

2007 EDITION

DRUM  
MAJOR  
INSTITUTE FOR PUBLIC  
POLICY

Principles for an [Immigration Policy](#) to  
Strengthen & Expand  
the American Middle Class

By Amy M. Traub, with assistance from Amy Taylor

# Principles for an Immigration Policy to Strengthen & Expand the American Middle Class:

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# EXECUTIVE SUMMARY

After a year of congressional debate over immigration reform, mass mobilizations across the country, and midterm elections in which the question of immigration reform often played a central role, the Drum Major Institute for Public Policy releases “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class: 2007 Edition.” First published in December 2005, “Principles” is updated to reflect recent legislative proposals and a discussion of issues that have emerged as important. It is intended to serve as a guide for those who wish to advance a progressive immigration agenda that reflects the best interests of America’s current and aspiring middle class.

We argue that any debate over immigration policy must be connected to the larger conversation about America’s squeezed middle class and those striving to attain a middle-class standard of living. Accordingly, the Drum Major Institute offers a lens through which to evaluate immigration policy that operates from the basic principle that immigration policy is sound only if it also helps to strengthen and expand America’s middle class. Our litmus test for evaluating immigration policy by its impact on the middle class is two-fold:

## **1) Immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers and consumers, because:**

- On average, immigrants pay more in taxes each year than they use in government services, and these taxes fund programs like Social Security that strengthen and expand the middle class.
- Undocumented immigrants alone are estimated to have contributed nearly \$50 billion in federal taxes between 1996 and 2003.
- The middle class relies on the goods and services that the authorized and undocumented immigrants in the U.S. now produce.
- By increasing consumer demand, immigrants generate economic growth that benefits the middle class: immigration is a major contributor to the expansion of Hispanic and Asian-American consumer markets—an estimated 12 percent of the nation’s 2004 purchasing power.
- Immigrants also stimulate the economy by starting small businesses and attracting investment capital from their countries of origin.

Since the American middle class relies on the economic contributions of immigrants both legal and undocumented, a pro-middle-class immigration policy must not include mass deportation or aim to shut down future immigration arbitrarily.

## **2) Immigration policy must strengthen the rights of immigrants in the workplace**

- Under current immigration law, immigrant workers compete with their U.S.-born counterparts on an uneven playing field—to the detriment of both groups.
- Because employers threaten undocumented immigrants with deportation, these workers cannot effectively assert their rights in the workplace by, for example, asking for raises, complaining about violations of wage and hour or workplace safety laws, or by supporting union organizing drives.
- As long as this cheaper and more compliant pool of immigrant labor is available, employers are all too willing to take advantage of the situation to keep their labor costs down.
- U.S.-born workers are left to either accept the same diminished wages and degraded working conditions as immigrants living under threat of deportation or be shut out of whole industries where employers hire predominantly undocumented immigrants.

When immigrants lack rights in the workplace, labor standards are driven down and all working people have less opportunity to enter or remain part of the middle class. A pro-middle-class immigration policy must therefore guarantee immigrants full labor rights so that employers cannot use deportation as a coercive tool in the labor market.

Current immigration policy fails both aspects of the test. It is disconnected from our nation's economic reliance on undocumented immigrants, and it threatens to undermine the middle class because these undocumented workers cannot exercise workplace rights. But not just any reform policy will do. "Comprehensive" immigration reform is a term that has been used by many advocates on all sides of the debate to describe legislation including a myriad of proposals. The term "comprehensive" in this context does not have an established meaning and does not necessarily mean that the legislation would be progressive. Although compromise is a positive step forward, it is important that we focus on the end product of any legislative package and its ability to meet the needs of middle-class Americans, rather than on the appearance of bipartisanship for its own sake.

A progressive immigration policy must be one that strengthens and expands the American middle class from San Diego, California, to Portland, Maine. DMI's "Principles for an Immigration Policy to Strengthen and Expand the American Middle Class" is our contribution to this important policy decision.

# INTRODUCTION

The Drum Major Institute for Public Policy (DMI) releases “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class: 2007 Edition” in response to a year of ongoing debate on immigration reform with very little concrete action. We offer this report to encourage an immigration reform package driven by the needs of American workers struggling to make ends meet in our current economy.

The nation’s immigration debate has heated up in recent years as the population of undocumented immigrants has increased to an estimated 12 million people.<sup>1</sup> Yet undocumented immigrants make up less than a third of the nation’s total foreign-born population, which amounts to 37 million U.S. residents or 12.4 percent of the entire U.S. population as of 2005.<sup>2</sup> Seventy percent of foreign-born U.S. residents are in the country legally, including 3 percent of immigrants who are temporary legal residents (students or temporary workers), 7 percent who are refugees, 28 percent who are legal permanent residents and 31 percent who are naturalized citizens. More than half of the immigrants in the United States were born in Latin America, while a quarter were born in Asia and just over 13 percent came from Europe. Looking only at undocumented immigrants, a much larger percentage—78 percent—came from Latin America. This includes the 56 percent of undocumented immigrants (6.2 million people) who were born in Mexico. Meanwhile 13 percent of undocumented immigrants were born in Asia, 6 percent were born in Europe or Canada and 3 percent were born in Africa and other countries.<sup>3</sup>

While these demographics provide a picture of the nation’s immigrant population, they don’t tell us how immigrants fit into American society and the economy. We argue that the debate over immigration reform must be connected to the larger conversation about America’s squeezed middle class and those striving to attain a middle-class standard of living. We cannot craft an immigration policy that ignores the impact of immigration on the opportunity for all Americans to realize the American Dream. Too much of the current debate misses this point completely. We offer this primer as a step in building a new paradigm in which immigration policy also advances a sound economic agenda for this country’s current and aspiring middle class.

Good immigration policy should be good for every American. So we create a litmus test to evaluate immigration policy driven by the principles laid out in the paper. In the appendices, we evaluate the most prominent immigration bills considered by Congress according to this litmus test. At the same time, we suggest that our proposed framework, and the core principles it embodies can help advocates and policymakers to enlarge the national conversation about immigration and the role of immigrants in our society.

With skyrocketing health care and education costs, the decline in unionization and guaranteed pensions, and a bankruptcy epidemic spiraling out of control, America’s middle class is no longer what it used to be. That is why “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class” attempts to connect the discussion of immigration to the larger conversation about America’s squeezed middle class.

Public policy created America’s middle class. From the GI bill, which allowed people to enter the middle class by putting a college education within reach, to Social Security benefits that today allow the middle class to retire with a modicum of financial well-being and dignity, the strength and size of America’s middle class can be traced to successful policies that enable people who work hard to realize the American Dream.

In the same way that education and tax policies are integral to the size and strength of our nation’s middle class, immigration policy is also critical. Our economy relies on the presence of immigrants: they provide a young labor

<sup>1</sup> Jeffrey S. Passel, “Estimates of the Size and Characteristics of the Unauthorized Migrant Population in the U.S.,” Pew Hispanic Center, (2006): p3, <http://pewhispanic.org/files/reports/61.pdf>

<sup>2</sup> U.S. Census Bureau, “Foreign-Born Population of the United States,” Current Population Survey Annual Social and Economic Supplement (2004): Table 3.1. <http://www.census.gov/population/www/socdemo/foreign/pp1-176.html>.

<sup>3</sup> Passel.

force, a tax base for programs that benefit the vast majority of Americans, and many are entrepreneurs with businesses serving our neighborhoods. However, policies that drive undocumented workers into the shadows of the labor market and leave them vulnerable to exploitation threaten to undermine the gains of middle-class Americans and those working their way up to the middle class. When our policies create a two-tiered society that marginalizes the immigrants our economy relies on, the political and economic foundation of the American middle class is undermined.

The immigration agenda of the big business lobby—allowing more immigrants but consigning them to a subordinate position in the labor market—is understandably driven by what will bolster the corporate bottom line. Middle-class voters can be forgiven for being skeptical of the notion that what’s best for Wall Street will also be best for Main Street. Similarly, since immigrant advocates speak for immigrants, it’s reasonable to assume that they have a vested interest in claiming that their agenda—more immigration and more rights for immigrants—is also the right agenda for middle America, whether that is actually the case or not.

The voices in the debate that make the most direct claim to speaking for working and middle-class Americans are often those who favor the most restrictive immigration policies. They speak to middle-class economic anxieties—about competition for jobs, higher taxes, over-crowded emergency rooms and more crime. Popular CNN anchor Lou Dobbs, who includes a segment on the nation’s “broken borders” on his show almost every evening, argues that deportation and a build-up of armed force on the border are the best responses to an “immigration policy [that] is a tragic joke at the expense of hard-working middle-class Americans.”<sup>4</sup> While we should reject the growing current of xenophobia that is fueling anti-immigrant sentiment, no one should dismiss out-of-hand the valid concerns of working and middle-class Americans about immigration. It is not inherently xenophobic to worry about earning a living that provides enough to take care of your family during a time of increased illegal immigration.

Yet while some advocates of tighter immigration policies have tapped into real concerns of a broad, middle class constituency, their policy prescriptions are misguided because they fundamentally misunderstand the relationship between immigration and the middle class. They exaggerate the cost of public services for immigrants while underestimating the economic contribution that immigrants make. Furthermore, their view of labor market competition fails to take into account the possibility of cooperation to raise standards for both immigrants and U.S.-born Americans who are striving to work their way into the middle class. This confusion over the real impact of immigration on the middle class too often leads to policy prescriptions that focus only on enforcement and “sealing the border.” Such proposals, like the border fence legislation, would cost middle-class tax payers billions of dollars, while failing to address the genuine needs of our economy.

This paper does not aim to provide a comprehensive blueprint for solving all of the challenges posed by immigration to the United States. In particular, the focus on strengthening and expanding the American middle class precludes us from incorporating goals—like family reunification—whose primary objective is one of basic fairness to immigrants themselves. This does not mean that fairness towards immigrants is an unimportant goal, only that we believe that a serious discussion about how to align immigration policy with an economic policy that benefits all working Americans is a needed contribution to the immigration debate in its own right.

This analysis of immigration policy also differs substantially from approaches that use border control and the enforcement of existing immigration law as a starting point for addressing immigration policy. While effective border control is a necessary component of national security, it has little of value to say about the estimated 12 million undocumented immigrants—or the 25 million legal residents and naturalized citizens—who already live in the U.S. and form an integral part of the U.S. economy. From the perspective of the middle class and aspiring middle class, the impact immigrants have on Americans’ ability to attain and maintain a middle-class standard of living is more significant than whether they entered the country legally or not.

The Drum Major Institute for Public Policy offers a framework for evaluating immigration policy that centers on the interests of the American middle class and those who aspire to a middle-class standard of living.

<sup>4</sup> Lou Dobbs, “U.S. policy on immigration is a tragic joke,” *The Arizona Republic*, August 28, 2005.

# INTRODUCING THE MIDDLE CLASS AND THE MIDDLE-CLASS TEST

While the Census Bureau has no official definition of the “middle class,” conventionally it has come to represent the large swath of the American populace with incomes between approximately 200 percent of the federal poverty threshold and those of the nation’s top five percent income earners—roughly \$25,000 to \$100,000 a year.

But the middle class is more than an income bracket. A thriving middle class is important for the nation’s prosperity. Over the past fifty years, a middle-class standard of living in the United States has come to mean having the opportunity to own a home, access to health care, retirement security, opportunities to save for the future and the ability to provide a good education, including a college education, for one’s children. When these middle-class fundamentals are within the reach of most Americans, the nation is stronger economically, culturally and democratically. Most political scientists see a large middle class as crucial to political stability and to a healthy democracy. Nations that have a large middle class with a stake in society and enough respite from the day-to-day struggle for survival to engage with public and community affairs are more socially cohesive than those divided by great extremes of wealth and poverty.

Based on our analysis of how immigrants affect the American middle class, we developed a two-part test for evaluating an immigration agenda that drives legislation or advocacy:

**1) Immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers and consumers.** Anti-immigrant policies are often premised on a flawed conception of the economy as a closed, zero-sum system—if an immigrant has a job, he must have taken a job away from an American. In fact, the economy is dynamic, and the presence of able-bodied, hard-working immigrants contributes to the growth of the economy and the creation of new jobs that wouldn’t exist if they weren’t here. They bring new tastes and cultures that spawn both the demand and the supply for new goods and services. Immigrants pay taxes at state, local and national levels. This paper draws on existing studies showing that immigrants pay substantially more in taxes than they consume in government services. In particular, the demographics of new immigrants and their families make immigration a powerful force shoring up the long-term viability of Social Security. An immigration policy that stifles any of these positive contributions of immigrants hurts the middle class.

**2) Immigration policy must strengthen the rights of immigrants in the workplace.** Under current immigration law, immigrants compete with U.S.-born workers on an uneven playing field—to the detriment of both U.S.- and foreign-born workers. Because undocumented immigrants are under constant threat of deportation, they cannot effectively assert their rights in the workplace. Immigrants who do get involved in union organizing drives, ask for raises or complain about violations of wage and hour or workplace safety laws risk getting reported to immigration authorities by their employers and being deported. As long as a cheaper and more compliant pool of immigrant labor is available, employers are all too willing to take advantage of the situation to keep their labor costs down and are less willing to hire U.S.-born workers if they demand better wages and working conditions. So, U.S.-born workers are left to either accept the same diminished wages and degraded working conditions as immigrants living under threat of deportation or be shut out of whole industries where employers hire predominantly undocumented immigrants. The solution is to eliminate the second-class labor market in this two-tiered system and allow immigrants and U.S.-born workers to compete on an even playing field by guaranteeing immigrants—including undocumented workers—equal labor rights and making sure that employers cannot use deportation as a coercive tool in the labor market.

# MIDDLE CLASS TEST PART I: IMMIGRATION POLICY SHOULD BOLSTER—NOT UNDERMINE—THE CRITICAL CONTRIBUTION THAT IMMIGRANTS MAKE TO OUR ECONOMY AS WORKERS, ENTREPRENEURS, TAXPAYERS AND CONSUMERS.

The American middle class relies on the economic contributions of immigrants, including naturalized citizens, permanent residents and undocumented immigrants. The goods and services immigrants provide, the economic stimulus generated by immigrant consumers and the immigrant tax dollars that help to finance vital middle-class programs combine to make immigrants an integral part of the American economy. This means that the challenges immigration poses for the middle class cannot be answered simply by shutting down or restricting the flow of immigrants. The policy implications of this part of the test are thus very simple: any immigration policy that addresses the economic interests of the middle class and aspiring middle class should not include deporting undocumented immigrants en masse or reducing legal immigration that meets the needs of the economy.

In the simplest sense, the middle class relies on the goods and services immigrants produce. Immigrants work in every sector of the U.S. economy: they are doctors, salespeople, factory workers, teachers, farm laborers, business owners, construction workers and computer programmers. Undocumented immigrants are concentrated in agriculture, where they make up nearly half of the workforce, and to a lesser extent are clustered in the restaurant and construction industries. Undocumented immigrants pick the apples, grapes and oranges on middle-class tables and the lettuce, asparagus and mushrooms in middle-class refrigerators. Undocumented workers build the homes and office buildings of the middle class, process their poultry, prepare their meals and wash the dishes in the restaurants they frequent across the country. In this very direct sense, the American middle class relies on the labor of immigrants.

Of course it is not just low-skilled immigrant labor that keeps our economy vibrant. Census data from 2000 shows one in every five doctors in the country is foreign-born, as well one in five computer specialists and one in six workers in science and engineering. Increased global competition for highly-skilled workers and professionals could cause the U.S. to lose some of its competitive edge in the science and engineering realms if we don't have the ability to keep workers here.<sup>5</sup> These high-skilled immigrants contribute to the global technological leadership of the U.S. The annual growth rate of foreign student enrollment in U.S.<sup>6</sup> academic institutions has slowed significantly since the 2002-2003 academic year. Meanwhile other industrialized countries recruit foreign students to address labor shortages, encourage research and development and boost their contacts with foreign markets.<sup>7</sup>

The middle class also benefits from the generalized economic growth immigrants stimulate. Immigrant consumers increase economic demand for the products and services produced by middle-class and aspiring middle-class workers. There is little research on the magnitude of immigrants' consumer demand because businesses are more interested in marketing to consumers based on ethnicity than on immigration status. Nevertheless, researchers cite immigration as a significant contributor to the rapid growth of the Hispanic and Asian-American consumer markets, which together accounted for an estimated trillion dollars in buying power in 2004—or about 12 percent of the nation's total purchasing power.<sup>8</sup>

<sup>5</sup> Neeraj Kaushal and Michael Fix, "The Contributions of High-Skilled Immigrants", Migration Policy Insight No. 16 (2006).

<sup>6</sup> Richard B. Freeman, "Does Globalization of the Scientific/Engineering Workforce Threaten US Economic Leadership?" National Bureau of Economic Research, (2005); and Lawrence Summers, Letter to US Secretary of State Colin Powell, (2004) <http://www.president.harvard.edu/speeches/2004/powell.html>

<sup>7</sup> Jeanne Batalova, "Competing for Foreign Talent: The Race Begins with Foreign Students", Immigration Policy In Focus, Volume 5, Issue 7, (2006). [http://www.aifl.org/ipc/infocus/infocus\\_90506.pdf](http://www.aifl.org/ipc/infocus/infocus_90506.pdf)

<sup>8</sup> Jeffrey M. Humphreys, "The Multicultural Economy 2004: America's Minority Buying Power", Georgia Business and Economic Conditions 64, n 3 (2004): p5-6, <http://www.selig.uga.edu/forecast/GBEC/GBEC043Q.pdf>.



One rare study that did look specifically at immigrant consumers focused on their participation in the housing market, one of the most dynamic engines of the American economy in recent years. This Harvard University study found that between 1998 and 2001,<sup>9</sup> immigrant homebuyers purchased eight percent of new homes and 11 percent of existing homes sold, making up 12 percent of first-time homebuyers in 2001. Immigrants, including the undocumented, will be an important market for the 34 million homes owned by the baby boom generation that will go on the market over the next two decades because immigrants who have lived in the U.S. for twenty years or more have a homeownership rate that is identical to that of the native-born.<sup>10</sup> Immigration is an important driver of demand in this vital sector of the economy.

In addition to their role as consumers, immigrants stimulate the economy by starting small businesses and by attracting investment capital from their countries of origin. Immigrants make up just over one in ten self-employed businesspeople in the United States, and some immigrant groups are significantly more likely to start small businesses than are U.S. natives. While aggregate data on the investment capital marshaled by immigrants is difficult to come by, individual examples abound. Asian immigrants in Silicon Valley leveraged millions of dollars in high technology capital from Taiwan and Japan in the late 1990s.<sup>12</sup> Latin American immigrants in South Florida have helped to make the area a leader in attracting foreign direct investment, particularly international banking.<sup>13</sup>

In a fundamental sense, the middle class relies on immigrants' economic contributions because the policies that strengthen and expand the middle class are funded by the taxes immigrants pay. In 1997, the National Research Council and National Academy of Sciences completed the most comprehensive analysis ever of the economic impact of immigrants on the United States. The report concluded that immigrants are net fiscal contributors to the U.S. economy. The average immigrant pays \$1,800 more in taxes than she receives in government benefits. Over their lifetimes, this amounts to \$80,000 more in tax contributions than the average immigrant and her immediate descendants receive in local, state and federal benefits.<sup>14</sup> Less comprehensive and more recent studies have re-examined the net benefit analysis. While some contest the findings of the National Research Council and National Academy of Sciences, none of them examined as many contexts over the same period of time. In fact, more recent studies suggest that the contributions of immigrants could be even greater than originally assumed. A recent study completed by the Texas Comptroller, one of few studies to comprehensively assess the fiscal impact of undocumented immigrants on a particular state's budget and economy, found that undocumented immigrants in the state only received \$1.16 billion in state services per year while producing \$1.58 billion every year in state revenues, although the costs and benefits were not shared equitably with local governments.<sup>15</sup>

Nationally, the Social Security Administration estimates that about three-quarters of undocumented immigrants are paying payroll taxes.<sup>16</sup> Meanwhile, the I.R.S. estimates that individuals who are not eligible for Social Security numbers paid nearly \$50 billion in federal taxes between 1996 and 2003 (see note below).<sup>17</sup> The overwhelming

<sup>9</sup> Joint Center for Housing Studies of Harvard University, "The State of the Nation's Housing 2004", (2004): p10-13, <http://www.jchs.harvard.edu/publications/markets/son2004.pdf>.

<sup>10</sup> Brian K. Ray, Demetrios Papademetriou and Maia Jachimowicz, "Immigrants and Homeownership in Urban America: An Examination of Nativity, Socio-Economic Status and Place," Migration Policy Institute (2004)

<sup>11</sup> William J. Haller, "Immigrant Entrepreneurship in Comparative Perspective: Rates, Human Capital Profiles, and Implications of Immigrant Self-Employment in Advanced Industrialized Societies," (2004). <http://www.lisproject.org/immigration/papers/haller.pdf>

<sup>12</sup> The Santa Clara County Office of Human Relations Citizenship and Immigrant Services Program, "Bridging Borders in Silicon Valley," (2000): p67-69. <http://www.immigrantinfo.org/borders/>

<sup>13</sup> Saskia Sassen and Alejandro Portes, "Miami: A New Global City?" *Contemporary Sociology* 22 Issue 4, (1993) p471-477.

<sup>14</sup> James P. Smith & Barry Edmonston, Editors, *The New Americans: Economic, Demographic, and Fiscal Effects of Immigration*. Washington, DC: National Research Council, National Academy of Sciences Press (1997) p 349, p 351.

<sup>15</sup> Carole Keeton Strayhorn, "Undocumented Immigrants in Texas: A Financial Analysis of the Impact to the State Budget and Economy," (2006). <http://www.cpa.state.tx.us/specialrpt/undocumented/>

<sup>16</sup> Eduardo Porter, "Illegal Immigrants are Bolstering Social Security with Billions," *New York Times*, April 5, 2005

<sup>17</sup> Randolph Capps and Michael E. Fix, "Undocumented Immigrants: Myths and Reality," *The Urban Institute* (2005) <http://www.urban.org/publications/900898.html>. These funds are stored in the "Earnings Suspense File" which is made up of tax contributions from individuals who have reported earnings using false or "mismatched" Social Security numbers. Experts believe that undocumented immigrants make all but a small percentage of these payments, but there is no official estimate on the exact percentage.

number of these taxpayers are believed to be undocumented immigrants. Since undocumented immigrants are barred from receiving welfare as well as almost all other federal public assistance benefits and most major federal and state benefits, their economic contributions have an even greater impact. In June of 2006, more than 500 economists, including five Nobel Laureates and prominent economists from the administrations of Presidents Nixon, Carter, the first President Bush, and Clinton agreed, publishing an open letter to Congress and President Bush arguing that immigration is a net benefit for American citizens.<sup>18</sup> The 2005 Economic Report of the President also confirmed this point, stating that, over time, the benefits of immigration exceed the costs.

Immigrant's economic contributions also have a decisive geographic impact. Many Northeastern and Midwestern states rely on an influx of immigrants to maintain their population and thus to stabilize their tax revenue. With their aging populations, low-fertility rates among natives and an increase in residents moving out of the state, these states depend on immigrants to keep their total population from declining. Massachusetts is a prime example of this trend. Between 2000 and 2005, 138,285 immigrants moved into the state; which would have its population decline by more than 87,000 without this influx. Rhode Island, Pennsylvania, Connecticut, New Jersey, and New York are similarly reliant on immigration to keep their populations constant and maintain the economic strength to support middle-class prosperity.<sup>19</sup>

Immigrant taxes support the schools and public universities that educate middle-class children, the unemployment benefits that help struggling American workers to get back on their feet and the Medicaid payments that help the poor stay healthy as they strive to work their way into the middle class. But nowhere is the tax contribution of immigrants more striking than in terms of Social Security. The U.S. Social Security Administration estimates that undocumented immigrants contribute \$6-7 billion in Social Security funds each year that most will never claim.<sup>20</sup>

The Social Security system is a mainstay of the middle class. In addition to providing guaranteed retirement income, Social Security provides disability insurance for people who become too injured to work and supplies survivor's benefits when a family's breadwinner dies. Analysts point out that by releasing working people from the necessity of being the sole economic support of their aging parents, Social Security enables Americans to invest in their children, giving them the leg up they need to do better than their parents' generation.

But the overall solvency of the Social Security system has become one of the nation's most controversial political issues. The problem is that as the large baby-boom generation ages, there will be fewer working people paying into the system for each retiree drawing benefits. As a result, the Social Security Board of Trustees projects that the system will no longer be able to pay the full promised benefits in 2042. Immigrants help to provide a solution, because those entering the country are younger, on average, than the American population as a whole. The initial generation of immigrants also tends to have more children who will pay into the Social Security system for their entire working lives before withdrawing benefits. In this way, immigration slows the decline in the ratio of workers to retirees, shoring up the system's solvency. As a result of its higher levels of immigration, the United States does not face the severe crisis of an aging population confronted by Japan and Europe. An analysis of Social Security Administration data by the National Foundation for American Policy, a non-partisan policy organization, finds that at current immigration levels, new immigrants entering the United States will provide a net benefit of \$407 billion to the Social Security system over the next 50 years.<sup>21</sup>

<sup>18</sup> Jeffery Abarbanell et al. "Open Letter on Immigration," (2006), <http://www.independent.org/newsroom/article.asp?id=1727>

<sup>19</sup> Rob Paral, "The Growth and Reach of Immigration," American Immigration Law Foundation (August 2006) [http://www.aifl.org/ipc/policybrief/policybrief\\_2006\\_81606.shtml](http://www.aifl.org/ipc/policybrief/policybrief_2006_81606.shtml)

<sup>20</sup> Randolph Capps and Michael E. Fix, "Undocumented Immigrants: Myths and Reality," The Urban Institute (2005) <http://www.urban.org/publications/900898.html>.

<sup>21</sup> Stuart Anderson, "The Contribution of Legal Immigration to the Social Security System," National Foundation for American Policy, (2005): p8, <http://www.nfap.net/researchactivities/studies/SocialSecurityStudy2005Revised.pdf>

Immigration policy must recognize the significance of immigrants' tax contributions to programs like Social Security or it risks robbing the middle class of a crucial support program or increasing the fiscal burden on middle-income taxpayers. Based on Social Security Administration data, the National Foundation for American Policy projects that if legal immigration to the United States were reduced by one third, Social Security's actuarial deficit would increase by ten percent over fifty years. To make up for the shortfall, a middle-class person making \$60,000 in 2004 would have to pay \$600 more in taxes over the next ten years if the program was maintained as it is currently structured. More drastic restrictions on immigration would expand the deficit still further, meaning deeper cuts in Social Security benefits or still higher taxes to maintain the same benefits. A complete moratorium on legal immigration would cost our prototypical middle class American making \$60,000 in 2004 an additional \$1,860 in payroll taxes over the next ten years just to make up for the loss of immigrants' contributions.<sup>22</sup>

The examination of Social Security financing demonstrates one way the middle class would be harmed by an immigration policy that fails to recognize the critical role immigrants play in the U.S. economy. Because the middle class relies on immigrants, immigration policy that seeks to strengthen and expand the middle class must not include mass deportation or aim to shut down future immigration arbitrarily. This idea is explored further in the "Putting the Test to Work" section on page 15.

<sup>22</sup> Ibid.

## MIDDLE CLASS TEST PART II: IMMIGRATION POLICY MUST STRENGTHEN THE RIGHTS OF IMMIGRANTS IN THE WORKPLACE.

Strong labor rights are a cornerstone of the American middle class. The wage and hour laws and legal protections for working people that were won by labor unions during the dark days of the Great Depression helped to lift millions of American workers out of poverty and into the post-war American Dream of home ownership, secure retirement and college-bound children. Keeping those labor rights secure for every worker in the United States is key to the continued economic security of our middle class. But our current immigration laws create a two-tiered labor market in which many employers do not comply with labor laws or other workplace regulations. Ending this two-tiered system and making sure workplace regulations are universally enforced is critical for the continued growth and prosperity of the middle class. To do this, we must reinforce the rights of immigrants in the workplace.

Under current immigration law, undocumented immigrants are at the mercy of their employers to the same degree that U.S.-born workers were before the labor victories of the 1930s. Technically, minimum wage and overtime laws and health and safety regulations extend to every worker in the U.S., regardless of immigration status.<sup>23</sup> But in practice, undocumented immigrants face the threat of deportation if they try to exercise any of these rights. To a lesser extent, legal permanent residents and the holders of temporary work visas, like the H-1B, may also experience anxiety about their immigration status that restrains them from exercising full rights in the workplace. This creates a two-tiered system between workplaces that comply with labor laws and those that don't.

As long as a cheaper and more compliant pool of immigrant labor is available to employers who are willing to wield the threat of deportation against their workers, those same employers will be less willing to hire U.S.-born workers if they demand better wages and working conditions. Eliminating the second-class labor market in this two-tiered system, allowing foreign and U.S.-born workers to compete on an even playing field with equal workplace rights and making sure that employers cannot use deportation as a coercive tool in the labor market would strengthen the existing middle class. It would also give a leg up to both immigrants and U.S.-born workers trying to join the middle class.

Shifting the debate about immigration among middle-class Americans to focus on the impact of ineffective labor rights for immigrants on their jobs and wages will be challenging. The idea that immigrant workers undercut “native” American workers in the labor market is long-standing and pervasive. A recent Gallup survey found that more than half of American adults believe that, rather than helping the U.S. economy, “illegal immigrants mostly hurt the economy by driving wages down for many Americans.”<sup>24</sup> Other polls suggest that voters from low- and middle-income households are more likely to express anti-immigrant attitudes than are wealthier voters.<sup>25</sup>

While we contend that the impulse to blame immigrants for our economic insecurity is misguided, the middle class and aspiring middle class are right to feel that they have lost economic ground. The Economic Policy Institute notes that from 1973 to 2005, median family income grew at less than one-third the rate of productivity, marking a period of growing inequality.<sup>26</sup> In other words, even as the economy as a whole was growing, increasing inequality meant that low-income and middle-class families got fewer of the benefits from that growth.

<sup>23</sup> Other workplace rights of undocumented immigrants were thrown into question when the Supreme Court ruled in *Hoffman Plastic Compounds, Inc. v. NLRB* that an undocumented worker thrown out of work for union organizing could not receive back pay. For the distinction, see U.S. Department of Labor Wage and Hour Division, “Fact Sheet #48: Application of U.S. Labor Laws to Immigrant Workers: Effect of Hoffman Plastics decision on laws enforced by the Wage and Hour Division,” <http://www.dol.gov/esa/regs/compliance/whd/whdfs48.htm>.

<sup>24</sup> “Gallup’s Pulse of Democracy: Immigration,” The Gallup Poll (survey data from December 2005). <http://www.galluppoll.com/content/default.aspx?ci=1660&VERSION=p>

<sup>25</sup> Westhill Partners, “Voters Divided on Immigration Reform,” The Monthly Westhill Partners Hotline Poll (February 2005), p2, [http://diageohotlinepoll.com/WHP\\_Hotline2\\_exec\\_summary\\_3-2-05\\_Recent.pdf](http://diageohotlinepoll.com/WHP_Hotline2_exec_summary_3-2-05_Recent.pdf).

<sup>26</sup> Lawrence Mishel, Jared Bernstein, and Sylvia Allegretto, *The State of Working America 2006/2007* New York: Economic Policy Institute and Cornell University Press (2006).

There is evidence (discussed below) suggesting that immigrant workers played a role in this growing inequality and will continue to undermine the ability of middle-class and aspiring middle-class workers to get a good deal in the American labor market if current policies continue. The solution is to bolster the rights of immigrants in the workplace, reducing immigrants' vulnerability to exploitation and enabling them to demand a deal in the labor market that doesn't undercut the aspiring middle class.

For the most part, economists have focused on how increased numbers of immigrants affect the U.S. labor market, regardless of the extent to which these immigrants can exercise full rights in the workplace. In a recent survey of immigration's effects on the wages of native-born Americans, the non-partisan Congressional Budget Office concluded that "the ultimate impact on wages is difficult to quantify [due to] uncertainty surrounding what employers and native workers would have done if those foreign-born workers had not been present."<sup>27</sup> Some economists argue that immigrant workers have had little or no effect on the wages and employment prospects of natives in the U.S.<sup>28</sup> Some of this research comes to the same conclusion even when looking only at low-skilled native workers in U.S. cities.<sup>29</sup> In particular, economists find that immigrants do not take American jobs because the economy can create as many jobs as there are available workers as long as certain conditions exist such as flexible, open labor markets open to all workers on an equal basis.<sup>30</sup> Yet others, using various statistical models and analyses of empirical data, argue that the presence of immigrants has a significant detrimental effect, particularly on unskilled workers.<sup>31</sup> Some researchers have, however, found that even when immigration reduces low-skilled natives' wages, most native workers still benefit from immigration through increased wages.<sup>32</sup> The effect of high-skilled immigration on native wages has shown similarly divergent results ranging from a large negative effect to no depression of wages to an increase in native wages.<sup>33</sup> One study also found that the size of the foreign-born workforce has no relation to the employment prospects of native workers.<sup>34</sup> What are we to make of this contradictory data?

On the most basic level, the question looks like one of supply and demand: basic economics suggests that if the supply of anything, including labor, increases significantly, the price buyers are willing to pay—in this case the amount employers will spend on wages, benefits or improved working conditions—will go down. The result is that those working people whose skills are similar to those of the new immigrant workers get a worse deal in the labor market. While most reputable economists don't dispute this fundamental principle of supply and demand, some suggest that the way it operates in practice in American labor markets is far more complex. As discussed in Middle-Class Test Part I, immigration does not just increase the supply of labor. Immigration also boosts demand as immigrants purchase consumer goods, start small businesses and attract investment capital from their home countries.<sup>35</sup> These benefits help to balance the labor-cheapening effects that the supply and demand theory predicts immigration to have.

<sup>27</sup> Congressional Budget Office, "The Role of Immigrants in the U.S. Labor Market", (November 2005) p 2. <http://www.cbo.gov/ftpdocs/68xx/doc6853/11-10-Immigration.pdf>.

<sup>28</sup> For example, see: Robert J. LaLonde and Robert H. Topel, "Immigrants in the American Labor Market: Quality, Assimilation and Distributional Effects," *American Economic Review* 81 no. 2 (1991); Kristin F. Butcher and David Card, "Immigration and Wages: Evidence from the 1980s", *American Economic Review* 81 no. 2 (1991); Stanley L. Engerman and Ronald W. Jones, "International Labor Flows and National Wages", *American Economic Review* 87 no.2 (1997); David Card, "Immigrant Inflows, Native Outflows, and the Local Labor Market Impacts of Higher Immigration," National Bureau of Economic Research (1997); Rakesh Kochar, "Growth in the Foreign-Born Workforce and Employment of the Native Born," Pew Hispanic Center (2006).

<sup>29</sup> David Card, "Is the New Immigration Really So Bad?" Institute for the Study of Labor (2004).

<sup>30</sup> Jeffery Abarbanell et al. "Open Letter on Immigration," (2006), <http://www.independent.org/newsroom/article.asp?id=1727>

<sup>31</sup> See: Hannes Johannsson and Stephan Weiler, "Local Labor Market Adjustment to Immigration," *Growth and Change* 35, no. 1 (2004) p 61–76; George J. Borjas, Richard B. Freeman, and Lawrence Katz, "Searching for the Effect of Immigration on the Labor Market", *American Economic Review* 86 (1996) p246–251; Michael F. Williams, "Economic Impacts of Increased Mexico-U.S. Labor Mobility", *International Trade Journal* 17 (2005).

<sup>32</sup> Gianmarco I.P. Ottaviano and Giovanni Peri, "Rethinking the Gains from Immigration: Theory and Evidence from the U.S.," National Bureau of Economic Research (2005).

<sup>33</sup> See: Neeraj Kaushal and Michael Fix, "The Contributions of High-Skilled Immigrants", *Migration Policy Insight* No. 16 (2006). [referencing: George Borjas, "The Labor Market Impact of High-Skill Immigration." NBER Working Paper 11217. Cambridge, MA: National Bureau of Economic Research, 2005; Borjas, "The Labor Demand Curve Is Downward Sloping," 1335-1374; Madeline Zavodny, "The H-1 B Program and Its Effects on Information Technology Workers," *Economic Review* (Third Quarter) (Atlanta, GA: Federal Reserve Bank of Atlanta, 2003); Jeanne Batalova, *Skilled Immigrant and Native Workers in the United States; The Economic Competition Debate and Beyond* (LFB Scholarly Publishing, forthcoming 2006).

<sup>34</sup> Rakesh Kochar, "Growth in the Foreign-born Workforce and Employment of the Native Born." Pew Hispanic Center (2006). <http://pewhispanic.org/reports/report.php?ReportID=69>.

<sup>35</sup> Gregory DeFreitas, "Immigration, Inequality, and Policy Alternatives", Russell Sage Foundation (1995); Richard Vedder, Lowell Gallaway and Stephen Moore, *Immigration and Unemployment: New Evidence*, Alexis de Tocqueville Institution (2004).

But the vulnerability of undocumented immigrants in the workplace compounds the impact that the sheer numbers of immigrant workers might have on the middle class. Millions of undocumented workers live and work in fear that they will be deported back to their countries of origin. This gives employers tremendous power to deny these workers basic labor rights, as discussed above.

The disempowered status of undocumented immigrant workers harms both the middle class and the aspiring middle class in the labor market. In some cases, U.S.-born workers are effectively shut out of whole industries in which employers hire predominantly undocumented immigrants and labor standards are uniformly below legal minimums. These tend to be jobs that would pay at or just above minimum standards if undocumented immigrants were not available and that would be filled by U.S.-born workers struggling to enter the middle class. In other cases, in industries that are heavily unionized and that provide middle-class wages and benefits, competition from employers who hire undocumented immigrants puts downward pressure on the wages and working conditions of middle-class workers whose employers are put at a disadvantage by complying with the law. This phenomenon of downward pressure on wages and working conditions is sometimes called “the race to the bottom.”

## **BEHIND PART II: THREE ARGUMENTS AGAINST THE RACE TO THE BOTTOM AND WHY THEY’RE WRONG**

There are three major arguments against our contention that the disempowered status of undocumented immigrants contributes to a race to the bottom in middle-class wages and working conditions. We’ll look at, and refute, each of them in turn. The first argument against the race to the bottom holds that immigrants only take jobs American workers would not be interested in anyway. This argument ignores the role that labor rights—especially the right to organize a union and bargain collectively—played and continue to play in transforming whole industries where jobs were once undesirable into pillars of middle-class life for millions of Americans and their families. Dirty and ill-paid jobs in steel mills became “good jobs” once unions negotiated for solid wages and working conditions. Similarly, the dishwashing jobs that are presumed to be wanted only by economically disempowered, undocumented immigrants are desirable to a wider range of workers when they are decently-paid positions with benefits at unionized restaurants in New York and Las Vegas hotels. As Dean Baker of the Center for Economic and Policy Research puts it:

There are no jobs that U.S. citizens do not want. There would be huge numbers of U.S. citizens willing to work as farm workers, custodians, restaurant kitchen staff, or other jobs frequently held by immigrants, if these jobs paid \$60,000 a year and provided benefits. The reason that U.S. citizens do not want these jobs is because the pay is low. Instead of paying higher wages, employers find it much easier to bring in foreign workers from developing countries who find these jobs very attractive relative to the options available in their own countries.<sup>36</sup>

In other words, undocumented workers without effective labor rights aren’t just filling positions U.S. citizens don’t want—their powerless status enables employers to keep certain jobs so undesirable that only they will accept them. On the other hand, if undocumented immigrants themselves were empowered to exercise full rights in the workplace, their efforts to improve their own working conditions would enhance the quality of these jobs.

The second argument that could be made against our position that the disempowered status of undocumented immigrants is a factor in the race to the bottom for the middle class is the claim that low wages in certain jobs and industries are explainable entirely by market forces of supply and demand. This contention is predicated on the belief that there is no systematic exploitation of immigrant workers and employers do not routinely take advantage of their employees’ precarious status in the country to violate their labor rights. Substantial empirical evidence of widespread abuse of undocumented workers shows this argument to be false. For example, one study

<sup>36</sup> Dean Baker, “Economic Reporting Review,” Center for Economic and Policy Research (August 29, 2005) [http://www.cepr.net/err/2005\\_08\\_29.htm](http://www.cepr.net/err/2005_08_29.htm).

examined workers in a variety of occupations whose employers learned from the Social Security Administration that their documentation was false and they were working in the country without authorization. Many of the workers surveyed reported that their employers' didn't fire them when they discovered their unauthorized status, but instead they continued to employ them while cutting their benefits or wages. Twenty-five percent of the workers said that they weren't fired until they complained about worksite conditions. Another 21 percent said their employers used their unauthorized status to fire them in retaliation for trying to organize a union.<sup>37</sup>

Similarly, a 2004 study of day laborers in the Washington D.C. metro area found that more than half had at least one experience of not being paid for their work, and while nearly all reported doing dangerous jobs exposing them to chemical waste or other hazards, 81 percent said they had not received any type of job safety training. More than half did not receive safety equipment like gloves, boots or masks that could prevent injury.<sup>38</sup> While not all of the day laborers in the study were undocumented, principal researcher Abel Valenzuela told the *Washington Post*, "The employers assume they're undocumented. They assume they're afraid to report the crime."<sup>39</sup>

The effects of this disempowerment have also been documented on a larger scale. Analyzing the wages of thousands of Mexican immigrants who were undocumented workers but later attained legal permanent residence under the Immigration Reform and Control Act of 1986, economist Francisco Rivera-Batiz found that even after controlling for factors like education, English proficiency and time of residence in the United States, both male and female workers earned significantly more money once they had legal working status.<sup>40</sup> This suggests that when formerly undocumented immigrant workers are granted enforceable legal rights, the wages they are able to earn no longer undercut others working their way into the middle class to the same extent.

A third objection to our account of a middle-class race to the bottom spurred by the disempowerment of undocumented workers stems from the fact that it is difficult to measure the concrete impact of disempowerment in the workplace on the middle class and aspiring middle class. In other words, even if the preceding arguments about immigrant disempowerment sound convincing, how do we know the middle class is really being affected? With economists sharply divided over whether the mere presence of immigrant workers raises unemployment or drives down wages, no attempt to quantify the effect of workplace disempowerment on the labor market as a whole is likely to attain consensus. However, there are some cases where the effects of this disempowerment on the current and aspiring middle class are clearly visible. One of these is the attempt to organize a union.

Unions have historically enabled working people to attain a middle-class standard of living, and they continue to do so. By virtually any measure, union workers get a better deal in the workplace. Union workers take home \$191 more every week than non-union employees do.<sup>41</sup> In the private sector, union members are 31 percent more likely to have health care benefits, and at the median, they pay only half of the insurance premiums shelled out by their non-union counterparts. Union members are also 47 percent more likely to have an employer-sponsored retirement plan and have more opportunities to accrue paid vacation days and holidays than do non-union employees.<sup>42</sup> In short, union jobs provide good wages, health benefits and retirement security—they offer a

<sup>37</sup> Chirag Mehta, Nik Theodore, and Marielena Hincapié, "Social Security Administration's No-Match Letter Program: Implications for Immigration Enforcement and Workers' Rights", Center for Urban Economic Development, University of Illinois at Chicago (2003).

<sup>38</sup> Abel Valenzuela Jr., Ana Luz Gonzalez, Nik Theodore, and Edwin Melendez, "In Pursuit of the American Dream: Day Labor in the Greater Washington D.C. Region," Center for the Study of Urban Poverty, University of California, Los Angeles (2005). [http://www.sscnet.ucla.edu/issr/csup/uploaded\\_files/DC\\_Day\\_Labor\\_Study.pdf](http://www.sscnet.ucla.edu/issr/csup/uploaded_files/DC_Day_Labor_Study.pdf)

<sup>39</sup> Mary Beth Sheridan, "Pay Abuses Common for Day Laborers, Study Finds", *Washington Post*, June 23, 2005. <http://www.washingtonpost.com/wp-dyn/content/article/2005/06/22/AR2005062202087.html>

<sup>40</sup> Francisco L. Rivera-Batiz, "Undocumented Workers in the Labor Market: An Analysis of the Earning of Legal and Illegal Mexican Immigrants in the United States," *Journal of Popular Economics* 12 (1999).

<sup>41</sup> Bureau of Labor Statistics, "Union Members in 2006," United States Department of Labor News (January 2007). <http://www.bls.gov/news.release/pdf/union2.pdf>

<sup>42</sup> Bureau of Labor Statistics, "National Compensation Survey: Employee Benefits in Private Industry in the United States, March 2006" (August 2006). <http://www.bls.gov/ncs/ebs/sp/ebsm0004.pdf>

middle-class standard of living.

Yet in recent years, businesses have more vigorously resisted their employees' attempts to form unions. A review of National Labor Relations Board reports by Human Rights Watch documents a dramatic increase each decade since the 1950s in illegal reprisals against workers exercising their right to organize. As Human Rights Watch noted, "Many workers who try to form and join trade unions to bargain with their employers are spied on, harassed, pressured, threatened, suspended, fired, deported or otherwise victimized in reprisal for their exercise of the right to freedom of association... In the United States, labor law enforcement efforts often fail to deter unlawful conduct. When the law is applied, enervating delays and weak remedies invite continued violations."<sup>43</sup> A study by Cornell University Labor Relations professor Kate Bronfenbrenner found that when workers try to organize a union, more than half of employers threaten to close down their facility, and one in four companies illegally fires workers for union activity.<sup>44</sup>

In the atmosphere of threats and pressures that is commonplace when employees try to unionize, undocumented workers' fear of deportation adds another dimension of intimidation. When undocumented workers are present in an organizing campaign, Bronfenbrenner's study finds that the majority of companies threaten to report them to the immigration authorities.<sup>45</sup> This added barrier to unionization hurts not only the undocumented immigrants themselves but also the U.S.-born workers who are denied the benefits of a union if the organizing drive fails.

Americans feel the negative effects of the two-tiered labor market beyond their workplaces as well. The marginalized status of immigrants often manifests itself in our communities in the form of "quality of life issues"—overcrowded housing conditions, deteriorating buildings and day laborers lingering on street corners. The backlash response to these problems often involves calls for increased immigration enforcement, but simply removing immigrants would be both impractical and harmful to the middle class, for reasons discussed in Middle-Class Test Part I. On the other hand, enforcing labor rights for immigrants could solve many of these problems. With higher wages, immigrant workers could afford less crowded housing. And if the workers who are now hired as day laborers and paid off the books were instead given regular employment status to do the work they're already doing, they wouldn't be crowding on street corners.

The American middle class suffers as a result of the two-tiered labor market that is created by our current immigration laws. While we cannot quantify the precise impact on wages or employment, plentiful evidence exists to support our assertion that employers exploit the threat of deportation to deny undocumented immigrants their basic labor rights. On a large scale, this phenomenon puts downward pressure on wages and working conditions across whole industries and makes unionization more difficult for legal U.S. residents. Claims by some that undocumented immigrants only take jobs that are undesirable for other workers misrepresent the incentives in play. The jobs in question are only undesirable for legal residents because they offer low pay and bad working conditions, and undocumented immigrants' willingness to accept miserable pay and dangerous conditions hinges on their lack of enforceable labor rights. Similarly, immigrants only live in overcrowded housing and solicit work on street corners because their disempowered status in the labor market has pushed them to the margins. In order for our immigration policies to promote the security and expansion of the American middle class, they must be reformed to provide equal protection of labor rights for documented and undocumented workers alike.

<sup>43</sup> Human Rights Watch, *Unfair Advantage: Workers' Freedom of Association in the United States under International Human Rights Standards*, Washington, D.C. (2000) [www.hrw.org/reports/2000/uslabor/](http://www.hrw.org/reports/2000/uslabor/)

<sup>44</sup> Kate Bronfenbrenner, "Uneasy Terrain: The Impact of Capital Mobility on Workers, Wages, and Union Organizing." U.S. Trade Deficit Review Commission, Washington DC (2000) [http://www.citizenstrade.org/pdf/nafta\\_uneasy\\_terrain.pdf](http://www.citizenstrade.org/pdf/nafta_uneasy_terrain.pdf)

<sup>45</sup> *Ibid.*



# PUTTING THE TEST TO WORK: WHY GUEST WORKER PROGRAMS AND ENFORCEMENT-ONLY PROPOSALS DON'T MAKE THE MIDDLE-CLASS GRADE

The past year has seen a blizzard of new immigration policy proposals, several of which are evaluated in the appendices to this paper, starting on page 20. But beyond the specifics of each bill, several broad approaches are being actively debated, including creating a guest worker program and more vigorously enforcing existing immigration law, for example, by beefing up border security or stiffening penalties for violations of immigration statutes. Although guest worker plans and enforcement-only bills are often portrayed as two ends of the spectrum on immigration policy, neither approach furthers our goal of strengthening and expanding the American middle class.

While several variations of guest worker programs have been proposed in Congress recently, all aim to bring hundreds of thousands of temporary workers, recruited overseas and/or from the ranks of undocumented immigrants currently working in the U.S., into the country to work legally for participating employers for a number of years. But despite the potential benefit of legal status for currently undocumented workers, guest worker programs pose a serious threat to the middle class. Guest worker programs institutionalize a permanent two-tiered labor market, formalizing some of the workplace exploitation that already exists informally. They also ensure that a continued stream of vulnerable workers will always be available, threatening to undermine middle-class wages and working conditions much as undocumented workers do now. The more jobs that can be transformed into “temporary worker jobs,” the fewer domestic jobs will provide the wages and benefits capable of providing a middle-class standard of living.

While the best guest worker proposals promise to enforce workplace rights for guest workers, allow them to switch jobs without losing their legal status, and even mandate that guest workers only be hired at the prevailing wage for a given industry, these measures can only partially mitigate the impact of establishing a permanent place for temporary workers in our economy. No matter what protections are in place, their temporary status ensures that guest workers will always remain more vulnerable and less secure than the mainstream of American workers. Even when workers are offered a path to permanent legal status, the very existence of a guest worker program ensures that they will be replaced with another influx of disempowered temporary laborers. It is unlikely that each successive cohort of guest workers would feel sufficiently knowledgeable and empowered to exercise their workplace rights, even when they are guaranteed the same formal protections that apply to U.S. workers. And with no permanent status, guest workers have little incentive to take risks—like trying to organize a union—that are often necessary to improve wages and working conditions.

The history of guest worker programs in the United States provides a cautionary tale. From the 1940s through the early 1960s, the Bracero Program brought more than four million temporary Mexican farm and railroad workers to the United States, where workplace abuses—from substandard wages and housing to violations of workplace safety laws—were rampant, while laws intended to prevent them went largely unenforced.<sup>46</sup> Nor were the miserable working conditions limited to the braceros themselves. In areas where guest workers were concentrated, the bargaining power of all workers in similar jobs declined and wages decreased.<sup>47</sup> Evidence suggests that similar abuses may be proliferating in the small temporary worker programs currently established in the United States<sup>48</sup> although most analysts agree that these programs are currently too small to have an impact on middle-class wages and working conditions.

<sup>46</sup> See Ernesto Garlarza, *Merchants of Labor: The Mexican Bracero Story*, McNally & Loftin (1964).

<sup>47</sup> Linda Levine, “The Effects on U.S. Farm Workers of an Agricultural Guest Worker Program,” Congressional Research Service Report, (2006) <http://www.ilw.com/immidaily/news/2006,0531-crs.pdf>.

<sup>48</sup> For example, see “Beneath the Pines: The Stories of Migrant Tree Planters,” Immigrant Justice Project of the Southern Poverty Law Center, (2005) [http://www.splcenter.org/images/dynamic/main/ijp\\_beneaththepines\\_web.pdf](http://www.splcenter.org/images/dynamic/main/ijp_beneaththepines_web.pdf).

Guest worker programs most obviously run afoul of Part II of the middle-class test due to their inherent inadequacy in strengthening immigrants' rights in the workplace. But guest workers also fall short in connection with Part I of the test—bolstering immigrants' economic contributions. Although guest worker programs are designed to address the immediate labor demands of the economy, guest workers' temporary status undermines their potential economic contribution over the long term. Because they are temporary, guest workers have less incentive (and less time) to gain skills on the job, become proficient in English, and become more productive employees. After a few years, they cycle out of the nation's workforce rather than moving up the job ladder and increasing their income, which would have resulted in more tax revenue and increased consumption. In addition, temporary workers have less of stake in the future of their communities and are less likely to make long-term investments by starting a business or buying a home.<sup>49</sup>

Regardless of the shortcomings of guest worker programs, the status quo—characterized by a profound mismatch between the laws on the books and the reality of an economy that relies on the labor of undocumented workers—should not be maintained. Nor can the situation be improved by more vigorous enforcement of a set of laws that is fundamentally at odds with our economy. Such “enforcement-only” proposals are unlikely to succeed in eliminating all undocumented immigrants from the country, and would endanger the middle class by both reducing immigrants' economic contributions to middle-class prosperity (Part I of the test) and driving immigrants further underground, making them more vulnerable to workplace exploitation that undermines middle-class wages and working conditions (Part II of the test). What's more, as we argue below, “enforcement only” proposals are both ineffective and costly to middle-class taxpayers.

Of course, the idea of enforcement itself is not the problem. Enforcement of immigration laws is an important aspect of any progressive immigration reform package. Once we have intelligent and workable laws put in place that respond to our nation's economic needs, those laws should be properly enforced. An immigration policy that does nothing but more stringently enforce the existing laws, however, does not address our nation's true problems regarding immigration because it does not address the way our laws are mismatched with economic reality. A focus on enforcement alone would cost middle-class Americans billions of tax-payer dollars and would not achieve its stated goal of decreasing illegal immigration. Furthermore, increased enforcement measures will continue to push undocumented immigrants into the shadows because as enforcement efforts increase, so does the fear in immigrant communities of coming into contact with law enforcement or any government agency. This type of one-track focus would only stymie our efforts to achieve our national security goals because our government needs to know who is living within our borders.

The history of U.S. border security policy illustrates the failure of enforcement-only policy, as well as the high costs to middle-class taxpayers. Beginning in the late 80s and early 90s, the U.S. began a policy of increased enforcement along the U.S.—Mexico border. This initiative included increasing border patrol agents, the construction of a double-high 14-foot fence along certain sectors of the border, and the installation of sensors and other high-tech security equipment. The Immigration and Naturalization (INS) budget allocated to border enforcement saw a dramatic increase between 1980 and 1995, rising by 700%.<sup>50</sup> Between 1993 and 2005, annual spending on border security tripled from \$480 million to \$1.4 billion.<sup>51</sup> It is clear that this increase in enforcement has not been successful in its goals since the number of undocumented immigrants living in this country nearly tripled between 1992 and 2005 despite such an increase in enforcement efforts.<sup>52</sup>

<sup>49</sup> Walter A. Ewing, “More Than A ‘Temporary’ Fix: The Role of Permanent Immigration in Comprehensive Reform,” *Immigration Policy In Focus*, Vol. 5, Issue 1 (January 2006) [http://www.aifl.org/ipc/infocus/2006\\_morethantemporary.pdf](http://www.aifl.org/ipc/infocus/2006_morethantemporary.pdf).

<sup>50</sup> Belinda I. Reyes, Hans P. Johnson and Richard von Swearingen, “Holding the Line? The Effect of the Recent Border Build-up on Unauthorized Immigration,” *Public Policy Institute of California* (2002) [http://www.ppic.org/content/pubs/report/R\\_702BRR.pdf](http://www.ppic.org/content/pubs/report/R_702BRR.pdf)

<sup>51</sup> Daniel González and Susan Carroll, “Siege on Border: Costly Fortifications Fail to Deter Immigrant Flow,” *The Arizona Republic*, (June 19, 2005) <http://www.azcentral.com/arizonarepublic/news/articles/0619border19.html>.

<sup>52</sup> Jeffrey S. Passel, “Estimates of the Size and Characteristics of the Unauthorized Migrant Population in the U.S.,” *Pew Hispanic Center*, (2006): p8, <http://pewhispanic.org/files/reports/61.pdf>

Studies have shown that this new border security effort did not increase the odds of getting caught while crossing over, but merely channeled this migration through more hazardous and remote regions of the border.<sup>53</sup> Following the implementation of these new measures in the mid 90s, the likelihood of apprehension fell from the 20 to 30 percent range down to a record low of just 5 percent in 2002.<sup>54</sup> Furthermore, because migrants began to cross in more remote regions, the cost to taxpayers of a single apprehension shot up to \$1,700 in 2002 from only \$300 in 1992.<sup>55</sup> After the San Diego “triple-fencing” was put in place, apprehensions in that immediate area did fall. However, during that period, apprehensions in the Tucson sector to the east of the fencing increased by 342 percent.<sup>56</sup> Increased enforcement in one area just moves the flow into other less-patrolled and more remote regions.

To make matters worse, there has been a tenfold increase in deaths on the Texas and Arizona portions of the border between 1993 and 2004.<sup>57</sup> In 2005, the 473 migrant deaths at the border marked an all-time high.<sup>58</sup> Knowledge of the danger that lies ahead generally has no effect on prospective migrants in their decision to attempt to cross the border. A study that interviewed prospective migrants from sending communities in Mexico found that most were very knowledgeable about the dangers of crossing the border. Three-quarters were knowledgeable about border enforcement operations, two-thirds believed it was more difficult to elude the border patrol than previously, eight out of ten believed crossing was more dangerous than it used to be, and many knew people who had died on the journey. The author of the study concluded that this knowledge about the dangers related to illegal border crossing has no effect on a potential migrants’ propensity to migrate.<sup>59</sup>

Since the border is 2,000 miles long, attempting to seal it would be impractical and would also be prohibitively expensive. The non-partisan Congressional Research Service estimated that a border fence, like the one mandated by the Secure Fence Act that was signed into law in 2006, would cost more than \$60 billion to build and maintain over 25 years.<sup>60</sup> Meanwhile H.R. 4437, passed last spring by the House of Representatives, has an estimated price tag of \$1.9 billion dollars for the federal government.<sup>61</sup> This type of bill would also impose additional costs on private employers and on local governments, which ultimately pass on many of the costs to the middle class in the form of higher taxes.

Finally, enforcement at the borders does not address the fact that 45 percent of all undocumented immigrants currently here entered legally, through our ports of entry, and then subsequently overstayed their visas.<sup>62</sup> An increased security presence on our border will also not address the nearly 12 million people who are already living without legal status within our borders.

While we should pursue further attempts to enforce our immigration laws intelligently, in order to approach reforming our country’s immigration system, we must focus on addressing the true roots of our nation’s immigration problem—which are economic.

<sup>53</sup> Douglas S. Massey, “Backfire at the Border: Why Enforcement Without Legalization Cannot Stop Illegal Immigration,” Trade Policy Analysis No. 29, The Cato Institute, 2005. <http://www.free-trade.org/pubs/pas/tpa-029es.html>.

<sup>54</sup> Ibid.

<sup>55</sup> Ibid.

<sup>56</sup> Jason Ackleson, “Fencing in Failure: Effective Border Control is not Achieved by Building More Fences,” Immigration Policy in Focus, Volume 4, Issue 2 (April 2005) [http://www.aifl.org/ipc/policy\\_reports\\_2005\\_fencinginfailure.asp](http://www.aifl.org/ipc/policy_reports_2005_fencinginfailure.asp).

<sup>57</sup> Migration Policy Institute, “Evaluating Enhanced US Border Enforcement,” Migration Information Source (May 2004), <http://www.migrationinformation.org/feature/display.cfm?ID=223>

<sup>58</sup> Migration Policy Institute, “The U.S.-Mexico Border,” Migration Information Source (June 2006) <http://www.migrationinformation.org/USFocus/display.cfm?ID=407>.

<sup>59</sup> Ibid.

<sup>60</sup> Blas Nunez-Neto and Stephen Vina, “Border Security: Barriers Along the U.S.-Mexico Border,” Congressional Research Service (December 2006) <http://www.fas.org/sgp/crs/homesecc/RL33659.pdf>

<sup>61</sup> “Cost Estimate for H.R. 4437: Border Protection, Antiterrorism, and Illegal Immigration Control Act of 2005,” Congressional Budget Office (December 2005) <http://www.cbo.gov/ftpdocs/69xx/doc6954/hr4437.pdf>

<sup>62</sup> “Modes of Entry for the Unauthorized Migrant Population,” Pew Hispanic Center (May 2006) <http://pewhispanic.org/files/factsheets/19.pdf>

## CONCLUSION: IMMIGRATION POLICY AND BEYOND

An immigration policy that serves the fundamental interests of middle-class Americans must take two realities into account: immigrants' economic contributions make them indispensable to our nation's middle class, and, at the same time, a lack of effective rights in the workplace for undocumented immigrants undermines the ability of all working people in America to secure and maintain jobs that provide a middle-class standard of living. Immigration will cease to threaten the current and aspiring middle class when everyone participating in the American workforce can exercise their rights—from reporting workplace health and safety violations, to demanding proper overtime pay, to joining a union organizing drive—without the fear of deportation or detention. We argue that a guest worker program can never sufficiently alleviate this fear because the temporary nature of guest workers means they will always be more vulnerable than the mainstream of American workers.

Nothing less than permanent legal residence for current undocumented immigrant workers can promote the secure status necessary to ensure an even playing field. A legalization plan could include such requirements as a criminal background check, payment of any back taxes, proficiency in English, and the imposition of a fine for having violated civil immigration statutes, but it's important that the process not be so burdensome that many immigrants find it impossible to regularize their status and a large population of undocumented workers persists. It is in the interests of the middle class that the underground economy be brought into line with the rule of law as expeditiously as possible.

Our policies on new immigrants going forward must respond to the same set of concerns about the needs of the economy and the ability of American workers to achieve and hold onto a middle-class standard of living. The economy's future immigration needs should be met by an increase in the number of permanent legal residents admitted, not a guest worker program. If we do not increase the means of legally entry for workers to come here in the future, we will only encourage future immigrants to come here illegally as they are drawn to jobs and to their families. Over the years, this would produce the same exploitable workforce that threatens the middle class today. At the same time, a policy of open borders would not serve the middle class. While the preponderance of research suggests that the economy has not exhausted its capacity to absorb new immigrants—especially given the fact that the economic activity immigrants generate creates jobs as well as filling existing ones—at some point the sheer oversupply of labor would put downward pressure on wages. Thus visas should be available based on an ongoing analysis that takes into account the current needs of our economy, demographic shifts and our unemployment rate.

Once our immigration laws are harmonized with the demands of the U.S. economy, eliminating the current backlogs and underground populations, effective enforcement of immigration law will become more feasible. Nevertheless, an immigration policy designed to serve the needs of the U.S. economy and the American middle class may still leave millions of workers throughout the world anxious—even desperate—to immigrate to the United States. Although greater numbers of permanent resident visas will relieve some pressure, they may not eliminate it entirely.

At this point, the nation's immigration policy intersects with the other types of policies the U.S. pursues in the world, particularly our trade policy. While we cannot explore this concept in great detail here, the U.S. should negotiate trade agreements that promote the ability of would-be migrants to achieve a decent standard of living in their home countries. Raising standards abroad would not only relieve immigration pressure on the U.S., but also

reduce the extent to which international economic competition threatens to undercut the American middle class. The principles applied here to immigration policy might fruitfully be applied to trade policy as well: international commerce produces economic growth and middle-class prosperity, yet at the same time competition from desperate workers in poor countries threatens to undermine wages and workplace standards for the American middle class. This would suggest that including labor and workplace rights in our trade agreements would benefit the current and aspiring middle class in this country. But that's a topic for another paper.

We hope that *this* paper will prove valuable for policymakers as they seek to evaluate how immigration policy proposals will impact their constituents, and advocate for an immigration policy that will truly help to strengthen and expand the American middle class.

**APPENDIX I****A LEGISLATIVE ANALYSIS OF:****COMPREHENSIVE ENFORCEMENT  
& IMMIGRATION REFORM ACT****S. 1438 sponsored by Senators John Cornyn (R-TX) & Jon Kyl (R-AZ)**

The Drum Major Institute for Public Policy (DMI) offers a framework for evaluating immigration policy that centers on a two-part “middle-class test.” Part One requires that: immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers and consumers. Part Two holds that: immigration policy must strengthen the rights of immigrants in the workplace. To the extent that a proposed policy fulfills both parts of the test, we argue that it will help to strengthen and expand the American middle class, enhancing opportunities for all Americans to realize the American Dream. We assign legislation a letter grade based on how well it matches up to each of these objectives.

A complete explanation of the framework and rationale for each part of the test is fully laid out in “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class,” available at [www.drummajorinstitute.org](http://www.drummajorinstitute.org).

**DESCRIPTION:** The Comprehensive Enforcement & Immigration Reform Act would dramatically increase immigration enforcement, including hiring 10,000 new Border Patrol Agents, increasing the capacity of immigrant detention facilities, boosting numbers of inspectors and immigration judges and stiffening penalties for undocumented immigrants and their employers. The bill would also establish a temporary worker program. After advertising job openings to U.S. workers, employers could offer them to temporary visa holders. Immigrants who apply for the visas must show that they have a job waiting in the U.S., pay a fee and pass medical and security checks. Visa-holders could work in the U.S. for two years, after which they would have to return to their home countries for a year before having the opportunity to renew their visas for another two years. A separate program for undocumented immigrants currently working without authorization in the U.S. would make them eligible to remain and work for a maximum of five years under a new Deferred Mandatory Departure status, but they would be subject to escalating fines for refusing to depart the country immediately.

**MIDDLE-CLASS TEST PART ONE:****IMMIGRATION POLICY SHOULD BOLSTER—NOT UNDERMINE—THE CRITICAL CONTRIBUTION THAT IMMIGRANTS MAKE TO OUR ECONOMY AS WORKERS, ENTREPRENEURS, TAXPAYERS, AND CONSUMERS.****Grade: C**

The American middle class relies on the economic contributions of immigrants. The Comprehensive Enforcement & Immigration Reform Act would enable immigrants to continue contributing to the U.S. to some extent through its temporary worker visa programs, but the frequent shuttling back and forth that the bill requires would hinder immigrant workers from developing strong economic ties to the United States or advancing economically. The fact that the bill does not provide any mechanism for immigrants to attain permanent legal status also inhibits immigrants from creating lasting and evolving economic ties to the country, limiting the contributions they can make to the economy and to the well-being of the middle class.

**MIDDLE-CLASS TEST PART TWO:****IMMIGRATION POLICY MUST STRENGTHEN THE RIGHTS OF IMMIGRANTS IN THE WORKPLACE.****Grade: D–**

When immigrants lack rights in the workplace, labor standards are driven down, and all working people have less opportunity to enter or remain part of the middle class. This bill would do very little to strengthen workplace rights for immigrants and a great deal to undermine them. On the plus side, those immigrant workers who participate in the temporary visa program would have legal status in the country, and their working conditions would thus be more open to enforcement of U.S. wage and hour laws, workplace safety standards and other labor regulations. By moving workers and workplaces out of the shadows, immigrants’ rights in the workplace could be enhanced to some degree.

However, this benefit is far outweighed by provisions that would put excessive power into the hands of employers, undermining the rights of immigrant workers and thus the strength of the American middle class. The two-year duration of the visas, coupled with the requirement that temporary workers return to their own countries for a year before returning to the U.S., dramatically reduces incentives for immigrants to improve their working conditions. Combined with the lack of opportunities for temporary workers to attain permanent status, it creates a program in which interchangeable workers shuttle in and out of the country with little opportunity to establish themselves economically or to advance in the workplace.

The effect is compounded by provisions that allow temporary workers to accept jobs only with employers authorized to participate in the program, limiting workers' options and giving them less leverage to negotiate better working conditions. This dependence on a limited number of employers and the resulting vulnerability would be further exacerbated by provisions requiring temporary workers to leave the country if they are unemployed for 30 days. Finally, the bill would allow the Department of Homeland Security to require that temporary workers waive their rights to appeal their immigration status, perpetuating the fear and powerlessness that prevent immigrants from exercising workplace rights. For these reasons and others, the Comprehensive Enforcement & Immigration Reform Act would institutionalize a permanently subordinate position for immigrant workers, one that would be all the more iron-clad because of its legal standing. For the reasons discussed extensively in "Principles for an Immigration Policy to Strengthen and Expand the American Middle Class," this would have a negative impact on middle-class American workplace conditions and living standards.

## APPENDIX II

### A LEGISLATIVE ANALYSIS OF:

# SECURE AMERICA & ORDERLY IMMIGRATION ACT OF 2005

**S. 1033** sponsored by Senators John McCain (R-AZ) & Edward Kennedy (D-MA)

**H.R. 2330** sponsored by Representatives Jim Kolbe (R-AZ), Jeff Flake (R-AZ) & Luis Gutierrez (D-IL)

The Drum Major Institute for Public Policy (DMI) offers a framework for evaluating immigration policy that centers on a two-part "middle-class test." Part One requires that: immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers and consumers. Part Two holds that: immigration policy must strengthen the rights of immigrants in the workplace. To the extent that a proposed policy fulfills both parts of the test, we argue that it will help to strengthen and expand the American middle class, enhancing opportunities for all Americans to realize the American Dream. We assign legislation a letter grade based on how well it matches up to each of these objectives.

A complete explanation of the framework and rationale for each part of the test is fully laid out in "Principles for an Immigration Policy to Strengthen and Expand the American Middle Class," available at [www.drummajorinstitute.org](http://www.drummajorinstitute.org).

**DESCRIPTION:** The Secure America & Orderly Immigration Act is a comprehensive immigration reform bill that sets up a temporary work visa program. After posting jobs in the U.S. Jobs Bank and finding no qualified U.S. worker who is interested, employers could offer jobs to those with temporary immigration visas. Temporary visas would be available both to foreign residents with an interest in working in the U.S. and to undocumented immigrants already working in the U.S. without authorization (who must pay an extra fine in order to participate). Immigrants who apply for the visas must show that they have a job waiting in the U.S., pay a fee and pass medical and security checks. Visa holders are eligible to work in the U.S. for a total stay of six years. After that, they must either return home or apply for permanent residency. The bill also includes new border security initiatives, measures to reduce the backlog in green card applications and facilitate family reunification, new resources for hospitals and local governments to deal with immigrants and the formation of an electronic work authorization system.

**MIDDLE-CLASS TEST PART ONE:  
IMMIGRATION POLICY SHOULD BOLSTER—NOT UNDERMINE—THE CRITICAL  
CONTRIBUTION THAT IMMIGRANTS MAKE TO OUR ECONOMY AS WORKERS,  
ENTREPRENEURS, TAXPAYERS, AND CONSUMERS.**

**Grade: A**

The American middle class relies on the economic contributions of immigrants. The Secure America & Orderly Immigration Act would enable immigrants to continue contributing to the U.S. through its temporary worker visa programs. The number of temporary visas available would be flexible, allowing numbers of new temporary workers to increase or decrease, according to economic conditions. Temporary workers who have formed strong ties to the United States, including economic ties, would have the opportunity to apply for permanent residency. The bill also bolsters immigrants' economic contribution by requiring formerly undocumented workers to pay any back taxes owed in order to qualify for permanent status.

**MIDDLE-CLASS TEST PART TWO:  
IMMIGRATION POLICY MUST STRENGTHEN THE RIGHTS OF IMMIGRANTS IN THE WORKPLACE.**

**Grade: C**

When immigrants lack rights in the workplace, labor standards are driven down, and all working people have less opportunity to enter or remain part of the middle class. The Secure America & Orderly Immigration Act contains some measures to reinforce the workplace rights of immigrants, but as the bill is currently written, these safeguards do not go far enough. The bill would enhance the labor rights of current undocumented immigrants by enabling them to attain at least temporary legal status, meaning they would no longer have to be afraid that exercising their rights at work or demanding improved wages and working conditions would lead to immediate deportation. The bill guarantees temporary immigrant workers the same workplace rights as U.S. workers and, by bringing their employment out into the open, helps to ensure that these workplace regulations, like minimum wage laws, safety standards and the right to organize a union, will be more consistently and effectively enforced. The bill would make it illegal to treat temporary immigrant workers as independent contractors, would ban hiring them to break strikes and would regulate the practice of recruiting workers abroad. It's significant that the new temporary visas would not bind immigrants to any one job, so that immigrant workers could leave an employer to seek a better opportunity elsewhere. These protections would make the workplace rights of currently undocumented immigrant workers stronger than they are today.

The workplace rights provisions are a good start, but they still leave immigrant workers vulnerable to exploitation in ways that could significantly undermine their rights and thus threaten middle-class wages and working conditions for all workers. Immigrants are particularly susceptible to exploitation under this bill at key points in their U.S. work experience: when they are first being recruited to work in the United States and are more willing to make concessions in an effort to compete with other workers for a limited number of visas; when they fear losing their jobs because it means losing legal status in the country after a period of unemployment; and when they are asking an employer to sponsor them for early green card eligibility. The opportunities for employers to exert excessive power over immigrant employees at these junctures has the potential to shape immigrants' entire U.S. work experience, rendering them unable to exercise their rights effectively and to advance in the workplace.

In addition, stronger mechanisms for enforcing all the bill's labor protections are needed, because the bill's weak administrative process carried out at the discretion of the already overburdened Department of Labor risks being insufficient to genuinely deter violations. Creating a more robust enforcement system and closing the loopholes that render temporary immigrant workers vulnerable to exploitation at key junctures would enable this bill to genuinely strengthen immigrants' rights in the workplace, representing a gain for every American who is, or aspires to be, middle class.



**APPENDIX III:****A LEGISLATIVE ANALYSIS OF:****BORDER PROTECTION, ANTITERRORISM,  
AND ILLEGAL IMMIGRATION CONTROL ACT****H.R. 4437 sponsored by Rep. James F. Sensenbrenner Jr. (R-WI)**

The Drum Major Institute for Public Policy (DMI) offers a framework for evaluating immigration policy. The framework centers on a two-part “middle-class test.” Part One requires that: immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers, and consumers. Part Two holds that: immigration policy must strengthen the rights of immigrants in the workplace. To the extent that a proposed policy fulfills both parts of the test, we argue that it will help to strengthen and expand the American middle class, enhancing opportunities for all Americans to realize the American dream. We assign legislation a letter grade based on how well it matches up to each of these objectives.

A complete explanation of the framework and rationale for each part of the test is fully laid out in “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class,” available at [www.drummajorinstitute.org](http://www.drummajorinstitute.org).

**DESCRIPTION:** The Border Protection, Antiterrorism, and Illegal Immigration Control Act increases immigration penalties, creates new criminal immigration offenses, steps up enforcement of immigration law and expands the list of violations that render a non-citizen deportable. Unauthorized entry and presence in the United States, currently civil violations, would become felony crimes, punishable by more than a year in jail. The bill imposes mandatory minimum sentences for immigrants convicted of re-entering the country after deportation, requires mandatory detention of undocumented immigrants for an indefinite period of time, and increases the expedited removal of immigrants without judicial review. Mandatory employer verification of every employees’ immigration status would be required after six years. The bill also increases security along the United States border and provides for increased use of military surveillance equipment.

**MIDDLE-CLASS TEST PART ONE:****IMMIGRATION POLICY SHOULD BOLSTER—NOT UNDERMINE—THE CRITICAL CONTRIBUTION THAT IMMIGRANTS MAKE TO OUR ECONOMY AS WORKERS, ENTREPRENEURS, TAXPAYERS, AND CONSUMERS.****Grade: D**

The American middle class relies on the economic contributions of immigrants. Yet the Border Protection, Antiterrorism, and Illegal Immigration Control Act does nothing to acknowledge immigrants’ economic contributions and, in fact, newly criminalizes their presence in the country. In effect, the bill endorses a policy of deporting 12 million undocumented immigrants currently helping to support the American economy. The bill receives a D in this category rather than an even lower grade because of the implausibility that this effort will succeed: the Department of Homeland Security and Department of Justice do not have the capacity to prosecute, incarcerate, and deport 12 million people, suggesting that a large number will continue to live and work in the United States whether or not this legislation becomes law. The bill’s objectives are so impracticable that it could not completely undermine the economic contributions of the undocumented immigrants it targets.

**MIDDLE-CLASS TEST PART TWO:****IMMIGRATION POLICY MUST STRENGTHEN THE RIGHTS OF IMMIGRANTS IN THE WORKPLACE.****Grade: F**

When immigrants lack rights in the workplace, labor standards are driven down and all working people have less opportunity to enter or remain part of the middle class. While this bill aims to remove undocumented workers from American workplaces, the more likely effect would be to drive them further underground. By criminalizing the presence of undocumented immigrants in the United States and increasing the severity of criminal penalties, the bill would give undocumented workers much more reason to fear asserting their rights in the workplace. This, in turn, would render them even more vulnerable to intimidation and exploitation by unscrupulous employers, who can threaten jail and deportation if they complain about workplace conditions, than they are today.

Moreover, as felons, undocumented immigrants would likely be ineligible for any guest worker program or other opportunity to regularize their immigration status in the future. This would ensure the continuous presence of a desperate, disempowered, underground workforce competing in the labor market with American citizens and would perpetuate a race to the bottom in which employers, especially those in industries requiring unskilled labor, are driven to restrict wages and benefits and degrade employee working conditions in an effort to compete with companies that employ undocumented workers under substandard conditions. For this reason, as is discussed more extensively in “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class,” this bill would have a severely negative impact on the workplace conditions and living standards of the American middle class.

## **APPENDIX IV:**

### **A LEGISLATIVE ANALYSIS OF:**

# **COMPREHENSIVE IMMIGRATION REFORM ACT**

## **S 2611 sponsored by Sen. Arlen Specter (R-PA)**

The Drum Major Institute for Public Policy (DMI) offers a framework for evaluating immigration policy. The framework centers on a two-part “middle-class test.” Part One requires that: immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers, and consumers. Part Two holds that: immigration policy must strengthen the rights of immigrants in the workplace. To the extent that a proposed policy fulfills both parts of the test, we argue that it will help to strengthen and expand the American middle class, enhancing opportunities for all Americans to realize the American dream. We assign legislation a letter grade based on how well it matches up to each of these objectives.

A complete explanation of the framework and rationale for each part of the test is fully laid out in “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class” available at [www.drummajorinstitute.org](http://www.drummajorinstitute.org).

**DESCRIPTION:** The Comprehensive Immigration Reform Act, the Senate’s “compromise” immigration bill, includes increased border and internal immigration enforcement, new penalties for document fraud and for unlawfully employing of an undocumented immigrant, mandated employer use of an electronic system to verify all employees’ work authorization, a new temporary worker program, and a system of earned legalization open to undocumented immigrants who have been living in the U.S. for a certain period of time. The bill would also reduce the backlog for permanent family visas.

The temporary worker program would create a new category of H-2C visas, with 200,000 available each year for jobs paying the U.S. prevailing wage for a given occupation. Employers would first be required to advertise these positions to U.S. workers. The visas would be available to workers outside the United States who pay a fee, undergo health and background checks, and have a job offer. These temporary workers could bring their families to the U.S. and work for a total of six years. After four years they could apply for a green card. The temporary worker program would not be permitted to operate in areas with an unemployment rate of greater than nine percent.

The separate earned legalization program for current undocumented immigrants would provide a path to permanent resident status and eventually citizenship for those who can prove they were in the U.S. prior to April 2001, have resided in the U.S. continuously for five years, worked for three years before April 2006 and six years after the legislation is enacted, demonstrate English and civics proficiency, and pay back taxes and a fine. Undocumented immigrants working in the U.S. for less than five years but more than two would be eligible for Deferred Mandatory Departure which, after a medical and background check, would allow them to legally remain in the country for three years. If they are not able to regularize their status in that period, they would be required to leave the country immediately. Undocumented immigrants present in the country for less than two years would continue to be subject to immediate deportation.

The bill includes separate legalization procedures for undocumented minors who have lived in the U.S. for five years and special temporary visas for agricultural workers already working in the U.S.

**MIDDLE-CLASS TEST PART ONE:  
IMMIGRATION POLICY SHOULD BOLSTER—NOT UNDERMINE—THE CRITICAL  
CONTRIBUTION THAT IMMIGRANTS MAKE TO OUR ECONOMY AS WORKERS,  
ENTREPRENEURS, TAXPAYERS, AND CONSUMERS.**

**Grade: B**

The American middle class relies on the economic contributions of immigrants. The Comprehensive Immigration Reform Act would allow many immigrants currently playing a role in the U.S. economy to continue their participation and deepen economic ties through permanent residency and, ultimately, citizenship. However, the restrictions based on length of residency and employment could bar as many as nine million of the estimated 12 million undocumented immigrants current living in the U.S. from attaining permanent legal status. The three-year grace period granted to undocumented immigrants who have been in the country for 2-5 years does not include any route for establishing permanent residency, meaning the legislation provides no opportunity for these immigrants, or those who have been in the U.S. for less than two years and are subject to immediate deportation, to continue their contributions to the economy and to middle-class well-being. While problematic from a workers' rights perspective (see below), the temporary worker program is more promising from the point of view of economic involvement, providing people living abroad with an opportunity to fill labor needs in the U.S. and work legally for six years, with a further option to apply for permanent residence and deepened economic contributions.

**MIDDLE-CLASS TEST PART TWO:  
IMMIGRATION POLICY MUST STRENGTHEN THE RIGHTS OF IMMIGRANTS IN THE WORKPLACE.**

**Grade: C–**

When immigrants lack rights in the workplace, labor standards are driven down and all working people have less opportunity to enter or remain part of the middle class. While this bill has some protections for the workplace rights of immigrants, it falls short on two major fronts: first, the temporary worker program is inherently problematic, and second, creating different standards for different groups of undocumented immigrants, without a continuing path towards legal status ensures the persistence and growth of a population of undocumented immigrant workers whose vulnerability to labor market exploitation would continue to threaten middle-class wages and workplace standards.

The fundamental problem with any temporary worker program is the way it institutionalizes the second-tier status of immigrant workers, providing employers with a constantly renewing labor force that is in many ways at their mercy, and thus will tend to be paid less and work under worse conditions than citizens. The more jobs that can be transformed into “temporary worker jobs,” the fewer domestic jobs will provide the wages and benefits capable of providing a middle-class standard of living. While the bill’s provisions for temporary workers to be hired at the prevailing wage would provide some important protection against this race to the bottom, a constant supply of disempowered temporary workers could still prevent wages in an industry dominated by temporary workers from rising when they otherwise might.

In addition to the general problem with temporary worker programs, the specific program established by this bill leaves immigrant workers vulnerable to exploitation in additional ways. By mandating that temporary workers who are unemployed for more than 60 days leave the country, the bill puts pressure on workers to remain in jobs with substandard wages and working conditions or rush to accept a new job with poor conditions before the period runs out, out of fear of losing legal status. In addition, stronger mechanisms for enforcing the bill’s labor protections are needed, because the bill’s weak administrative process carried out at the discretion of the already overburdened Department of Labor risks being insufficient to genuinely deter violations.

The combination of a temporary worker program that is not open to undocumented immigrants currently in the U.S. and an earned legalization program that excludes the majority of these immigrants means that a significant undocumented population will remain working in the United States. Despite more intensive enforcement efforts, many immigrants who have been living in the U.S. for four years and remain an additional three years under the mandatory deferred departure program are unlikely to leave after seven years of continuous work and residence in the United States. Instead, they will become undocumented again, pushed back into the shadows and vulnerable to workplace exploitation that threatens to depress wages and working conditions for Americans aspiring to a middle-class standard of living. An immigration policy that truly aims to strengthen and expand the American middle class must deal with all current undocumented workers and provide a means for future undocumented immigrants in the U.S. to regularize their status.

## APPENDIX V: A LEGISLATIVE ANALYSIS OF: **SECURE FENCE ACT OF 2006**

**H.R. 6061 sponsored by Rep. Peter King (R-NY)**

The Drum Major Institute for Public Policy (DMI) offers a framework for evaluating immigration policy. The framework centers on a two-part “middle-class test.” Part One requires that: immigration policy should bolster—not undermine—the critical contribution that immigrants make to our economy as workers, entrepreneurs, taxpayers, and consumers. Part Two holds that: immigration policy must strengthen the rights of immigrants in the workplace. To the extent that a proposed policy fulfills both parts of the test, we argue that it will help to strengthen and expand the American middle class, enhancing opportunities for all Americans to realize the American dream. We assign legislation a letter grade based on how well it matches up to each of these objectives.

A complete explanation of the framework and rationale for each part of the test is fully laid out in “Principles for an Immigration Policy to Strengthen and Expand the American Middle Class” available at [www.drummajorinstitute.org](http://www.drummajorinstitute.org).

**DESCRIPTION:** The Secure Fence Act was signed into law on October 26, 2006. The Act authorizes the construction of hundreds of miles of double-layered fencing along the nation’s Southern border. It also directs the Secretary of Homeland Security to take action to stop the unlawful entry of undocumented immigrants, terrorists, and contraband into the U.S. using both personnel and surveillance technology. The Secretary is further instructed to evaluate U.S. Customs and Border Protection training and equipment. Finally, the Act requests a study on the feasibility of constructing an improved security system along the Northern border.

### **MIDDLE-CLASS TEST PART ONE: IMMIGRATION POLICY SHOULD BOLSTER—NOT UNDERMINE—THE CRITICAL CONTRIBUTION THAT IMMIGRANTS MAKE TO OUR ECONOMY AS WORKERS, ENTREPRENEURS, TAXPAYERS, AND CONSUMERS.**

**Grade: D**

The American middle class relies on the economic contributions of immigrants. Unfortunately, the Secure Fence Act fails to recognize undocumented immigrants’ contributions, ignoring the complexities of economic integration between the United States and Mexico in favor of a wall between the two countries. While border security must ultimately be a part of any comprehensive immigration policy, history suggests that ramped up enforcement in the absence of sufficient opportunities for immigrants to enter the country legally is a waste of resources. Would-be migrants simply adopt more remote and dangerous routes of entry into the country, leading to a much higher taxpayer cost per apprehension, or they enter the country legally and overstay their visas. The bill receives a D on this part of the test rather than a lower grade because it does not attempt to choke off the economic contributions of immigrants already in the country and because it is unlikely to actually succeed in stopping the flow of new immigrants into the country.

### **MIDDLE-CLASS TEST PART TWO: IMMIGRATION POLICY MUST STRENGTHEN THE RIGHTS OF IMMIGRANTS IN THE WORKPLACE.**

**Grade: D**

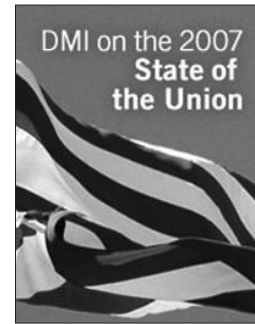
When immigrants lack rights in the workplace, labor standards are driven down and all working people have less opportunity to enter or remain part of the middle class. The Secure Fence Act has nothing to say on this subject. Trying to stop the flow of immigrants at the border would not affect the millions of undocumented workers already impacting the American labor market and, as we argue above, would also fail to significantly stem the tide of additional migrants.

By passing legislation that is enforcement-focused with no other reform measures included, this bill only perpetuates the status quo by giving immigrant workers lured here for jobs no other option than to enter the country illegally, pushing them into the shadows where they will continue to be vulnerable to exploitation and threaten to undermine the middle class.

# ALSO FROM DMI

## DMI ON THE 2007 STATE OF THE UNION

January 2007 / There was little for current and aspiring middle-class Americans in President Bush's State of the Union Address this year. DMI's "instant analysis," released just hours after the speech, examines the President's domestic policy agenda in-depth. We find that the President's proposals, at their core, are driven by a conservative ideology that doggedly protects the wealthiest Americans from tax hikes by sharply cutting social programs, while also absolving corporations of their obligation to protect the health and welfare of their employees by shifting those burdens to the workers themselves.



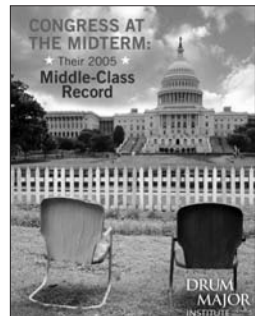
## THE 2006 DMI YEAR IN REVIEW

December 2006 / 2006 was the year of Systems Failure. Most Americans were tired of the status quo—on the war, on the economy, on the lapsed ethics of those entrusted to represent our interests. The result: on Election Day, they rebooted, ready to try again. The DMI 2006 Year in Review explores the year's best and worst of public policy, tunes into the voices of 2006 and profiles eight Americans advancing progressive policy. Also featured: a report from the front lines in six states and from the blogosphere, our recommended reading list, a recap of what the think tanks of the conservative right are up to and, as always, the 2006 Injustice Index.



## CONGRESS AT THE MIDTERM: THEIR 2005 MIDDLE-CLASS RECORD

June 2006 / In vote after vote, Congress disdained the concerns of middle-class Americans and opted instead to favor the already wealthy and powerful: a surefire recipe for a shrinking middle class. This report takes a closer look at those decisions and issues each member of Congress, as well as the House and Senate as a whole, a letter grade based on their 2005 votes on legislation critical to expanding and strengthening America's middle class.



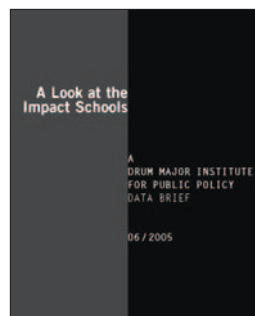
## FIGHTING FOR NEW YORK'S MIDDLE CLASS: 2001-2005 NY STATE LEGISLATIVE SCORECARD

March 2006 / Who voted to support the American Dream in the Empire State? The New York State legislature has been called the most dysfunctional in the nation, but it is far from powerless. The scorecard looks at twenty pieces of legislation over the last five years, from the minimum wage to the high cost of car insurance, and assigns each state senator and assembly member a grade based on his or her votes in support of—or against—New York's current and aspiring middle class.



## A LOOK AT THE IMPACT SCHOOLS

June 2005 / A demographic profile of the middle and high schools targeted by the "Impact Schools" safety initiative. This report finds that high levels of crime and disorder aren't the only characteristics that distinguish the Impact Schools from their peers in the New York City public school system.



# WHO IS THE DRUM MAJOR INSTITUTE FOR PUBLIC POLICY?



The Drum Major Institute for Public Policy is a non-partisan, non-profit think tank generating the ideas that fuel the progressive movement. From releasing nationally recognized studies of our increasingly fragile middle class to showcasing progressive policies that have worked to advance social and economic justice, DMI has been on the leading edge of the public policy debate. DMI is also noted for developing new and creative ways to bring its work to the advocates and opinion leaders that need it, from starting one of the first public policy weblogs to pioneering the use of Google Adwords to hold elected officials accountable for their votes on issues of importance to their constituents.

Originally called the Drum Major Foundation, DMI was founded by Harry Wachtel, lawyer and advisor to Rev. Dr. Martin Luther King, Jr. during the turbulent years of the civil rights movement. DMI was relaunched in 1999 by New York attorney William Wachtel, Harry's son, and by Martin Luther King III and Ambassador Andrew Young.

DMI's approach is unwavering: We do not issue reports to see our name in print or hold forums for the sake of mere talk. We seek to change policy by conducting research into overlooked but important social and economic issues, by leveraging our strategic relationships to engage policymakers and opinion-leaders in our work and by offering platforms to amplify the ideas of those who are working for social and economic fairness. From releasing an almost instantaneous analysis of the President's State of the Union Address to launching a fellows program that highlights the unique insights of activists, DMI consistently demonstrates that its reach extends far beyond the tired orthodoxies of both the right and the left.

Please visit [www.drummajorinstitute.org](http://www.drummajorinstitute.org) for more information.

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