

Enforcing Immigration Laws: Repairing our Broken Immigration System

For years the U.S. government has addressed unauthorized immigration primarily through the lens of deportation and removal, pursuing enforcement-only policies that have not effectively curbed unauthorized immigration. An increase of personnel and technology along the U.S.-Mexico border has been accompanied by increased worksite enforcement in the interior of the United States. In addition, U.S. Immigration and Customs Enforcement (ICE) has partnered with state and local police agencies and jails to identify and apprehend immigrants and to remove them from the country. None of these efforts has resulted in a significant decline in the size of the unauthorized population, but these enforcement policies and priorities have had devastating impacts on U.S. families and communities.

Comprehensively reforming our broken immigration system will necessarily transform the role of immigration enforcement. Legalization of unauthorized immigrants already in the United States will result in a significantly smaller unauthorized population, and the creation of flexible legal channels for those immigrants we want and need will ensure that future flows of illegal immigration are minimal. However, there will continue to be a need to enforce our nation's immigration laws. The challenge is designing appropriate, effective enforcement mechanisms for a new, well-functioning legal immigration system.

Border enforcement will always be necessary for immigration enforcement and national security. However, the borders must be recognized as gateways through which legitimate transnational commerce and travel are encouraged. The U.S. government should focus its enforcement efforts on combating genuine security risks along our borders. Comprehensive immigration reform also means enforcing current laws in a manner that ensures fair and humane treatment for all. Due process and humane policies must be restored at every stage of the process, including during worksite and home raids. Finally, enforcement must include employment law enforcement. Comprehensive reform must recognize that strong employment protections for all workers reduces the incentive for unscrupulous employers to hire and mistreat unauthorized workers, thereby improving wages and working conditions for all workers.

A comprehensive immigration-enforcement strategy would provide the following benefits to the United States:

- Allow law-enforcement agencies along the border and in the interior of the country to focus on genuine security risks, as well as smuggling, trafficking, and other serious criminal activity.
- Ensure that all persons are treated humanely and fairly, and that human and civil rights are respected throughout the enforcement process.
- Reduce the incentive for unscrupulous employers to hire and exploit unauthorized workers.
- Ensure that people who are arrested have access to due process for determining their right to remain in the United States and to not be detained.

The following are principles for immigration enforcement within the context of comprehensive immigration reform:

Border Enforcement

- **Make border-enforcement policies, projects, and agencies accountable to the communities in which they operate.** This includes the creation of a U.S.-Mexico Border Review Commission, a mandatory Congressional Report on Border Deaths, significant increases in training for the Border Patrol, and regular consultations with local communities.
- **Differentiate between border security and enforcing immigration laws.** Although border enforcement necessarily involves preventing illegal border crossings, it also encompasses a host of other issues that do not necessarily involve immigration. We must provide resources that address cross-border drug trafficking, gun running, and border violence to the appropriate law-enforcement agencies.

Interior Enforcement

- **Improve detention policies and conditions.** Detention standards—including guidelines relating to transfers, language access, medical care, access to counsel, telephone access, and religious practice and visitation—must be codified and applied to all locales in which ICE detainees are held. There must be additional oversight of detention facilities to ensure compliance with detention standards.
- **Legislation should expand judicial discretion to consider individual circumstances so that each immigration case can be evaluated on its own merits.** Judges and Department of Homeland Security (DHS) officials should be able to consider the individual circumstances of each case when making a determination about a person’s liberty. Mandatory detention categories should not be expanded, nor should removal grounds be added or expanded. The detention statute should be modified to enhance release and parole options for individuals who pose no flight risk or danger to public safety. Detention should only be a last resort and, in every case, the burden should be on the government to demonstrate that detention is necessary.
- **Ensure access to counsel and legal information.** Legislation should provide for national expansion of the legal orientation presentation program, and other programs to secure legal counsel for all detained individuals and for vulnerable populations, including children and mentally ill individuals who are unable to meaningfully participate in their removal proceedings. Pilot programs for exploring government-funded positions for “Guardians ad Litem” and legal counsel for vulnerable populations should be included.
- **All individuals should have their fair day in court.** Legislation should ensure meaningful judicial and administrative review and provide essential resources and personnel necessary to prevent delays in resolving cases in immigration court.
- **The federal government should be in charge of immigration enforcement.** The established doctrine of federal pre-emption of immigration enforcement must be followed. Before entering into any partnerships with state and local police agencies, DHS and Congress must assess the impact of that partnership on the local community, the impact on the immigrant population, the potential for racial profiling and civil-rights violations, and the impact on DHS’s ability to fulfill its enforcement priorities. Further, meaningful oversight and adequate supervision of local law-enforcement agencies by DHS is necessary.
- **Enforce civil-rights laws and protections for noncitizens during all enforcement actions.** Provide civil-rights training for all immigration officials and local law-enforcement officers enforcing immigration law. Create independent oversight mechanisms to monitor and enforce the protection of civil rights, including prohibitions against racial and ethnic profiling.

Enhanced Enforcement of Laws Protecting Workers

- **Make enforcement of labor laws a priority.** The Department of Labor must be provided with additional resources to investigate and prosecute wage and hour violations, ensure worksite safety, and enforce other protections designed to prevent employers from taking advantage of workers. Increasing this kind of enforcement would directly affect unscrupulous employers who frequently rely on unauthorized workers.
- **Establish clear rules that give precedence to labor investigations where there are potential conflicts between labor and immigration-enforcement issues.** Immigration enforcement must not interfere with ongoing labor disputes or with investigations into labor law violations. DHS must have a policy which requires that if ICE discovers employment or labor law violations in the course of its worksite enforcement actions, those violations are reported to the appropriate government labor or employment-rights agency.
- **Hold employers accountable for employment- and labor-law violations.** Ensure confidentiality for those who cooperate with employment and labor-law investigations, and grant visas and an opportunity for immigrant workers to petition for them and for work authorization, so that they can cooperate with investigations into workplace law violations.

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