

## Immigration Enforcement Today Measured Against Benchmarks Set in 2007

In 2007, the Senate introduced bi-partisan, comprehensive immigration reform legislation containing a section establishing a series of border security and other enforcement “triggers” that had to be met before other sections of the bill, including the legalization of undocumented immigrants, would take effect. These security “benchmarks” were conditions demanded by Senators who insisted that the border must be secured first before dealing realistically with the undocumented population. The 2007 immigration reform legislation ultimately failed, but the border security buildup continued. The government has already met or surpassed many of those security benchmarks, yet some members of Congress refuse to move on to constructive dialogue over a legalization program.

Following is a list of those immigration enforcement conditions, and how they relate to today’s level of immigration enforcement.

### **1. Control of the Border**

The 2007 bill<sup>i</sup> specified that the Secretary of Homeland Security (DHS) must demonstrate operational control of 100 percent of the Southwest border “including the ability to monitor such border through available methods.”

By the bill’s definition, control of the border has been accomplished. Currently, the entire Southwest border is either “controlled,” “managed,” or “monitored” to some degree.<sup>ii iii</sup>

With the current record level of border enforcement, illegal crossings, as measured by apprehensions at the border, are at their lowest level since 1971.<sup>iv</sup> By comparison, the last time a legalization program was considered and passed in Congress, in 1986, apprehensions on the border were more than triple today’s level.<sup>v</sup>

### **2. Border Patrol Staffing**

The 2007 legislation specified that Border Patrol staffing be at 20,000 full-time agents. Currently, there are more than 21,200 agents.<sup>vi</sup> In addition, there are thousands of agents from other federal agencies, including the Drug Enforcement Agency (DEA), the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), Federal Bureau of Investigations (FBI), and other agencies, supplemented by 1,200 National Guard troops. This does not include thousands of agents employed by Customs and Border Protection (the parent agency of the Border Patrol and a component of the DHS) who work at the ports of entry on the border.<sup>vii</sup>

### **3. Border Infrastructure**

The 2007 legislation specified the construction of 670 miles of border fencing, 105 camera and radar towers, and four unmanned aerial vehicles.

To date, 650 miles of border fencing have been built out of the 652 miles that the Border Patrol feels is operationally necessary. The two additional miles are under construction.<sup>viii</sup> The fence now covers almost the entire length of the border from California to Texas.<sup>ix</sup> There is double fencing in many areas. Between Mexico and Texas, the Rio Grande River already serves as a natural barrier. Many additional miles of border are virtually impassible due to the remoteness of the terrain and deep canyons.<sup>x</sup>

The 2007 legislation specifies the use of at least 105 ground-based radar and camera towers. Customs and Border Protection now has 253 Remote Video Surveillance Systems with day and night cameras deployed on the Southwest border. In addition, the agency relies on 39 Mobile Surveillance Systems which are truck-mounted infrared cameras and radar.<sup>xi</sup> CBP has also sent Mobile Surveillance Systems, Remote Video Surveillance Systems, thermal imaging systems, radiation portal monitors, and license plate readers to the Southwest border.<sup>xii</sup>

The 2007 legislation specified the deployment of four unmanned aerial vehicles along the Southwest border. Customs and Border Protection currently operates three Predator B unmanned aerial drones from an Arizona base,<sup>xiii</sup> and two from a Texas base, providing surveillance coverage of the Southwest border across Arizona, New Mexico, and Texas.<sup>xiv</sup>

### **4. Apprehension and Detention of Border Crossers**

The 2007 legislation specified that DHS should be detaining all persons illegally crossing the Southwest border, and it should have the resources to hold in detention up to 31,500 persons per day on an annual basis.

Prior to August 2006, many persons who were apprehended at the border were released pending their immigration hearing. That practice was ended in August 2006, and now nearly all persons crossing the border illegally are detained.<sup>xv</sup> Immigration and Customs Enforcement is now funded to hold 33,400 individuals in detention at any given time. Over the course of the Government's fiscal year 2010, ICE reported that it detained 363,000 individuals<sup>xvi</sup>—52,000 more than the 311,000 individuals who were detained in 2007.<sup>xvii</sup> In fiscal year 2011, the government deported 397,000 persons, a record.<sup>xviii</sup> That number is approximately 78,000 more than were removed in 2007.<sup>xix</sup>

In addition to removal, many who cross illegally in Texas and Arizona face prosecution on criminal charges through a program called "Operation Streamline." These persons face a federal judge, pre-trial custody, and jail time in a federal prison before they are put into deportation proceedings.

## 5. Worksite Enforcement Tools

The 2007 legislation specified that DHS must comply with a set of requirements for a worksite system that was contained elsewhere in the legislation—which, of course, was not passed.

Today, the Department of Homeland Security is using an electronic worker verification system called E-Verify. The system currently is not mandatory, except for certain classes of employers, such as federal contractors. Making the system mandatory nationwide will require further legislation that will be difficult to pass if it is not coupled with broader reforms.

Aside from its voluntary enrollment, the system in use today is similar to that contained in the 2007 legislation. It is electronic, and searches government databases to determine whether a prospective hire is authorized to work in the U.S. It also searches government image databases, if the prospective hire presents a U.S. passport, a U.S. Permanent Resident card, or a work authorization document (all of which are federally-issued identification documents with embedded images). Despite the fact that Congress has not mandated its use beyond certain types of employers,<sup>xx</sup> employers continue to sign up to use E-Verify. Nationwide, more than 269,000 employers at over 900,000 worksites are enrolled as of June 2011.<sup>xxi</sup>

### Above and Beyond the 2007 Benchmarks

While these 2007 “benchmarks” have largely been met if not surpassed, they are not the only methods of immigration enforcement that have been implemented or expanded in the last four years. Here are a few examples:

- **US-VISIT:** When a visitor to the U.S. arrives in the U.S., a Customs and Border Protection inspector captures a visitor’s fingerprints and photograph and instantly checks for any criminal background or immigration problems. In the case of someone who has applied for a visa through the U.S. State Department, that person was photographed and fingerprinted when applying for the visa, and the information at the point of entry can be compared with the information in the State Department’s records, to ensure the visa holder arriving in the U.S. is the same person as the one who applied for the visa.
- **ESTA:** For persons who are not required to apply for a visa, there is now a program they must use to gain travel authorization from the U.S. government. With the Electronic System for Travel Authorization, someone coming from a visa waiver country (mainly Europe and Japan) enters information about him- or herself online and that information is examined by DHS to determine whether the visitor poses a potential problem.
- **Secure Communities:** Persons who are arrested by local police for any reason have their fingerprints taken as part of the booking process. These fingerprints, after being checked by the FBI for criminal history, are turned over to the Department of Homeland Security, which checks its databases for potential immigration problems. If a database check turns up a problem, Immigration and Customs Enforcement can interview the individual or request that the local police agency place a hold on the person’s release from detention. The program is proving to be extremely controversial because it is being implemented without the broader reforms to the immigration system necessary to deal realistically with the nation’s undocumented population.

- **I-9 Audits:** While the E-Verify electronic verification is not yet mandatory, ICE continues to use a different tool for enforcing immigration laws in the workplace. Employers are required to keep records on each employee showing that the employer was provided with documents that authorize the employee to work in the U.S. Since 2007, ICE has stepped up its monitoring of employer compliance with the law. For example, from the end of April 2011 until mid-November, ICE slapped employers with fines totaling nearly \$800,000, compared to under \$200,000 in the same period in 2008. In the same period this year, ICE initiated triple the number of cases against employers than in the corresponding period in 2008.<sup>xxii</sup>
- **Benefit Fraud:** The Fraud Detection and National Security Directorate (FDNS) was created within U.S. Citizenship and Immigration Services to check the background of a person applying for some immigration benefit, such as citizenship. If someone is found to be ineligible for that benefit (due to a criminal history, for example) the person will be denied the benefit and may be placed into deportation proceedings. In addition to checking the information supplied by immigrant benefit petitioners, the agency investigates, among others, employers who are petitioning for a worker to determine if the employer really exists and is paying workers what the employer reported to USCIS.

## Conclusion

Despite progress on enforcement benchmarks set in 2007, and despite other advances in enforcement unanticipated by the 2007 legislation, some in Congress say they cannot support reform until more is done. In truth, these members of Congress will never support a reasonable solution to our immigration problems. By Congress' own criteria, America has achieved sufficient levels of enforcement. Continued advancements in enforcement will depend on broader reforms to the immigration laws that are now broken, so that enforcement resources can be targeted to focus on real threats.

*December 2011*

---

<sup>i</sup> S. 1639, introduced by Senators Edward Kennedy (D-MA) and Arlen Specter (R-PA), available at: [http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110\\_cong\\_bills&docid=f:s1639pcs.txt.pdf](http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=110_cong_bills&docid=f:s1639pcs.txt.pdf). Triggers are in Section 1, "Effective Date Triggers."

<sup>ii</sup> Government Accountability Office, "BORDER SECURITY: Preliminary Observations on Border Control Measures for the Southwest Border," Testimony Before the Subcommittee on Border and Maritime Security, Committee on Homeland Security, House of Representatives, February 15, 2011. Available at: <http://www.gao.gov/new.items/d11374t.pdf>.

<sup>iii</sup> Subsequent to the 2007 legislation, members of Congress opposed to immigration reform have adopted a definition of "operational control" that appears in the Secure Fence Act of 2006: the prevention of all unlawful entries. Congress has never appropriated the amount necessary to prevent every single unlawful entry, which might require tens or hundreds of thousands more Border Patrol agents. Such expense would not be practical or sustainable, and the 2007 legislation contained the caveat that the listed enforcement measures be completed "as soon as practicable" and "subject to the necessary appropriations."

<sup>iv</sup> In 2010, total Border Patrol apprehensions on the Southwest border were 447,000. Office of Immigration Statistics, "Apprehensions by the U.S. Border Patrol: 2005–2010," July 2011. Available at: <http://www.dhs.gov/xlibrary/assets/statistics/publications/ois-apprehensions-fs-2005-2010.pdf>  
In 1971, total aliens apprehended were 420,000. Immigration and Naturalization Service, "1975 Annual Report: Immigration and Naturalization Service," 1976.

- 
- v Immigration and Naturalization Service, “1989 Statistical Yearbook of the Immigration and Naturalization Service,” September 1990.
- vi “Testimony of Secretary Janet Napolitano U.S. Department of Homeland Security Before the United States House of Representatives Committee on the Judiciary,” October 26th, 2011. Available at: <http://judiciary.house.gov/hearings/pdf/Napolitano%2010262011.pdf>.
- vii National Immigration Forum, “The ABCs of Federal Agents on the Border,” May 2011. Available at: <http://www.immigrationforum.org/images/uploads/2011/FederalAgentsontheBorder.pdf>.
- viii See note vi.
- ix See map: U.S. Customs and Border Protection, “Fencing Construction Status,” 12/25/2009. Available at: [http://www.cbp.gov/linkhandler/cgov/newsroom/highlights/fence\\_map.ctt/fence\\_map.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/highlights/fence_map.ctt/fence_map.pdf).
- x *Washington Post*, “Republicans are fencing with the truth on immigration,” (editorial), November 30, 2011. Available at: [http://www.washingtonpost.com/opinions/republicans-are-fencing-with-the-truth-on-immigration/2011/11/29/gIOAu2cMEO\\_story.html](http://www.washingtonpost.com/opinions/republicans-are-fencing-with-the-truth-on-immigration/2011/11/29/gIOAu2cMEO_story.html).
- xi “Statement of U.S. Customs and Border Protection Border Patrol Chief Michael Fisher, Assistant Commissioner Thomas Winkowski, U.S. Immigration and Customs Enforcement Executive Associate Director James A. Dinkins, U.S. Coast Guard Rear Admiral Paul F. Zukunft, of the Department of Homeland Security, Before the House Appropriations Subcommittee on Homeland Security,” March 16, 2011. Available at: [http://www.cbp.gov/linkhandler/cgov/newsroom/congressional\\_test/southwest.ctt/southwest.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/congressional_test/southwest.ctt/southwest.pdf).
- xii Department of Homeland Security, “Fact Sheet: Smart, Effective Border Security and Immigration Enforcement,” October 5, 2011. Available at: <http://www.dhs.gov/ynews/releases/20111005-fact-sheet-border-security-immigration-enforcement.shtm>.
- xiii U.S. Customs and Border Protection, “Unmanned Aircraft System MQ-9 Predator B,” *Fact Sheet*, January 2011. Available at: [http://www.cbp.gov/linkhandler/cgov/newsroom/fact\\_sheets/marine/uas.ctt/uas.pdf](http://www.cbp.gov/linkhandler/cgov/newsroom/fact_sheets/marine/uas.ctt/uas.pdf).
- xiv Customs and Border Protection, “CBP Receives Second Predator-B in Texas,” *News Release*, October 28, 2011. Available at: [http://www.cbp.gov/xp/cgov/newsroom/news\\_releases/national/10272011.xml](http://www.cbp.gov/xp/cgov/newsroom/news_releases/national/10272011.xml).
- xv Meissner and Kerwin, “DHS and Immigration: Taking Stock and Correcting Course,” Migration Policy Institute, February 2009. Available at: [http://www.migrationpolicy.org/pubs/DHS\\_Feb09.pdf](http://www.migrationpolicy.org/pubs/DHS_Feb09.pdf).
- xvi Department of Homeland Security Office of Immigration Statistics, *Annual Report*, “Immigration Enforcement Actions: 2010,” June 2011. Available at: <http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement-ar-2010.pdf>.
- xvii Department of Homeland Security Office of Immigration Statistics, *Annual Report*, “Immigration Enforcement Actions: 2007,” December 2008. Available at: [http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement\\_ar\\_07.pdf](http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_07.pdf).
- xviii U.S. Immigration and Customs Enforcement, “FY 2011: ICE announces year-end removal numbers, highlights focus on key priorities including threats to public safety and national security,” *News Release*, October 18, 2011. Available at: <http://www.ice.gov/news/releases/1110/111018washingtondc.htm>.
- xix “Immigration Enforcement Actions: 2007”
- xx Some states have mandated the use of E-Verify for businesses operating in within the state as a condition for obtaining a business license.
- xxi U.S. Citizenship and Immigration Services, “USCIS and Mississippi Implement New E-Verify Tool to Combat Fraud,” June 13, 2011. Available at: <http://www.uscis.gov/portal/site/uscis/menuitem.5af9bb95919f35e66f614176543f6d1a/?vgnnextoid=304cadec01a80310VgnVCM100000082ca60aRCRD&vgnnextchannel=de779589cdb76210VgnVCM100000b92ca60aRCRD>.
- xxii Immigration and Customs Enforcement, “ICE Assistant Secretary John Morton announces 1,000 new workplace audits to hold employers accountable for their hiring practices,” *News Release*, November 19, 2011. Available at: <http://www.ice.gov/news/releases/0911/091119washingtondc2.htm>.