



Center for Immigration Studies

BOARD OF DIRECTORS: Peter Nunez (Chair), Vernon Briggs Jr., Thomas Brokaw, William Chip,
T. Willard Fair, Otis Graham Jr., George Grayson, Carol Lannone, Frank Morris Sr., Anita Winsor-Edwards

State Immigration Enforcement Efforts Effective in Curbing Illegal Settlement

February 4, 2009

Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies

Written Testimony for the Indiana Senate Committee on Pensions and Labor Regarding SB580: Indiana Comprehensive Immigration Reform Bill Indianapolis, Indiana

Chair and members of the Labor Committee, thank you for the opportunity to submit testimony on SB580, Sen. Delph's bill to provide tools and funding for Indiana state agencies to support federal efforts to enforce immigration laws and achieve a lawful employment environment in Indiana.

For several years I have advised state and local lawmakers on how to increase compliance with immigration laws and reduce illegal settlement. This bill is a responsible and comprehensive approach and, based on what I have observed in jurisdictions that have implemented similar initiatives, it will be highly effective without overreaching the state's authority, disrupting legitimate commerce, or leading to discrimination against immigrants. It is a balanced approach that focuses appropriately on criminal aliens, illegal employment, and document misuse.

Our research has shown that this strategy, which we call "Attrition Through Enforcement,"¹ is working. Defenders of illegal immigration often suggest that illegal immigration is like a force of nature that cannot be stopped without implementing draconian policies such as mass deportation, or that illegal immigration will decline naturally in difficult economic times; therefore, states should take no further action. This argument is false – immigrants are human beings and in addition to reacting to conditions in their home countries (the "push factors"), they also respond to incentives and disincentives created by our government policies (the "pull factors"). Because the federal government lacks the resources to deal with the problem of illegal immigration problem on its own, and because the economic, fiscal, and public safety consequences of illegal

¹ See Mark Krikorian, "Downsizing Illegal Immigration: A Strategy of Attrition Through Enforcement," <http://www.cis.org/articles/2005/back605.html> and Jessica M. Vaughan, "Attrition Through Enforcement: A Cost-Effective Strategy to Shrink the Illegal Population," <http://www.cis.org/articles/2006/back406.html>.

immigration fall largely on the states, state leaders must do what they can to help gain control of this problem.

At least 20 other states have enacted measures to address illegal immigration. In addition, in the last few years, the federal government has stepped up enforcement of immigration laws. The result has been a modest, but significant decline in the size of the illegal population. We estimate that the illegal alien population declined by 11 percent from mid-2007 to mid-2008, primarily as a result of the increased level of enforcement generated by both the Bureau of Immigration and Customs Enforcement (ICE) and state and local initiatives.²

Measures to Address Criminal Aliens

Indiana has a significant problem with criminal aliens that this bill will take important steps to address. Committing crimes is not a job Americans won't do. We are stuck with native-born criminals, but need not accept the burden of criminals who have no permission to be here in the first place.

Very little data on the true size of the criminal alien population exists. ICE estimates that 20 percent of the incarcerated population nationwide is foreign-born, and that at least 50 percent of those aliens are removable.³ In 2005, there were 135 known illegal aliens and about 800 likely illegal aliens in Indiana state prisons and those jails that sought reimbursement for costs from the federal government.⁴ My own analysis of ICE's gang arrests under Operation Community Shield⁵ finds that between 2005 and 2008, the Indianapolis ICE field office arrested 65 immigrant gang members and leaders in Indiana. Most of these individuals were affiliated with large transnational organized crime gangs such as Surenos-13, 18th Street, and MS-13. They were charged with offenses such as murder, attempted murder, armed robbery, weapons violations, sexual battery, forgery, and cocaine distribution. Almost one-third of these gang members were juveniles at the time of their arrest.

Criminal aliens are the highest priority for immigration law enforcement at the federal level, but Indiana lawmakers cannot wait for ICE to solve this problem. ICE has just over 11,000 investigative and removal agents to deal with between 300,000 and 450,000 criminal aliens estimated to be in the country, along with its other mission requirements, which include counter-terrorism, workplace enforcement, and customs violations.⁶ ICE estimates that it will take more than three years and about \$1 billion just

² Steven A. Camarota and Karen Jensenius, "Homeward Bound: Recent Immigration Enforcement and the Decline of the Illegal Alien Population," http://www.cis.org/trends_and_enforcement.

³ ICE, "Criminal Alien Program Analysis: Incarcerated Alien Universe," provided to Jessica Vaughan by ICE on January 12, 2009.

⁴ See data on federal reimbursement to Indiana correctional facilities at http://www.ojp.usdoj.gov/BJA/grant/05SCAAP_Data1.pdf.

⁵ See Jessica M. Vaughan and Jon D. Feere, "Taking Back the Streets: ICE and Local Law Enforcement Target Immigrant Gangs," <http://www.cis.org/ImmigrantGangs>.

⁶ See ICE report entitled "Secure Communities: A Comprehensive Plan to Identify and Remove Criminal Aliens," at http://www.ice.gov/pi/news/factsheets/secure_communities.htm.

to identify and remove the worst offenders (murderers, rapists, armed robbers, kidnappers, etc.). It has only a small regional field office to cover Indiana.

By requiring the Indiana Department of Corrections to screen prisoners for immigration status, prohibiting Indiana law enforcement agencies from refusing to cooperate with ICE, encouraging judges to keep illegal aliens in custody rather than releasing on bond, and setting up state statutes on crimes associated with illegal immigration that mirror federal laws, this bill is certain to ensure that the most serious criminal offenders are removed from the state, rather than permitted to slip between the cracks and continue their criminal career in Indiana. It will prevent rogue localities or agencies from obstructing the identification of criminal aliens, as has been the case in jurisdictions in Connecticut, Maryland, Virginia, California, Rhode Island and numerous other places. These policies often result in the release of violent criminals from police custody, sometimes with tragic consequences and new victims.⁷

In addition, I would recommend that a portion of the funding provided to administer the provisions of this law be used to train state and local law enforcement agencies, such as corrections officers, gang investigators, state highway patrols, probation and parole, and prosecutors, in the basics of immigration law. This training will give them a general understanding of immigration law and how it works, how to question foreign nationals in custody, how to implement the provisions of this act, help them make good use of ICE's Law Enforcement Support Center, avoid procedural mistakes, and increase the number of criminal aliens who are removed from Indiana. A number of other states (Kentucky Office of Homeland Security, Alabama Department of Public Safety, Georgia Sheriffs' Association, for example) have taken this approach in addition to or instead of the more comprehensive 287(g) delegation of authority training.⁸

Preventing Illegal Employment

It is widely recognized that employment is the most common incentive for illegal immigration to the United States. The measures in SB580 will provide an incentive for employers to use the highly effective E-Verify system, ensure that public sector jobs go to authorized workers, and offer an avenue for state-level enforcement against those who ignore these laws.

E-Verify works. It helps employers avoid hiring illegal workers and makes it harder for illegal workers to dupe their employers with false documents. It is easy to use, accurate, and helps reduce discrimination against immigrants. It enjoys broad public and bi-partisan support.⁹

⁷ See, for example, the case of Marco Riz in Jessica Vaughan, "Protect the Public, Not the Criminals," <http://cis.org/node/694>.

⁸ For an example of such a training program, see www.omegasecuresolutions.com.

⁹ Jessica M. Vaughan, "E-Verify Results Demonstrate Accuracy and Efficiency," <http://www.cis.org/articles/2008/jmvtestimony051408.html>.

The biggest problem with E-Verify is that it is voluntary. Those employers that wish to continue hiring illegal aliens can excuse themselves from the process. This is a significant disadvantage for law-abiding employers who must compete with them, and for those U.S. and legal immigrant workers who are shut out of those jobs. The provisions in SB580 that enable state prosecutors to investigate and prosecute possible instances of illegal employment will represent a strong disincentive for immigration scofflaws.

Arizona has a similar complaint-driven mechanism, together with universal mandatory use of E-Verify and a state statute against illegal hiring that parallels the federal law. The county attorneys, which have the authority to investigate complaints from the public, have had to undertake only a few investigations and prosecutions to date.¹⁰ However, the exodus of illegal workers from Arizona has been noticeable and swift. Newspapers have reported on several indicators, including declining school enrollments, high vacancy rates in certain apartment complexes, increasing requests for travel documents at Mexican consulates, etc.¹¹ Other states have learned that without some mechanism and funding for state prosecution of violations, the law may well be widely ignored.¹²

Addressing Document Fraud and Misuse

Many illegal aliens are able to hide in plain sight by becoming "documented" using tax identification numbers (ITINs), consular identification cards, or municipal identification. In addition, many illegal aliens steal the identity of citizens and legal residents in order to obtain employment, credit, and access to social services. SB580 addresses both of these problems.

By preventing acceptance of consular identification and the ITIN, this bill will close a significant documentation loophole that has enabled millions of illegal aliens to mask their identity and status, avoid arrest, open bank accounts, and receive tax credits and refunds.

Federal law enforcement agencies have warned against allowing the acceptance of consular identification cards for years. The Departments of Justice, Homeland Security and the FBI all have declared these cards worthless as identification. Steven McCraw, then assistant director of the FBI's intelligence office, told Congress in 2003, "There are major criminal threats posed by the cards, and a potential terrorist threat." There is no way to authenticate the identity of the bearer, and foreign governments have lax standards for issuance.¹³

¹⁰ Craig Harris, "Employer Sanctions Complaints Dropped Statewide," *Tucson Citizen*, May 20, 2008, <http://www.tucsoncitizen.com/altss/printstory/local/85811.php>.

¹¹ Randal C. Archibold, "Arizona Seeing Signs of Flight by Immigrants," *New York Times*, February 12, 2008, p. A 13.

¹² Cameron McWhirter and Mary Lou Pickel, "State's strict immigration law goes unenforced," *Atlanta Journal and Constitution*, January 25, 2009.

¹³ Marti Dinerstein, "IDs For Illegals," at <http://www.cis.org/articles/2003/back303.html>.

Since 1996 the IRS has issued more than seven million ITINs. They were never intended to be used as identification or to demonstrate entitlement for benefits. The IRS warns that they are not to be used for identification, only for filing taxes, but many businesses and government agencies around the country accept them anyway. The Treasury Department's internal auditors, among others, believe that this practice has created law enforcement problems and exacerbated the problem of identity fraud without increasing tax revenues.¹⁴

A number of other states have begun cracking down on identity theft, especially identity theft that is perpetrated for the purposes of illegal employment. Indiana lawmakers should also consider requiring government agencies to notify those individuals whose identity information has been compromised, as in Utah and Rhode Island, so that they can take steps to ameliorate the damage. Research shows that many of the victims of such theft are children, and citizens with Hispanic surnames are more likely to be the victims of job-related identity theft.¹⁵

Thank you again for the opportunity to submit testimony, and I would be pleased to answer any questions or provide additional information upon request.

Jessica M. Vaughan
Director of Policy Studies
Center for Immigration Studies
jmv@cis.org
(202)466-8185

The Center for Immigration Studies is a non-profit, non-partisan research institute that studies the effects of immigration on American society. Jessica M. Vaughan is an expert on immigration enforcement and compliance programs and state and local immigration initiatives. See www.cis.org.

¹⁴ See Vaughan, "Attrition Through Enforcement," p. 7.

¹⁵ Miriam Jordan, "How to Make Identity Theft Worse," *Wall Street Journal*, August 7, 2008, p. A8.