants have had a positive (seventy-four percent) or neutral (eleven percent) impact on the U.S. economy.⁴⁶

That being said, I say that these academic arguments are, well, academic. The reality is that it really doesn’t matter if the undocumented population pays a little more or a little less than what they receive back in social services, because these revenue figures are dwarfed by the only figure that really counts. The important figure is the amount of tax revenue that is generated directly *and* indirectly to our tax base because of, and through the presence of, these 12,000,000 to 20,000,000 undocumented people.⁴⁷

While of course these people pay taxes—and they would pay even more taxes after CIR—their tax contributions are minute compared to the taxes paid by:

1. the corporations that the undocumented workers generate revenue for;
2. the additional legal co-workers who owe their income, in whole or in part, to the presence of the undocumented workers who

44. Robert E. Rector & Christine Kim, *The Fiscal Cost of Low-Skill Immigrants to the U.S. Taxpayer* (May 22, 2007), <http://www.heritage.org/Research/Immigration/sr14.cfm>.

45. Steven A. Camarota, *The High Cost of Cheap Labor: Illegal Immigration and the Federal Budget* (Aug. 2004), <http://www.cis.org/articles/2004/fiscal.pdf>.

46. Francine J. Lipman, *The Taxation of Undocumented Immigrants: Separate, Unequal, and Without Representation*, 9 HARV. LATINO L. REV. 1, 2–4 (2006) (quoting Peter L. Reich, *Public Benefits for Undocumented Aliens: State Law Into the Breach Once More*, 21 N.M. L. REV. 219, 243–46 (1991)).

47. For more on the estimated number of illegal immigrants currently in the United States, see Brad Knickerbocker, *Illegal Immigrants in the U.S.: How Many are There?*, CHRISTIAN SCI. MONITOR, May 16, 2006, available at <http://www.csmonitor.com/2006/0516/p01s02-ussc.html>.

- work with them (often at much higher tax rate salaries or commissions than the undocumented lower wage employees);
3. the owners or shareholders of the companies that they work for (again, at much higher tax rates because of much larger incomes);
 4. the property taxes paid by the businesses that the undocumented work for;
 5. the taxes paid by the owners and employees of businesses that produce revenue by working with those who employ undocumented workers (grocery chains, for example, that sell produce picked by undocumented laborers).

However, even these figures, while much larger than the direct taxes paid by the undocumented workers, really don't tell the whole story at all. To really appreciate the fiscal impact of the 12,000,000 to 20,000,000 undocumented people on our economy—and therefore on our tax base—you have to look at the full macroeconomic impact of these people on the overall economy. When one considers the multiplicative effect of each dollar spent or generated by the undocumented people, as well as the legal citizens that they work with directly and indirectly, on the overall economy, the amount of tax revenue attributable to the labor of the undocumented workers skyrockets. This is because the multiplicative effect takes into consideration the fact that when one person spends a dollar, that same dollar gets recycled several times throughout the economy, generating tax revenue at each stop along the way.

When you look at this equation through a macroeconomic lens (which is the only accurate way to look at it), then the tax revenue generated through and because of the undocumented population is several times the amount that they receive back in social services. It's not even remotely close. Many economists believe that immigrants are not the problem, but rather are the solution to many economic problems. As Julian Simon has noted, "[E]very study that provides dollar estimates shows that when the sum of the tax contributions to city, state and federal government are allowed for, those tax payments vastly exceed the cost of the services used, by a factor of perhaps five, ten or more."⁴⁸

In fact, contrary to the myth that illegal immigrants cost us more in social services than they contribute to our tax base, I would also argue that the legalization of our undocumented immigrant population, not to mention our future need for additional immigrants, will greatly and positively impact the viability of our country's future social service commitments to our aging citizenry, particularly Social Security and Medicare. In short, we will need the vital financial contributions that these immigrants will be paying into these programs for years to come. According

48. JULIAN L. SIMON, *THE ECONOMIC CONSEQUENCES OF IMMIGRATION* 320 (2d ed. Univ. of Mich. Press 1999) (1989).

to Dowell Myers, a planning professor in the U.S.C. School of Policy, Planning, and Development, “Immigrants and boomers need each other. These are two populations whose destinies are going to converge in less than 20 years. We already know a lot about the boomers’ coming retirement impacts, but we still underestimate the immigrants and how they can help.”⁴⁹

By 2015, programs for the elderly will consume forty-eight percent of the federal budget, up from thirty-one percent in 1980.⁵⁰ Meanwhile, the ratio of seniors to working-age residents, including immigrants, is projected to grow from 250 seniors per 1,000 working-age residents in 2010 to 410 per 1,000 in 2030.⁵¹ According to the National Immigration Law Center, “Over the next 75 years, new immigrants will provide a net benefit of approximately \$611 billion in present value to the Social Security system.”⁵² Also, according to the Immigration Policy Center,

IMMIGRANTS PAY MORE IN TAXES THAN THEY USE IN SERVICES OVER THEIR LIFETIMES: Depending on skills and level of education, each immigrant pays, on average, between \$20,000 and \$80,000 more in taxes than he or she consumes in public benefits.

IMMIGRANTS’ RELATIVE YOUTH CONTRIBUTES TO SOCIAL SECURITY’S HEALTH: Current levels of immigration will provide a net benefit to the Social Security system of nearly \$450 billion in taxes paid over benefits received during the 2006–2030 period—and almost \$4.4 trillion during the 2006–2080 period. This is because 75 percent of immigrants arrive in the United States when they are in their prime working years (age 18 to 65). But the share of native-born citizens in their prime working years now stands at only 60 percent, and will decline rapidly over the coming decades as the Baby Boomers retire.⁵³

So, in point of fact, we either have to start having many more babies as soon as possible, or we need to face up to the reality that we need CIR

49. Darren Schenck, U.S.C. Public Relations, *Immigrants and Boomers Need Each Other* (Feb. 7, 2007), <http://www.usc.edu/uscnnews/stories/13379.html>. Professor Myers’ comments were in regard to his new book. See generally DOWELL MYERS, *IMMIGRANTS AND BOOMERS: FORGING A NEW SOCIAL CONTRACT FOR THE FUTURE OF AMERICA* (2007).

50. MYERS, *supra* note 49, at 46.

51. *Id.* at 183.

52. Press Release, Nat’l Immigr. Law Ctr., *Proposal to Strip Workers of Social Security Earnings Based on Prior Employment Status: Bad for the System and an Affront to Our Values* (Feb. 28, 2007), http://www.nilc.org/immlawpolicy/CIR/ensign_ss_amdmt_2007-02-28.pdf.

53. Press Release, Immigr. Pol’y Ctr., *It’s Tax Time! Immigrants and Taxes: Contributions to State and Federal Coffers* (Apr. 2008), <http://www.immigrationpolicy.org/images/File/factcheck/Taxpayers04-08.pdf>.

going forward, if for no other reason than we need the tax contributions of all of these immigrants to help pay for our retirement!

III. CIR AND AMNESTY

This leads me to the third myth that I want to discuss, and that is the argument made by the antagonists against CIR that this whole bill is simply a ploy to legalize, through a replay of the 1986 (“Simpson-Mazzoli”) amnesty,⁵⁴ all of the “illegals”—and that by doing so, we will just make the problem of illegal entry worse, by encouraging future undocumented immigration. In truth, this issue is the “deal-breaker” that has stalled progress on reform to date. In fact, were it not for this issue, I suspect that “Non-Comprehensive” Immigration Reform would have easily been enacted back in 2006. Make no mistake: in the battle for CIR, this issue constitutes the central front, and is where both sides have drawn their “line in the sand.”

A more accurate acronym for CIR would be CCIR, short for Compromise Comprehensive Immigration Reform. I say this because no side on this debate can possibly expect to get everything that they want in the final legislation, and without some type of regularization of the status of the millions of undocumented immigrants, any further attempt at discussion is a non-starter. However, in point of fact, that is a good thing, because whether each side realizes it or not, giving legal status to the undocumented who will qualify under the terms of this legislation—including by paying a \$1,500 fine as a penalty for their illegal entry;⁵⁵ passing federal and state biometric and fingerprint background checks;⁵⁶ filing and paying any unpaid back taxes;⁵⁷ learning to speak, read, and write in English;⁵⁸ going to the “end of the line” of immigrant processing for citizenship;⁵⁹ and continuing to obey all of our laws during all of the years that they will be required to wait for citizenship,⁶⁰ which in all likelihood stands to be over a decade—is not only good for our country (and by extension the entire world, since we are the leaders of the free world), but without it, we compromise our economy and our security (as well as our moral authority, but more about that later).

As to the argument that the 1986 amnesty led to the situation that our country finds itself in today—in which millions of undocumented immigrants were encouraged to come here illegally, or to overstay their visas—they have a point. However, instead of lamenting the shortcom-

54. Immigration Reform and Control Act (“Simpson-Mazzoli Act”), Pub. L. No. 99-603, 100 Stat. 3359 (1986).

55. STRIVE Act, *supra* note 1, § 602(c)(2).

56. *Id.* § 602(i).

57. *Id.* § 602(g).

58. *Id.* § 602(h).

59. *Id.* § 602(j).

60. *See id.* § 602(d).

ings inherent in that twenty-three-year-old legislation from the last century, why don't we learn from our mistakes, and do it right this time? Are we saying that we, as a country, are too inept to figure out what went wrong, and too lacking in resolve to correct those errors? Let's not forget a couple of things about that legislation.

First, the security provisions in the 1986 bill weren't enforced. Ronald Reagan is to be commended for showing "compassionate conservatism" in signing the legislation in the first place, but should rightly be blamed for not authorizing the manpower and tools, not to mention the national will, required to enforce the legislation. Primarily because of his belief in smaller government, he wouldn't authorize what he perceived to be an increase in the size of government that proper implementation of the security and enforcement provisions in the 1986 bill would have needed to be successful.⁶¹ In addition, I would be remiss if I didn't mention here that former Notre Dame President Theodore Hesburgh, while serving in his capacity as the Chairman of the Select Commission on Immigration and Refugee Policy, warned presciently and emphatically that without proper implementation of the security and enforcement provisions in the 1986 Simpson-Mazzoli Bill, and specifically the sealing of our borders, the increased illegal immigration that we in fact are experiencing today would occur.⁶²

However, I would argue that this is 2009, not 1986, and we have learned from our past mistakes. We also have invented new technologies, such as biometric identification, that weren't even conceptualized back when the 1986 bill was written. We can point to our lack of national will to enforce the security and enforcement provisions of the 1986 bill, and mandate that the enforcement and security requirements of the current legislation be in place before the legalization process for immigrants is implemented, such as how the STRIVE Act has been written.

If we follow the protocols called for in the STRIVE Act, and build a fence that actually comprehensively seals our southern border from illegal trespassers (not to mention criminals and drug dealers), then we will have taken a major step toward ensuring our ability to drastically reduce the enticement of illegal immigration that will be elevated due to the legalization aspects of the bill. However, by passing this bill or a similar one sooner rather than later, we can establish a hard date for presence in this country that will further negate the lure of entering illegally in the future. In other words, if the final legislation requires that anyone seeking to regularize their status needs to show verifiable proof of their immigrating here prior to a certain cut-off date, such as 12/31/09, for example, then

61. See generally NICHOLAS LAHAM, RONALD REAGAN AND THE POLITICS OF IMMIGRATION REFORM 165–202 (2000).

62. ROGER DANIELS & OTIS L. GRAHAM, DEBATING AMERICAN IMMIGRATION, 1882–PRESENT 50 (2001).

anyone who comes in after that date would not be able to qualify, and would not receive the biometric identification that will be mandatory for employment, as well as a wide range of other vital legal transactions, such as opening bank accounts, or perhaps even signing leases.

Other than the physical obstacle of the border fence, the key to enforcement will be that after the legislation is enacted and employed, all employees present and future will need to present a mandatory biometric, tamper-proof work authorization ID card.⁶³ All employers will be subject to audit, and the penalties for employing an unauthorized employee would be swift, severe, and effective.⁶⁴ This can only be done through CIR, because should these thorough steps be enacted without CIR, it would create havoc and send us into an economic tailspin, which is clearly something that we don't need during these troubling financial times.

Conversely, it is worth noting that should CIR be enacted soon, it could help us to pull out of the housing crisis facilitated by the downward spiral of home values. This is because CIR would bring 20,000,000 or so people out of the financial shadows, and thus into the above-ground banking system. This would help in at least two ways. By ensuring that these undocumented people could now open bank accounts, they would deposit their paychecks directly into bank accounts, as opposed to cashing their checks at check cashing services. This is vitally important to any economic stimulus plan, because our banking system is set up so that banks are able to lend an amount of money that is based on a multiple of their on-hand deposits; therefore this new influx of deposits into the banking system would go a long way toward easing our current credit crisis. However, and more importantly, the influx of millions of potential new homebuyers into our housing market would go a long way toward stabilizing house values, and thereby help to stop the bleeding caused by the sub-prime lending fiasco.

IV. OUR MORAL RESPONSIBILITY

This leads me to the final myth that I'd like to argue against, which is the fallacy that since these immigrants took it upon themselves to come here illegally, the United States has no moral or ethical responsibility to allow them to stay, or specifically to legalize their status to remain in the United States. To answer this charge, I will seek to juxtapose the moral principles of Leviticus 19 ("When an alien resides with you in your land, you shall not oppress the alien. The alien who resides with you shall be to you as the citizen among you; you shall love the alien as yourself, for you were aliens in the land of Egypt: I am the Lord your God."⁶⁵) with

63. See STRIVE Act, *supra* note 1, § 643(f).

64. See *id.* § 301.

65. *Leviticus* 19:33–34 (NRSV).

my previously mentioned ideas about the security, economic, and political benefits of Comprehensive Immigration Reform. Do we—as citizens of the United States—and does the United States—as a country—have moral obligations to address the issue of the legal status of the undocumented among us? I would have to say, yes. I think that too often we think of moral behavior in religious terms, but, in fact, we have to examine the issue of our undocumented residents through the moral lens of fairness and human decency.

First of all, the 20,000,000 undocumented immigrants didn't just take it upon themselves to come here because they wanted to see the sights, and most especially and particularly I might add that they didn't come here for a handout of any kind. They came because they knew that there was good work waiting for them here (comparatively speaking). They knew that if they could get past the token security at our border, our economic engine would welcome them with open arms. Certainly that was why the security at our southern border seemingly was intentionally left so lax for all of these years, because we needed these people (and we still do). There can be no doubt that the United States government colluded with the American business community to turn a blind eye toward the undocumented entry of these "economic refugees," and more specifically to the worksite enforcement provisions of the Simpson-Mazzoli Bill. Therefore, the United States should ethically, if not legally, assume at least a share of the responsibility for the presence of these refugees. They came to us, and we thanked them for coming and gave them our most awful jobs, and they were grateful to have those jobs, so they started to make a life here. Do we now pull the rug out from under them? Their children are *de facto* Americans, whether by birthright or by culture. Their dependents back in their previous home countries are, well, dependent on their income to survive, which is often part and parcel of why they came.

The 20,000,000 undocumented economic refugees might not be a fully integrated part of our assimilated society, but they most certainly are fully integrated into our workforce. We are, in fact, co-dependent on each other. We depend on the work that they do for us, while they and their extended families in the U.S. and abroad are dependent on the wages that we gladly pay to them. Does this co-dependence make us complicit in their presence here? Of course it does. We are fully complicit, and that complicity, morally and ethically, demands responsibility. We have to live up to our responsibility, or we are being dishonest to ourselves, but that is only a crime of disingenuousness. However, we are also being unfair and dishonest with our undocumented residents, and that is a moral and ethical crime.

David DeCosse, writing for the Markkula Center for Applied Ethics at Santa Clara University, noted,

But one could view [the undocumented] more broadly and accurately, not only in terms of a legal violation but also in terms of the fundamental motives of a shared humanity. Then one could ask, to borrow a phrase about migrants from the French philosopher Simone Weil: Are not these men and women “exactly like us”? In asking this question, it becomes possible to see undocumented immigrants as more than violators of a law and deserving of deportation. Instead they emerge as fellow human beings, who have sometimes endured great hardship to seek a better life here, much as our ancestors did. One can see them as possessing inalienable human rights.⁶⁶

Even the most restrictionist politicians have publicly admitted that the mass deportation of our nation’s undocumented immigrants is not only untenable and ill-advised, but they have admitted on the record that it isn’t going to happen.⁶⁷ However, there is something disingenuous in what they are not saying. By blocking through filibuster the passage of reform legislation, while encouraging stricter enforcement at both the federal and state levels, they are passive-aggressively pushing for the cruel enforcement through attrition strategy proposed by Mark Krikorian of the Center for Immigration Studies. This is a dangerous flirtation with a course callously created in abject folly. This caustic approach is a moral and ethical outrage. The scheme would, by design, withhold any ability for our 20,000,000 undocumented residents to survive here economically, thereby forcing them to self-deport in an effort to survive starvation and the elements. This inhumane strategy would decimate what’s left of our fragile moral authority in the world. Can you imagine nightly reports on CNN and other news channels for months on end showing starving immigrants in miles-long lines for weeks, waiting to be processed for self-deportation? The “attrition through enforcement” approach would be documented and broadcast nightly for the world to see our shame. Talk about emboldening our enemies! The Hugo Chavezes and Mahmoud Ahmadinejads of the world would use this shameful spectacle unmercifully to undermine our image in Latin America and the Middle East.

Moral authority is a nebulous commodity. It can’t be purchased or coerced; it must be earned through action and by deed. “Might equals right” is a political, not a moral, distinction. How we finally resolve our undocumented immigrant crisis will speak volumes in the internationally

66. David DeCosse, *Can Citizenship Be Earned?*, AMERICA, Oct. 13, 2008, at 10, 11.

67. See, e.g., Billy House, *Deportation is “A False Choice,”* TAMPA TRIB., June 18, 2007, available at <http://www2.tbo.com/content/2007/jun/18/na-deportation-is-a-false-choice/> (quoting Mark Krikorian as saying that “mass deportation is not even being discussed [as a realistic option], except by maybe some kook writing a blog in his grandmother’s basement”).

understood language of ethical leadership. As leaders in the global community, we have a moral and ethical responsibility to, in fact, *lead*.

If we recognize that our current undocumented crisis has been fueled by economic upheaval in primarily the nations to our south, do we not have a moral and ethical responsibility to help alleviate the cause of the problem at its source? In other words, if millions of Latin American migrants came illegally into the United States to escape poverty and starvation, don't we want to assist these countries to be self sufficient? It would increase their value to us as trading partners, while at the same time relieving the pressure on their citizens to escape poverty at home by migrating to the United States. Those are practical reasons, but we also have moral and ethical responsibilities to help those less fortunate than ourselves. Some might argue that sending aid to these countries, while we are experiencing financial troubles here at home, would be fiscally irresponsible. I would argue that, on the other hand, if we were to continue to employ the millions of undocumented workers who are here by giving them legal status, they would continue to send a small portion of their earnings back to their home countries in the form of remittances, thereby relieving us of the responsibility of sending direct aid to these countries while at the same time helping to alleviate our own financial problems through the benefit of their hard work and productivity. That is a win-win-win solution. We win by helping our own economic self interest. Our neighbors and allies win by continuing to receive vital economic remittances. Finally, we win again by acting in a morally and ethically responsible manner.

In summation, we have to face the fact that in the continuing debate for Comprehensive Immigration Reform, there are very few clearly defined black and white issues. The final solutions will almost certainly emerge as murky shades of gray. That being said, it is vital that we go into this debate with as many truths as possible, and eliminate propaganda, spin, and outright falsehoods. Millions of lives are hanging in the balance, as well as nothing short of our national security and economic vitality. With the stakes so high, this debate deserves nothing less than our best, bipartisan good-faith effort to achieve workable and enforceable legislation. Our government has an ethical responsibility to enact this vital legislation, and it has a moral responsibility to make sure that the final legislation reflects fairness, inclusiveness, and the American values that we hold to be self-evident.

