



## **Assets or Enemies: Securing our Nation by Enforcing Immigration Laws**

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The United States of America has a long and storied history of welcoming immigrants and tapping their potential to advance the nation. Citizens from other countries have for centuries come to the United States seeking to realize their dreams, at great economic, commercial, and social benefit to their adopted country. From the armed services to corporations to communities, we are truly a nation of immigrants. In fact, President Obama noted in his inaugural address, “we are shaped by every language and culture, drawn from every end of this Earth” affirming that “our patchwork heritage is a strength, not a weakness.”

Equality, liberty and justice for all are the core principles upon which our nation remains safe, secure and prosperous. Our nation’s antiquated immigration system, however, fails to extend these fundamental principles to immigrants living among us, serving to undermine our safety, security and prosperity. For our nation to remain secure in the 21<sup>st</sup> century, we need a 21<sup>st</sup> century immigration system that sees enforcement as a balance between security, accountability, and human rights.

Beyond operating in an irresponsible, unaccountable fashion, there are ugly knots in our immigration system barring productive and law-abiding men, women and children wishing to immigrate to America. Coupled with unbalanced enforcement priorities that allocate too much attention to non-violent border crossers and too little attention to smugglers of weapons, drugs and humans, our immigration system weakens our international standing, national security and economic health.

Indisputably, there are individuals who misuse America’s immigration system for nefarious purposes. Measures to deport or exclude foreign nationals who pose a potential threat to our national security have a legitimate place in any immigration system and wise and deliberate use of immigration authority can increase the security of our country. However, this proper intention of separating the few individuals who wish to do us harm from the many who seek only safety or to work or reunite with their families has been badly distorted.

Since the terrorist attacks of September 11, 2001, immigration enforcement has become increasingly entwined and confused with national security. Views have shifted from seeing immigrants as potential assets to seeing them as potential enemies. Undertaken in the name of safeguarding national security, immigration enforcement actions and immigration restrictions have been overbroad, overly harsh, and misdirected. Furthermore, community security is reduced when our archaic immigration laws are

enforced using methods that replace accountability, responsibility and respect with fear, racism, and illegal profiling.

Our failure to value immigrants and immigration starts beyond our borders. The tens of thousands of Iraqi and Afghan nationals who serve as interpreters for the United States military forces overseas illustrate the value that foreign citizens can bring to our national interests. Repeating a mistake we made during the Vietnam era, thousands of these interpreters found themselves in peril in their home countries on account of their service to our war effort, yet the United States immigration system was not equipped or not sufficiently motivated to serve their needs.

A special visa program for endangered Iraqi and Afghani interpreters became quickly and dangerously jammed as both interpreters and their U.S. military allies worked to navigate the archaic immigration morass. Concerned about the slow-moving immigration bureaucracy, the U.S. ambassador to Iraq, Ryan C. Crocker, issued a State Department cable in July 2007 seeking support for expanded breadth of the visa program and praising the bravery, sacrifices, and service of all “Locally Engaged Staff.”

On the ground in Iraq, Lt. Col. Steven Miska, an Army infantry officer, recognized a direct connection between increased immigration and national security and saw the value in welcoming trusted partners into the United States. Col. Miska put it this way, “Not only is it the right thing to do from a moral perspective, it’s the way to win.” After looking into the impenetrable visa process, he decided that “no Iraqi would ever figure that thing out,” and charged his staff with helping shepherd the interpreters out of Iraq, through Jordan and Syria and into the United States. Correctly, Col. Miska stressed that immigration assistance would reassure Iraqis that they can trust Americans despite the risk in helping them.<sup>1</sup> The opposite is also true - denying visas to our most loyal allies tells the world not to trust Americans, and certainly not to trust our immigration system.

When the interpreter visa program began in 2006, 50 slots existed for the approximately 10,000 Iraqi interpreters working for the United States.<sup>2</sup> The next year, in response to diplomatic and military pressure, Congress temporarily increased the available visas to 500 annually for Fiscal Years 2007 and 2008 in hopes of eliminating the nine-year backlog of interpreter applicants.<sup>3</sup> Finally, on June 3, 2008 (two years after the initial special visa program took effect and more than five years after the

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<sup>1</sup> “Officers Battle Visa Hurdles for Iraq Aides,” Conrad Mulcahy, New York Times, May 14, 2008, available at [http://www.nytimes.com/2008/05/14/world/middleeast/14interpreters.html?\\_r=1](http://www.nytimes.com/2008/05/14/world/middleeast/14interpreters.html?_r=1)

<sup>2</sup> “Iraqi Translators: Visas or Death?,” Scott Conroy, CBS Evening News, February 14, 2007, available at <http://www.cbsnews.com/stories/2007/02/14/eveningnews/main2478843.shtml>

<sup>3</sup> See Department of Homeland Security, USCIS Fact Sheet, July 2, 2007 available at <http://www.uscis.gov/files/pressrelease/TranslatorExpansionFS02Jul07.pdf>

invasion of Iraq), President Bush signed a new law authorizing higher numbers of visas for Iraqi and Afghan interpreters, allowing processors to exceed the earlier visa cap.<sup>4</sup>

Loyal interpreters and bona fide refugees are no threat to our national security, it is our crumbling immigration system itself that creates the danger.

### **Border Enforcement: National security or national boondoggle?**

For all stakeholders, the U.S.-Mexico border has come to represent the shortcomings of our immigration system. Those who view immigrants as a threat rather than an asset see the Southern border as the greatest risk to our national security. Those who advocate welcoming immigrants as new neighbors and taxpayers see the militarization and fencing of the Southern border as a symbolic and actual rejection of immigrants that breeds intolerance and nativism. Those who depend on the border for economic strength see the restrictions as a choke hold on success.

Over the past two decades, immigration policies have focused on securing the Southern border, seemingly at all costs. This myopic approach ignores the reality of the “border” as a dynamic concept comprised of people, communities, and businesses. When immigration policies respect the rights of community members and the needs of their hometowns, the national security is strengthened. When these communities are shattered by immigration enforcement actions and residents are pushed into hiding, the national security suffers. According to border leaders, including local law enforcement and elected officials, respectful and informed immigration policies can improve security and safety for the border region and the nation, while enforcement-obsessed policies drain resources, weaken security, and degrade communities.<sup>5</sup> These border residents point to lengthy delays at ports of entry that result in lost working hours and wages, fencing projects that cost \$7.5 million per mile but fail to stop irregular immigration flows, and immeasurable lost opportunities in social and economic development due to the Federal Government’s focus on escalating immigration enforcement operations.

Predictions of diminished community security due to unwise immigration enforcement priorities have unfortunately come to pass. Recent reports show that the government’s unwavering focus on apprehending and criminally prosecuting undocumented migrants has overshadowed concerns for community safety and security. Department of Justice statistics show that during the eight years of the Bush Administration, the annual count

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<sup>4</sup> See Department of State, “Special Immigrant Visas for Iraqi and Afghan Translators/Interpreters,” available at [http://travel.state.gov/visa/immigrants/info/info\\_3738.html](http://travel.state.gov/visa/immigrants/info/info_3738.html)

<sup>5</sup> “Effective Border policy: Security, Responsibility and Human Rights at the U.S.-Mexico Border,” U.S.-Mexico Border and Immigration Task Force, November 2008, available at <http://bnhr.org/pdf/BorderPolicy%20Report2008.pdf>

of criminal prosecutions for immigration offenses more than quadrupled while prosecutions of white-collar crimes, weapons and narcotics crimes slumped.<sup>6</sup>

During just the single month of February 2008, criminal immigration cases made up the majority of new federal criminal prosecutions nationwide, about 7,250 out of 13,500, and outnumbered all white-collar, civil rights, environmental, and other criminal cases combined.<sup>7</sup> Federal judges and prosecutors report that immigration prosecutions siphon resources from other criminal prosecutions, erode morale among federal lawyers and overload the federal court system. Local communities are left to deal with the remainder of crimes, including gun trafficking, organized crime and the increasingly violent drug trade, which are now routinely referred to state and county officials, who often lack the finances or authority to prosecute them effectively.

This misguided prosecution strategy demonstrates how turning non-violent immigrants into criminals is both ineffective and counterproductive. While the Bush Administration attributed a decrease in illegal border crossings to its intense enforcement operations, long-term studies of the flow of undocumented immigrants tie declines more to the failing economy than to heightened enforcement strategies.<sup>8</sup> And even allowing for some deterrent effect caused by enforcement measures, there is no evidence that the criminal prosecution of immigrants for illegal border crossings is an effective deterrent. The escalating use of criminal prosecutions in interior enforcement, such as the kangaroo trials of hundreds of immigrant workers in Postville, Iowa in 2008, does not address the fundamental flaw in this strategy either. During its final year, the Bush Administration swept down with a vengeance on worksites across the nation, making good on its announced intention to detain and deport every undocumented immigrant in the United States. Because Congress had not enacted immigration reform, DHS reasoned that escalated raids were needed to safeguard the nation's security. Workplace raids reached an all-time high with upwards of 6,000 arrests in 2008, yet no terror-related arrests were among them.<sup>9</sup> What the raids have succeeded in is terrible disruption of economies and communities. Factories have closed, families have been broken, and small-town economies have been crippled. Mayor Robert Penrod of Postville said shortly after the raid there, "We didn't need this. It literally blew our town away." The fact is we cannot prosecute our way out of our broken immigration system.

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<sup>6</sup> Transactional Records Access Clearinghouse, Syracuse University, Jan. 12, 2009, summary available at <http://trac.syr.edu/tracreports/crim/201/>

<sup>7</sup> "Immigration Prosecutions Hit New High", Spencer S. Hsu, Washington Post, June 2, 2008, available at [http://www.washingtonpost.com/wp-dyn/content/article/2008/06/01/AR2008060102192\\_pf.html](http://www.washingtonpost.com/wp-dyn/content/article/2008/06/01/AR2008060102192_pf.html)

<sup>8</sup> "Fewer Job Openings Equals Fewer Immigrants: Undocumented Immigration Slows Along With the U.S. Economy," Immigration Policy Center, October 1, 2008, available at <http://www.immigrationpolicy.org/images/File/factcheck/FewerJobOpeningsFewerImmigrants10-01-08.pdf>

<sup>9</sup> "Immigration Raid Spotlights Rift of Have-Nots," Deborah Hastings, AP National Writer, Laurel Leader-Call, January 24, 2009, available at [http://www.leadercall.com/local/local\\_story\\_024125938.html](http://www.leadercall.com/local/local_story_024125938.html)

Turning the full force of the immigration laws against those who are apprehended at the border or picked up in worksite raids ignores the fact that we will never be able to deport the more than 12 million people living illegally in the United States. Using our scarce resources to prosecute immigrant workers, while turning our backs on weapons traffickers and other criminals undermines national and community security.

### **Enforcement Based on Ethnicity or Religion: Undermining community safety**

In the wake of September 11, the Bush Administration undertook a series of immigration actions that ostensibly sought to identify non-citizens who were a national security threat. Several of these actions explicitly targeted Arab and Muslim populations. In 2002 and 2003, a special registration program called the National Security Entry-Exit Registration System (NSEERS) was launched by the Immigration and Naturalization Services (INS) that required more than 80,000 male non-U.S. citizens from twenty-four Arab and Muslim countries and North Korea to be fingerprinted, photographed and interviewed under oath. Despite suspension of a few requirements in 2004, criminal and civil penalties associated with the failure to comply with NSEERS remain alive, including arrest, detention, monetary fines and/or deportation.

Since 2001, NSEERS and other post-September 11 immigration enforcement initiatives that targeted Arab or Muslim individuals have been challenged as ineffective counterterrorism measures with high administrative burdens and questionable constitutionality. INS officials later acknowledged they were ill-prepared to carry out NSEERS and acknowledged numerous agency shortcomings.<sup>10</sup> The 9/11 Commission Report staff found no evidence to suggest that any of the immigration actions undertaken following the terrorist attacks had identified any terrorists.<sup>11</sup> No registrants have been convicted of a terrorist crime.<sup>12</sup> This dearth of counterterrorism success is not surprising given the implementation stumbles and the untargeted nature of the initiative.

NSEERS has proven painfully ill-advised and counterproductive in fostering community safety and national security. The program unwisely diverted resources from more effective national security initiatives. Arabs and Muslims lost their fundamental right to be treated equally by the United States Government, yet the nation gained no measurable progress towards combating terrorism. Further, entire immigrant

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<sup>10</sup> “ADC Launches ‘End the Shame of NSEERS’ Ad Campaign,” American-Arab Anti-Discrimination Committee, available at <http://www.adc.org/index.php?id=3078>

<sup>11</sup> “Threats and Responses in 2001: Staff Statement No. 10.,” National Commission on Terrorist Attacks Upon the United States, April 15, 2004, available at [http://govinfo.library.unt.edu/911/staff\\_statements/staff\\_statement\\_10.pdf](http://govinfo.library.unt.edu/911/staff_statements/staff_statement_10.pdf)

<sup>12</sup> “The Use and Abuse of Immigration Authority as a Counterterrorism Tool: Constitutional and Policy Considerations,” The Constitution Project, 2008, available at [http://www.constitutionproject.org/pdf/Immigration\\_Authority\\_As\\_A\\_Counterterrorism\\_Tool.pdf](http://www.constitutionproject.org/pdf/Immigration_Authority_As_A_Counterterrorism_Tool.pdf)

communities were alienated by enforcement programs driven by national origin. Relationships of trust that law-enforcement agencies had carefully nurtured with immigrant communities vanished as anxiety and suspicion of law enforcement took hold. In a period when hate crimes against Arabs and Muslims were climbing, these communities were afraid to seek protection from police. As with the special visa program for Iraqi and Afghani interpreters, the Government fumbled an opportunity to build goodwill with a community of allies. Instead of creating community security, NSEERS ripped apart Arab and Muslim communities and individual families as 2,870 people were detained and 13,499 were placed in deportation proceedings for alleged immigration violations.<sup>13</sup> No terrorists were identified.

Former Government officials have attempted to restore the relationships lost in the aftermath of NSEERS. At a 2004 gathering of Arab-Americans, former Department of Homeland Security Undersecretary for Border and Transportation Security Asa Hutchinson said, “It is our hope to completely end this special registration program because our long term goal is to treat everybody the same way and not based upon where you came from.”<sup>14</sup> Former INS Commissioner James Ziglar was even more direct in his comments on NSEERS, “To my knowledge, not one actual terrorist was identified. But what we did get was a lot of bad publicity, litigation and disruption in our relationships with immigrant communities and countries that we needed help from in the war on terror.”<sup>15</sup>

Despite the creation of a newer and broader tracking system known as US-VISIT, which essentially renders redundant the immigration purpose of NSEERS, the Department of Homeland Security has failed to officially end the discriminatory NSEERS program. The agency’s authority to reenact future tracking schemes based on national origin remains intact. These programs should be repudiated as ineffective counterterrorism measures that are counterproductive to safety and security.

### **Local Enforcement of Immigration Laws: Undermining our economic security**

The use of state and local law enforcement to enforce federal immigration laws dilutes community security by disrupting communication between police and communities, reducing the willingness of immigrant community members to seek protection, report crimes or cooperate in investigations and prosecutions, and damaging community

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<sup>13</sup> See Department of Homeland Security, ICE, “Changes to National Security Entry/Exit Registration System (NSEERS), Dec. 1, 2003, available at <http://www.ice.gov/pi/news/factsheets/nseersFS120103.htm>

<sup>14</sup> “ADC Launches ‘End the Shame of NSEERS’ Ad Campaign,” available at <http://www.adc.org/index.php?id=3078>

<sup>15</sup> “Program’s Value in Dispute as a Tool to Fight Terrorism,” Rachel L. Swarns, The New York Times, Dec. 21, 2004 available at [http://query.nytimes.com/gst/fullpage.html?res=950CE0DB1330F932A15751C1A9629C8B63&sec=&spon=&page\\_wanted=2](http://query.nytimes.com/gst/fullpage.html?res=950CE0DB1330F932A15751C1A9629C8B63&sec=&spon=&page_wanted=2)

policing initiatives. Communities suffer when law enforcement officers are distracted from their core functions by immigration enforcement efforts.

Notoriously, Sheriff Joe Arpaio in Maricopa County, Arizona has made immigration enforcement his hallmark, to the detriment of community safety in his county. Since Sheriff Arpaio entered into an agreement in January 2007 with the Department of Homeland Security to enforce immigration laws, his department's crime-fighting efforts have suffered.<sup>16</sup> Investigations resulting in an arrest shrank from 10.5 percent prior to the immigration partnership to 2.5 percent by July 2007.<sup>17</sup> After Sheriff Arpaio pulled deputies off patrol beats and reassigned them to immigration-related units, the response times to emergency calls increased and patrol cars arrived late two-thirds of the time on more than 6,000 of the most serious calls for service.<sup>18</sup> Lawsuits were filed accusing deputies of racial profiling Latinos.<sup>19</sup> Economic security in Maricopa County also plummeted as the Sheriff incurred a \$1.3 million deficit within the initial three months of enacting the immigration agreement, largely attributed to overtime wages paid to officers.<sup>20</sup>

The failure of DHS to monitor and carefully control the actions of its partners indicates not only that the existing 287(g) program lacks appropriate safeguards, but it also highlights yet again how misguided attempts to conflate immigration enforcement and security can easily lead us down a path of demagoguery and discrimination. Sheriff Arpaio is perhaps the worst, but not the only, example of this dangerous conflation of duties.

## **Conclusion**

Thus, the threat posed by immigration comes not from immigrants or from a robust immigration policy, but from fear of immigrants. We need an immigration system and enforcement mechanisms that ensure we know who is here, who is coming, and whether or not they have left when they are supposed to, but without reform, that day is a long way off. Rational, honest people, whether employers or individual immigrants, are choosing to go around our legal system, not through it. We currently have no incentives for people here on expired visas or who came illegally to come forward and get right with the law, and the chances that we will drive a significant number of them out are next to zero. And with respect to terrorism and other external threats, we need to isolate and dispose of those threats without isolating America, sorting needles from haystacks so that our economy grows and our place among nations does not deteriorate further.

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<sup>16</sup> "What happens when local cops become immigration agents? Arizona sheriff's immigration enforcement activities impact budget, arrest rate and response times," Immigration Policy Center, August 6, 2008, available at <http://immigrationpolicy.org/images/File/factcheck/AZTribuneSeries8-6-08.pdf>

<sup>17</sup> Immigration Policy Center.

<sup>18</sup> Immigration Policy Center.

<sup>19</sup> "U.S. Citizens Claim Profiling, Join Lawsuit Against Sheriff Arpaio," Daniel Gonzalez, The Arizona Republic, July 17, 2008 available at <http://www.azcentral.com/news/articles/2008/07/17/20080717profiling0717.html>

<sup>20</sup> Immigration Policy Center.

The efforts to derail or delay immigration reforms that can enhance security have mainly been led by those opposed to immigration, not those most concerned about national security. Despite claims to the contrary, the loudest voices in the immigration debate tend to be those who want to make legal immigration and legal status once here more difficult, feeding more of the immigration that is happening into the black market. Those who appear to come from the law, order and security side of this debate have actually left us with less law, less order and less security.

The real threat to our security comes if we cannot see the difference between threats and assets when it comes to our immigration system and the enforcement thereof. An immigration enforcement system based on accountability, transparency, and human rights is within our grasp. By leading our nation to a 21<sup>st</sup> century immigration system, President Obama can restore our reputation as a beacon of hope the world over, secure our borders, and protect our communities.