

# EXECUTIVE SUMMARY

## INTRODUCTION

The U.S. Commission on Immigration Reform was created by Congress to assess U.S. immigration policy and make recommendations regarding its implementation and effects. Mandated in the Immigration Act of 1990 to submit an interim report in 1994 and a final report in 1997, the Commission has undertaken public hearings, fact-finding missions, and expert consultations to identify the major immigration-related issues facing the United States today.

This process has been a complex one. Distinguishing fact from fiction has been difficult, in some cases because of what has become a highly emotional debate on immigration. We have heard contradictory testimony, shaky statistics, and a great deal of honest confusion regarding the impacts of immigration. Nevertheless, we have tried throughout to engage in what we believe is a systematic, non-partisan effort to reach conclusions drawn from analysis of the best data available.

## Underlying Principles

Certain basic principles underlie the Commission's work. The Commission decries hostility and discrimination against immigrants as antithetical to the traditions and interests of the country. At the same time, we disagree with those who would label efforts to control immigration as being inherently anti-immigrant. Rather, it is both a right and a responsibility of a democratic society to manage immigration so that it serves the national interest.

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## Challenges Ahead

The Commission believes that legal immigration has strengthened and can continue to strengthen this country. While we will be reporting at a later date on the impacts of our legal immigration system, and while there may even be disagreements among us as to the total number of immigrants that can be absorbed into the United States or the categories that should be given priority for admission, the Commission members agree that immigration presents many opportunities for this nation. Immigrants can contribute to the building of the country. In most cases, they have been actively sought by family members or businesses in the U.S. The tradition of welcoming newcomers has become an important element of how we define ourselves as a nation.

The Commission is mindful of the problems that also emanate from immigration. In particular, we believe that unlawful immigration is unacceptable. Enforcement efforts have not been effective in deterring unlawful immigration. This failure to develop effective strategies to control unlawful immigration has blurred the public perception of the distinction between legal and illegal immigrants.

For the Commission, the principal issue at present is how to manage immigration so that it will continue to be in the national interest.

- How do we ensure that immigration is based on and supports broad national economic, social, and humanitarian interests, rather than the interests of those who would abuse our laws?
- How do we gain effective control over our borders while still encouraging international trade, investment, and tourism?

- How do we maintain a civic culture based on shared values while accommodating the large and diverse population admitted through immigration policy?

The credibility of immigration policy can be measured by a simple yardstick: people who should get in, do get in; people who should not get in are kept out; and people who are judged deportable are required to leave.

During the decade from 1980 to 1990, three major pieces of legislation were adopted to govern immigration policy—the Refugee Act of 1980, the Immigration Reform and Control Act of 1986, and the Immigration Act of 1990. The Commission supports the broad framework for immigration policy that these laws represent: a legal immigration system that strives to serve the national interest in helping families to reunify and employers to obtain skills not available in the U.S. labor force; a refugee system that reflects both our humanitarian beliefs and international refugee law; and an enforcement system that seeks to deter unlawful immigration through employer sanctions and tighter border control.

The Commission has concluded, however, that more needs to be done to guarantee that the stated goals of our immigration policy are met. The immediate need is more effective prevention and deterrence of unlawful immigration. This report to Congress outlines the Commission's recommendations in this area.

In the long term, immigration policies for the 1990s and beyond should anticipate the challenges of the next century. These challenges will be substantially influenced by factors such as the restructuring of our own economy, the establishment of such new trade relationships as the North American Free Trade Agreement [NAFTA], and changing geopolitical relations. No less importantly, immigration policy must carefully take into account social concerns,

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demographic trends, and the impact of added population on the country's environment.

Finally, current immigration is the first to occur in what economists call a post-industrial economy, just as it is the first to occur after the appearance of the modern welfare state. The Commission's report to Congress in 1997 will cover these issues in assessing the impact of the Immigration Act of 1990. The present report reviews the progress of the beginning implementation of this legislation.

## RECOMMENDATIONS

Serious problems undermine present immigration policies, their implementation, and their credibility: people who should get in find a cumbersome process that often impedes their entry; people who should not get in find it all too easy to enter; and people who are here without permission remain with impunity.

The Commission is convinced that unlawful immigration can be controlled consistent with our traditions, civil rights, and civil liberties. As a nation with a long history of immigration and commitment to the rule of law, this country must set limits on who can enter and then must credibly enforce our immigration law. Unfortunately, no quick and easy solutions are available. The United States can do a more effective job, but only with additional financial resources and the political will to take action. Our recommendations for a comprehensive, effective strategy follow.

### Border Management

The Commission believes that significant progress has been made during the past several years in identifying and remedying some of the weaknesses in U.S. border management. Nevertheless, we believe that far more can and should be done to meet the twin goals of border management: preventing illegal entries while facilitating legal ones.

#### Land Borders

Credibility is a problem at U.S. land borders, given the ease of illegal entry and various obstacles to legal entry. These problems are particularly prevalent at the U.S.-Mexico border, as the Commission's visit to San Diego and El Paso demonstrated. The Commission

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believes that an underlying principle of border management is that prevention is far more effective and cost-efficient than the apprehension and removal of illegal aliens after entry. At the same time, the Commission believes that legal entry should be facilitated in order for the country to benefit from cross-border trade and tourism.

*The Commission supports the strategy, now being tested as “Operation Hold the Line” in El Paso, that emphasizes prevention of illegal entry at the border, rather than apprehension following illegal entry.*

Prevention holds many advantages: it is more cost-effective than apprehension and removal; it eliminates the cycle of voluntary return and reentry that has characterized unlawful border crossings; and it reduces potentially violent confrontations on the border. The Commission recommends:

*San Diego border patrol  
[INS photo]*

- **Increased resources for prevention**, including additional staff, such improved technology as sensors and infrared scopes, data systems that permit expeditious identification of repeat offenders, and such additional equipment as vehicles and radios.
- **Increased training for border control officers** to execute strategies that emphasize prevention of illegal entry.
- **Formation of a mobile, rapid response team to improve Border Patrol anticipation of new smuggling sites and to augment their capacity at these locations.** The Immigration and Naturalization Service [INS] must develop a capacity to respond quickly to changing patterns of unlawful immigration along the land border. Also, contingency plans should be developed to

address increased boat arrivals that may arise from improved land border enforcement.

- **Use of fences to reduce border violence and facilitate enforcement. However, the Commission does not support the erection of extraordinary physical barriers, such as unscaleable walls, unless needed as a last resort to stop violence when other means have proved ineffective.** Fences have been used effectively in San Diego to reduce border violence, deter illegal aliens from running across the interstate highway that leads from Mexico, and facilitate enforcement.
- **Systematic evaluation of the effectiveness of any new border strategies by INS.** The typical measurements of Border Patrol effectiveness—apprehension rates—have little meaning in assessing a prevention strategy. INS should develop new evaluation techniques that measure the effects of border management efforts in terms of the flow of unauthorized aliens and their impacts on U.S. communities.

*The Commission supports efforts to reduce potentially violent confrontations between Border Patrol officers and those believed to be seeking illegal entry into the U.S.* Such confrontations were reduced, for example, during “Operation Hold the Line,” in terms of both reported human rights violations against suspected illegal aliens and attacks on Border Patrol officers.

*The Commission supports efforts already underway to address complaints about human rights violations,* including:

- **Increased training and professionalism of Border Patrol officers to enable them to respond appropriately to potentially violent situations;**

- **Improved procedures for adjudicating complaints of Border Patrol abuses;**
- **Mechanisms to provide redress or relief to those subjected to improper actions; and**
  - **More effective protection of Border Patrol officers from violence directed at them.**

*The Commission believes that port of entry operations can be improved.* Legal entry at the border should be facilitated as the United States benefits from trade, tourism, family visits and consumer spending. More specifically, the Commission supports:

*Congestion at El Paso  
port of entry  
[INS photo]*

- **Additional resources for inspections** at land border ports of entry.
- **An expedited adjudication and issuance process for the Border Crossing Card [BCC].** Mexican nationals are required to have a visa (unlike Canadians). Because of the volume of BCC applications on the Mexican border, the Commission encourages negotiations between the U.S. and Mexico to amend the bilateral treaty to permit collection of fees to be used exclusively to expedite the issuance and adjudication of the card.
- **Further steps to better ensure that the BCC is not misused by legal crossers who engage in unauthorized employment after entry.** Each BCC should contain the legend indicating it is “not for work authorization,” as currently appears on INS-issued cards.



- **Development of a land border user fee to pay for needed improvements in the inspection of border crossers**, with fees to be used exclusively to facilitate land border management.

*The Commission supports increased coordination on border issues between the governments of the U.S. and Mexico.* The Commission views favorably the discussions underway between the U.S. and Mexican governments. These discussions promote greater cooperation between the two governments in solving problems of mutual concern. In particular, the Commission encourages:

- **Continued cooperation in antismuggling efforts** to reduce smuggling of people and goods across the U.S.-Mexico border.
- **Bilateral discussions that take into account both U.S. entry and Mexican exit laws in devising a cooperative approach to regulating the movements of people across the U.S.-Mexican land border.** Mexican law requires that Mexican nationals exit Mexico through official inspection stations. Thus, unauthorized migration into the United States generally violates not only U.S. law, but Mexican law as well.
- **Cross border discussions and cooperative law enforcement efforts** among federal, state, and local officials of both countries to develop cooperative approaches to combat violent crimes and auto and cargo theft along the border.
- **Continued U.S. cooperation and support for Mexican efforts to address the problem of third-country nationals crossing Mexico to come to the United States.**

## Airports

Each year about 50 million citizens and aliens enter the country through airports.

*The Commission supports a combined facilitation and enforcement strategy that would prevent the entry of unauthorized aliens while facilitating legal admissions at U.S. airports as efficiently as possible, including:*

- **The use of new technologies to expedite the inspections process and improve law enforcement, including more efficient processing of travelers with Machine Readable Documents.**
- **Programs that enhance the capacity of airline carriers to identify and refuse travel to aliens seeking to enter the U.S. on fraudulent documents, including the Carrier Consultant Program and other coordinated efforts to maintain complete, accurate, and reliable Advance Passenger Information System [APIS] data and improved lookout data systems.**
- **Continued government-airline industry discussions on improving inspections that have led to innovative proposals.**
- **Development of a system for mitigation of penalties or fines for those carriers that cooperate in screening and other programs and demonstrate success in reducing the number of unauthorized aliens they carry.**
- **Making INS, not the carrier, responsible for the actual physical custody of inadmissible air passengers.**

*Immigration Inspection,  
O'Hare International Airport  
[INS Chicago District photo]*

## Interagency Coordination

The Commission expresses its dissatisfaction with the past lack of coordination between the Customs Service and the INS at ports of entry. This has hampered effective border management by both agencies.

*The Commission recommends implementation of initiatives to improve coordination between INS and Customs, as recommended by the General Accounting Office [GAO] and the National Performance Review.* The Commission will monitor these efforts to improve coordination of border management, particularly as they relate to immigration matters.

*If these efforts prove ineffective, the Commission will recommend more extensive action,* such as creating a new immigration and customs agency or designating one agency as the lead agency on inspections.

## Alien Smuggling

Organized smuggling operations undermine the credibility of U.S. enforcement efforts and pose dangers to the smuggled aliens.

*The Commission recommends an effective prevention strategy that requires enhanced capacities to combat organized smuggling for commercial gain.* Possible enhancements include:

- **Expanded enforcement authorities,** such as Racketeer Influenced and Corrupt Organizations Act [RICO] provisions, wire-

*Aliens on the ship  
Chin Lung Hsiang  
[INS photo]*

tap authority, and expanded asset forfeiture for smuggling aliens;  
and

- **Enhanced intelligence gathering and diplomatic efforts** to deter smuggling.

*Reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration.*

## Worksite Enforcement

The Commission believes that reducing the employment magnet is the linchpin of a comprehensive strategy to reduce illegal immigration. The ineffectiveness of employer sanctions, prevalence of fraudulent documents, and continued high numbers of unauthorized workers, combined with confusion for employers and reported discrimination against employees, have challenged the credibility of current worksite enforcement efforts.

### Verification

A better system for verifying work authorization is central to the effective enforcement of employer sanctions.

*The Commission recommends development and implementation of a simpler, more fraud-resistant system for verifying work authorization.* The current system is doubly flawed: it is too susceptible to fraud, particularly through the counterfeiting of documents; and it can lead to increased discrimination against foreign-looking or foreign-sounding authorized workers.

In examining the options for improving verification, *the Commission believes that the most promising option for secure, non-discriminatory verification is a computerized registry* using data provided by the Social Security Administration [SSA] and the INS.

The key to this process is the social security number. For decades, all workers have been required to provide employers with their social security number. The computer registry would add only one step to this existing requirement: an employer check that the social security number is valid and has been issued to someone authorized to work in the United States.

The Commission believes the computerized system is the most promising option because it holds great potential for accomplishing the following:

- **Reduction in the potential for fraud.** Using a computerized registry, rather than only an identification card, guards against counterfeiting of documents. It provides more reliable information about work authorization.
- **Reduction in the potential for discrimination** based on national origin and citizenship status, as well as inappropriate demands for specific or additional documents, given that employers will not be required to ascertain whether a worker is a citizen or an immigrant and will have no reason to reject documents they believe to be counterfeit. The only relevant question will be: “What is your social security number?”
- **Reduction in the time, resources, and paperwork** spent by employers in complying with the Immigration Reform and Control Act of 1986 [IRCA] and corresponding redirection of enforcement activities from paperwork violations to knowing hire of unauthorized workers.

*The Commission recommends that the President immediately initiate and evaluate pilot programs using the proposed computerized verification system in the five states with the highest levels of illegal immigration as well as several less affected states.* The Presi-

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dent has the authority to do so under Section 274A(d)(4) of the Immigration and Nationality Act. A pilot program will: permit the testing of various approaches to using the proposed verification system; provide needed information about the advantages, disadvantages, and costs of the various approaches; develop and evaluate measures to protect civil rights and civil liberties; and ensure that any potential obstacles, such as the quality of the data used in the registry, are addressed prior to national implementation. Assuming the successful results of the pilot program, Congress should pass the necessary statutory authorities to support more effective verification. Pilot program features should include:

- **A means by which employers will access the verification system to validate the accuracy of information given by workers.** We have received conflicting testimony about the best way to check the applicant's identity. We have heard proposals for a more secure social security card, a counterfeit-resistant driver's license, and a telephone verification system that does not rely on any document. The pilot program presents an opportunity to determine the most cost-effective, fraud-resistant, and nondiscriminatory method available.
- **Measures to ensure the accuracy of and access to the specific data needed** to ensure that employers have timely and reliable information when seeking verification of work authorization. Improvements in the Social Security Administration and INS databases must be made to ensure that these data are available. Procedures must be developed to ensure timely and accurate entry, update, extraction, and correction of data. The Commission strongly urges INS and the Social Security Administration to cooperate in this endeavor, as the proposed registry would be built upon and—once implemented—would support the primary missions of those agencies.

- **Measures to ensure against discrimination and disparate treatment of foreign-looking or -sounding persons.** The Commission believes that the least discriminatory system would have the same requirements for citizens and aliens alike. To reduce the potential for discrimination and increase the security of the system, the Commission also believes that employers should not be required to ascertain immigration status in the process of verifying authorization for employment. Their only requirement should be to check the social security number presented by each employee against the registry and record an authorization number to prove that they have done so.
- **Measures to protect civil liberties.** It is essential that explicit protections be devised against use of the database—and any card or any other means used to gain access to it—for purposes other than those specified in law. The uses to be made of the verification system must be clearly specified. We believe the worksite verification system could be used, without damage to civil liberties, for verifying eligibility to receive public benefits [see p. 22]. However, it should be stipulated that no one should be required to carry a card, if one is used, or to present it for routine identification purposes. There also should be penalties for inappropriate use of the verification process.
- **Measures to protect the privacy of the information included in the database.** The Commission is aware of the proliferation of databases and the potential for the invasion of privacy by both government and private agencies. There need to be explicit provisions for protecting privacy; the resultant system should incorporate appropriate safeguards regarding authorized users' access to individual information. In establishing privacy safeguards, it is important to take into account that, while access to any one piece of information may not be intrusive,

in combination with other information such access may violate privacy.

- **Estimates of the start-up time and financial and other costs** of developing, implementing and maintaining a national system in such a manner that verification is reliable.
- **Specification of the rights, responsibilities, and impact on individual workers and employers**, for example: what individuals must do; how long it will take for newly authorized workers to get on the system and to correct inaccurate data; and what will be required of employers and at what expense. Provisions must also be developed to protect both workers from denial of employment and employers from penalties in cases where the information provided by the computer registry may be missing or inaccurate.
- **A plan for phasing in of the system.** The Commission recognizes that the proposed verification system will result in financial costs. The system should be phased in to lessen the immediate impact. The pilot programs should test various phase-in procedures. Given the required levels of accuracy, reliability, and convenience required, the evaluation should help measure the cost of phasing in the system nationally.

***The Commission recommends evaluation of the pilot programs to assess the effectiveness of the verification system.*** The evaluation should include objective measures and procedures to determine whether current problems related to fraud, discrimination, and excessive paperwork requirements for employers are effectively overcome without imposing undue costs on the government, employers, or employees. The evaluation should pay particular attention to the effectiveness of the measures used to protect civil liberties and privacy.



***The Commission supports INS efforts to improve its Telephone Verification System/SAVE [TVS/SAVE] database—but only as an interim measure.*** The improvements are essential for improving the data needed for the new, more effective verification process. The Commission is aware of the inadequacies of the current INS data that would be used in the proposed system. The Commission does not endorse the TVS/SAVE program as a long-term solution to the verification problem because use of TVS/SAVE requires the inadequate mechanism of self-attestation by workers as to their citizenship or alienage, thus making it easy for aliens to fraudulently claim U.S. citizenship. It also imposes requirements on legal immigrants that do not apply to citizens. Nevertheless, improvements in this database, as well as the Social Security Administration database, are essential to the development of a more secure, less potentially discriminatory verification system.

***The Commission also recommends action that would reduce the fraudulent access to so-called “breeder documents,” particularly birth certificates, that can be used to establish an identity in this country,*** including:

- **Regulation of requests for birth certificates** through standardized application forms;
- **A system of interstate and intrastate matching** of birth and death records;
- **Making certified copies of birth certificates issued by states or state-controlled vital records offices the only forms accepted by federal agencies;**

*False documents  
[INS photo]*

- **Using a standard design and paperstock for all certified copies** of birth certificates to reduce counterfeiting; and
- **Encouraging states to computerize** birth records repositories.

*To address the abuse of fraudulent documents, the Commission recommends imposition of greater penalties on those producing or selling such documents.* Document fraud and counterfeiting has become a lucrative and well-organized operation that may involve international networks that conspire to produce and sell the resulting fraudulent products. These documents are used in smuggling and terrorist operations, as well as for work authorization. RICO provisions designed to facilitate racketeering investigations should cover conspiracy to produce and sell fraudulent documents. Criminal penalties should also be increased for large-scale counterfeiting activities

*Mechanisms must effectively prevent and redress immigration-related discrimination.*

## **Antidiscrimination Strategies**

The Commission is concerned about unfair immigration-related employment practices against both citizens and noncitizens that may occur under the current system of employer sanctions. A more reliable, simpler verification system holds great potential to reduce any such discrimination because employers will no longer have to make any determination as to immigration status. Nevertheless, mechanisms must effectively prevent and redress discrimination.

*The Commission recommends that the Office of the Special Counsel [OSC] for Immigration-Related Unfair Employment Practices in the Department of Justice initiate more proactive strategies to identify and combat immigration-related discrimination at the workplace.* OSC should target resources on independent investigations and on programs to assess the incidence and prevalence of unfair immigration-related employment practices.

*The Commission also recommends a methodologically-sound study to document the nature and extent of unfair immigration-related employment practices that have occurred since GAO's 1990 report.*

The new study should measure the effects of immigration policy—as distinct from other factors—on discrimination at the worksite. As noted above, the pilot programs should be evaluated to determine if they substantially reduce immigration-related discrimination at the workplace.

## **Employer Sanctions and Labor Standards Enforcement**

The Commission believes that enforcement of employer sanctions, wage/hour, child labor, and other labor standards can be an effective tool in reducing employment of unauthorized workers. The Commission finds, however, that current enforcement efforts are inadequate. In addition, the Commission expresses its concern that current coordination efforts between the Immigration and Naturalization Service and the Department of Labor are insufficient.

*The Commission supports vigorous enforcement of labor standards and enforcement against knowing hire of unauthorized workers as an integral part of the strategy to reduce illegal immigration. Labor standards and employer sanctions should be seen as mutually reinforcing.* Specifically, the Commission recommends:

- **Allocation of increased staff and resources to the enforcement of labor standards to complement employer sanctions enforcement.**
- **Vigorous enforcement, increased staff and resources, and full use of current penalties against those who knowingly hire unauthorized workers.** If the new verification system proposed by the Commission substantially reduces inadvertent hiring of unauthorized workers—as we believe will occur—Congress

*Enforcement of employer sanctions, wage/hour, child labor, and other labor standards can be an effective tool in reducing employment of unauthorized workers.*

*Garment industry violations  
[Department of Labor photo]*

should discontinue paperwork penalties and evaluate the need for increased penalties against violators and businesses that knowingly hire or fail to verify work authorization for all employees.

- **Targeting of investigations to industries that have a history of using illegal alien labor.**

- **Enhanced enforcement efforts targeted at farm labor and other contractors** who hire unauthorized workers on behalf of agricultural growers and other businesses.

- **Application of employer sanctions to the federal government.** At a minimum, the President should issue an Executive Order requiring federal agencies to abide by the procedures required of other employers. Alternatively, legislation should stipulate that federal agencies follow the verification procedures required of other employers and be subject to penalties if they fail to verify work authorization.

***The Commission urges the Attorney General and the Secretary of Labor to review the current division of responsibilities between the Departments of Justice and Labor in the enforcement of employer sanctions and labor standards.*** INS and the Department of Labor have signed a Memorandum of Understanding [MOU] that spells out each agency's responsibility for enforcing employer sanctions and labor standards. Preliminary evidence indicates that few warnings have been issued to employers under the MOU. The implementation of the MOU should be closely monitored over the next twelve months. Should the monitoring demonstrate that the joint

efforts have not resulted in effective enforcement, it may be necessary to designate a single agency to enforce employer sanctions.

***The Commission recommends enhanced coordination mechanisms to promote cooperation among all of the agencies responsible for worksite enforcement.*** Strategies to promote coordination at headquarters and in field operations include:

- **Establishment of a taskforce in Washington, D.C., to review and set policy;**
- **Local taskforces of worksite investigators** to coordinate field operations; and
- **Continued joint training for worksite investigators** from all applicable agencies.

## **Education**

Thousands of new businesses begin operations each year. New workers enter the labor force each year as well.

***The Commission recommends coordination and continuance of educational efforts by the Immigration and Naturalization Service, the Office of Special Counsel, and the Department of Labor regarding employer sanctions, antidiscrimination provisions, and labor standards.*** The Commission calls upon these agencies to develop and communicate a single message to all employers and employees. The Commission also recommends the development of new strategies, including the enhanced use of technology, to inform employers and workers of their rights and responsibilities under the law.

*The eligibility of aliens for public benefits should be consistent with the objectives of our immigration policy.*

## Benefits Eligibility and Fiscal Impact

The Commission believes a clear and consistent policy on immigrant eligibility for public benefits is needed. The Commission also believes that the federal government has a responsibility to mitigate the impacts of unlawful immigration on states and localities, particularly through renewed efforts to reduce illegal entries.

### Eligibility

The U.S. has the sovereign authority to make distinctions as to certain rights and responsibilities of various people subject to its jurisdiction—illegal aliens, legal immigrants, and U.S. citizens. Policies regarding the eligibility of aliens for public benefits should be consistent with the objectives of our immigration policy.

*The Commission recommends that illegal aliens should not be eligible for any publicly-funded services or assistance except those made available on an emergency basis or for similar compelling reasons to protect public health and safety (e.g., immunizations and school lunch and other child nutrition programs) or to conform to constitutional requirements.* Illegal aliens are now eligible for few benefit programs. The Commission firmly believes that benefits policies should continue to send this message: if aliens enter the U.S. unlawfully, they will not receive aid except in limited instances. Federal legislation should permit states and localities to limit eligibility of illegal aliens on this same basis. Should illegal aliens require other forms of assistance, their only recourse should be return to their countries of origin.

- **The pilot programs on work authorization also should test new procedures for verification of benefit eligibility.** Verification of eligibility for federally-funded benefits is an essential

part of the overall strategy for maintaining a credible benefits enforcement policy. Many of the shortcomings of the eligibility verification process are parallel to those for employment. The proposed pilot programs will provide an opportunity to test new approaches to benefit eligibility verification.

- **An equitable policy based on immigration status must be adhered to in cases of mixed households** (households in which some members are legal residents and/or citizens and others are illegal aliens). Regardless of a family's economic situation, only citizen members or those legally authorized to reside and work in the U.S. should receive routine benefits. Some benefits could be prorated in order to provide them only to eligible recipients in a household.

***The Commission recommends against any broad, categorical denial of public benefits to legal immigrants.*** The United States admits legal immigrants with the expectation that they will reside permanently in the United States as productive residents. Therefore, the Commission believes that:

- **The safety net provided by needs-tested programs should continue to be available to those whom we have affirmatively accepted as legal immigrants into our communities.** U.S. immigration law bars the entry of those who are likely to become a public charge [see below]. However, circumstances may arise after entry that create a pressing need for public help—unexpected illness, injuries from a serious accident, loss of employment, a death in the family. Under such circumstances, legal immigrants should be eligible for public benefits if they meet other eligibility requirements.

*Migrant healthcare*  
[photo copyright  
1992 Alan Pogue]

- **Sponsors should be held financially responsible for the immigrants that they bring to this country.** In particular, the Commission believes that the affidavits of support signed by sponsors should be legally enforceable, with contingencies made if the sponsor's financial circumstances change significantly for reasons that occurred after the immigrant's entry. Mechanisms should be developed that would ensure that sponsors actually provide the support they have promised. This would protect recent immigrants and close a loophole in current policy wherein the sponsor's income is "deemed," or taken into account, in calculating the immigrant's eligibility, regardless of whether such support is actually available to the immigrant.
- **A serious effort to enhance and enforce the public charge provisions** in immigration law is needed to ensure that legal immigrants do not require public assistance within five years of entry for reasons that existed prior to entry. The Commission recommends modification in the procedures for deporting such individuals. The sustained use of public benefits for reasons that existed prior to entry should become the basis for deportation. Current practices are unreasonable: the government is required to show that the benefit program requested repayment of the aid under a specific statute and that the immigrant has refused repayment.

*The Commission recommends that comprehensive categories of aliens in the U.S. be defined in the Immigration and Nationality Act to simplify determination of eligibility for public benefits.* The Commission believes that benefit eligibility determinations are complicated by the myriad legal statuses now afforded to individuals within this country. While the rights of lawful permanent residents, refugees and asylees have been spelled out in the Immigration and Nationality Act and/or benefit laws, it is also true that the Congress,



Executive Branch, and the courts have created various other statuses that may or may not denote benefit eligibility. The Commission recommends:

- **Establishment of statutory categories of aliens according to their eligibility for work and benefits.** Such categories could include those who are authorized to work and eligible for needs-tested benefits, subject to public charge and sponsorship provisions; authorized to work and eligible only for benefits that accrue from employment; not authorized to work and not eligible for any but a circumscribed list of benefits.
- **Placement of every alien who is permitted to remain in the country on a temporary or permanent basis (whether by legislation, court order, or administrative order) in one of the designated categories.** The categories should reflect whether an alien has been affirmatively admitted to the United States, is awaiting a final decision on deportability, or has already been determined deportable and is awaiting removal.

## Impact on States and Localities

Difficulties in enforcing U.S. immigration laws have created fiscal impacts that would not have occurred had enforcement strategies been more effective. The ineffective enforcement has been due, in some measure, to a lack of political will on the part of decision-makers, including officials and representatives of states now heavily affected by illegal immigration. Nevertheless, the federal government clearly bears a responsibility for alleviating these impacts, particularly through renewed efforts to reduce unlawful immigration.

*The Commission supports in principle a short-term authorization of impact aid to offset at least a portion of the fiscal burdens of*

*The federal government clearly bears a responsibility for alleviating the impacts of unlawful immigration.*

*unlawful immigration until such time as better enforcement measures are in place.* Any such aid should be provided contingent on the following conditions:

- **Better data and methods to measure the net fiscal impact of illegal immigration.** The Commission finds that weak data make it difficult to determine the extent of these burdens. The authorization of impact aid should follow a concerted effort to develop better data on such impacts, with impact assistance provided only to the extent that actual net costs are accurately identified.
- **Provision of any impact aid authorized in a manner commensurate with the interim period of regaining control over unauthorized immigration.** Impact aid mechanisms should be temporary and designed to ensure that governments do not become dependent on impact aid as a continuing source of funding.
- **Appropriate cooperation of state and local governments receiving impact aid with federal authorities** to enforce the immigration laws of the United States. The type of cooperation will vary depending on the assistance programs covered by impact aid and should be consistent with the federal laws and regulations that apply to the program in question. For example, law enforcement officers may be asked to provide information to identify convicted or arrested illegal aliens, whereas school officials would not be required to transfer information obtained from their pupils.

*The Commission supports an immediate authorization of impact aid aimed specifically at criminal justice costs.* The Commission believes impact assistance for criminal justice and law enforcement is justified where there is a high incidence of illegal aliens in the

criminal justice system. Specific costs attributable to the incarceration of illegal aliens can be reliably ascertained if state correctional departments cooperate with INS in identifying deportable illegal aliens in prisons. The federal government should assume responsibility for the costs of incarcerating illegal aliens through reimbursement, by incarcerating them in federal facilities, and/or by negotiating with foreign governments to accept and incarcerate their nationals who are criminal illegal aliens.

*The Commission recommends further investigation of the costs of education and emergency medical assistance.* The data currently available do not provide reliable estimates of the number of illegal alien children and the proportion of emergency medical assistance specifically associated with illegal aliens. While the Commission accepts in principle the need for enhanced federal funding to assist localities with the costs of providing elementary and secondary education to illegal alien children and of emergency medical care under Medicaid to illegal aliens, the Commission does not recommend that such a program be instituted until there is a workable method for accurately establishing actual costs.

## **Detention and Removal of Criminal Aliens**

An effective procedure for prompt removal of aliens ordered deported is an essential part of a credible deterrence policy. If unlawful aliens believe that they can remain indefinitely once they are within our national borders, there will be increased incentives to try to enter or remain illegally. The Commission is reviewing the full range of issues raised by U.S. exclusion and deportation procedures and plans to issue a separate report on this subject in FY 1995. For the present, the Commission limits its specific recommendations to

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the removal of criminal aliens who represent the most serious threat to public safety and national security.

*The top priority of enforcement strategies should be the removal of criminal aliens from the U.S. in such a way that the potential for their return to the U.S. will be minimized.* To help ensure the prompt and effective removal of criminal aliens, the Commission recommends:

- **Increased resources for INS investigations** to identify and initiate deportation of criminal aliens.
- **Enhanced use of the Institutional Hearing Program [IHP] as an effective mechanism to ensure that criminal aliens are identified and receive final orders of deportation while still serving their sentences.** The IHP is cost-effective in that criminal aliens can be deported directly from state and federal prisons, alleviating INS' need to detain them during deportation proceedings. The Commission commends the negotiations taking place between INS, the Executive Office of Immigration Review [EOIR], and state correctional departments to enhance their efficiency.
- **In the case of Mexico, repatriation of deported criminal aliens to the area of Mexico from which they came, rather than simply to the border.** Removals should be done in coordination with Mexican authorities who may then determine if there is a warrant for the arrest of the criminal alien for crimes committed in Mexico.
- **Use of bilateral treaties encouraging the transfer of criminal aliens to serve sentences in their own countries.** The Department of State should monitor these cases to be certain that sentences are served.

## Immigration Emergencies

Since 1980, emergency circumstances in their home countries have prompted the migration of large numbers of people to the U.S. Their arrival, in turn, has created emergency circumstances within the United States. The exodus of Haitians and Cubans are only the most recent examples. An emergency can overwhelm resources and create massive problems that far outlast the emergency.

*The Commission believes that a credible immigration policy requires the ability to respond effectively and humanely to immigration emergencies.*

Specific recommendations regarding emergencies will be the subject of a separate report in FY 1995 that will include discussion of contingency planning, interdiction, safe havens, refugee processing, asylum procedures, temporary protected status, aid to communities experiencing emergency arrivals of aliens, and other issues.

*Haitian migrant interdiction  
[Official U.S. Coast Guard photo]*

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## Curtailing Unlawful Immigration at the Source

Migrants enter and remain unlawfully in the United States for a variety of reasons. Few migrants take the decision to leave their countries lightly. Generally, a combination of “push” and “pull” factors contribute to these movements. Many of the recommendations in this report aim to reduce the pull of both jobs and of ineffective immigration enforcement. On the push side, lack of employment, low wages and poor working conditions, separation from family members, political, social and religious repression, civil conflict, and other problems motivate people to leave their homes. Any effective strategy to prevent unlawful migration must address these causes.

*Any effective strategy to prevent unlawful migration must address both “push” and “pull” factors.*

*The Commission recommends that the United States give priority in its foreign policy and international economic policy to long-term reduction in the causes of unauthorized migration to the U.S.* More specifically, the Commission supports:

- **The recommendations of the Commission for the Study of International Migration and Cooperative Economic Development related to trade with, and investment in, immigrant-sending countries.**
- **Adoption of quick and effective strategies targeted at alleviating migration pressures in communities producing large numbers of illegal aliens.**
- **Strengthening intelligence gathering capacities to improve early warning of unauthorized migration patterns.**
- **Coordinated efforts by the United States and other countries to address pressures for unlawful migration.** The Commission

recommends a strengthening of those multilateral coordination efforts that prove effective in averting unauthorized migration, particularly within the Western Hemisphere.

## Improving Data

Throughout the Commission's own inquiry, we have found it difficult to assess the effects of immigration policy and of immigration itself because of inadequacies in the data. The Commission commends the work of the InterAgency Working Group on Immigration Statistics that is seeking to reform data collection efforts within the federal government. Reliable data is a necessary ingredient for credible policy and its implementation.

*The Commission supports improved data collection efforts in four major areas:*

- **Matching administrative data** on immigrants collected by the INS, Social Security Administration, and other agencies to obtain a more accurate profile of their experiences in this country;
- **Developing a methodology for better measuring the size of the illegal alien population and the flow of illegal aliens entering the United States;**
- **Developing new methods for estimating emigration** from the United States; and
- **Improving the estimates of the costs and benefits** associated with people of different immigration status.

*File room [INS Chicago District photo]*

*Reliable data is a necessary ingredient for credible policy and its implementation.*





# THE IMMIGRATION ACT OF 1990 AND LEGAL IMMIGRATION

The Immigration Act of 1990 [IMMACT], which provided for the most comprehensive change in the legal immigration system since 1965, aimed to:

- Establish overall limits on legal immigration through adoption of a flexible cap on total numbers;
- Permit continued reunification of close family members (allowing increases above the cap if higher numbers of immediate relatives of U.S. citizens seek entry);
- Meet labor market needs by increasing the number of immigrants admitted for employment-based reasons and giving higher priority to the entry of professionals and others who are highly skilled; and
- Provide greater diversity through new opportunities for migration from countries with relatively small numbers of immigrants to the United States.

*Naturalization ceremony  
[INS photo]*

## IMMACT Effects on Migration

The principal provisions of IMMACT were not implemented until 1992, and with only two years worth of data, there is little experience to use in determining its effects. The Diversity

**Table 1.  
 Immigrants Admitted by Major Category**

<b>Category of Admission</b>	<b>Average 1987-1991</b>	<b>1992</b>	<b>1993</b>	<b>Projected 1994</b>
<b>Subject to the Numerical Cap</b>	<b>511,427</b>	<b>655,541</b>	<b>719,701</b>	<b>683,350</b>
<b>Family-based immigrants</b>	<b>439,614</b>	<b>502,995</b>	<b>539,209</b>	<b>512,600</b>
Immediate relatives of U.S. citizens and children born abroad to alien residents	227,551	237,600	257,089	252,900
Family-sponsored immigrants	212,062	213,123	226,776	225,300
Legalization dependents	NA	52,272	55,344	34,400
<b>Employment-based immigrants</b>	<b>58,341</b>	<b>116,198</b>	<b>147,012</b>	<b>128,750</b>
<b>Diversity programs</b>	<b>13,473</b>	<b>36,348</b>	<b>33,480</b>	<b>42,000</b>
<b>Not Subject to the Numerical Cap</b>	<b>131,926</b>	<b>155,094</b>	<b>160,313</b>	<b>150,100</b>
Refugees and Asylees	98,858	117,037	127,343	131,000
Other	33,068	38,057	32,970	19,100
<b>Total</b>	<b>643,353</b>	<b>810,635</b>	<b>880,014</b>	<b>833,450</b>

Excludes persons granted legal permanent resident status under the provisions of the Immigration Reform and Control Act of 1986. Categories are arranged according to the limitations specified in IMMACT.

Program will not go into effect until FY 1995. The following analysis, therefore, must be considered preliminary at best.

As Table 1 shows, overall levels of legal immigration increased from an average of 640,000 during the five years preceding IMMACT implementation to an average 840,000 for the past three years. The immigrants fall into two major categories: those whose numbers are subject to an annual statutory cap and those whose numerical limits can change each year.

### **Statutory Cap**

IMMACT established a flexible worldwide level of 700,000 family-based, employment-based, and diversity immigration visas for FYs 1992-1994. This limit can be "pierced" if the number of immediate relatives of U.S. citizens, for whom there are no numerical limits, exceeds 239,000 (FYs 1992-1994) and 254,000 (FY 1995 and after).

- **Family-sponsored immigration** increased modestly since passage of IMMACT, largely because of an increase in the number of immediate relatives of U.S. citizens. Waiting lists that number more than one million persons continue in the categories under which spouses and minor children of permanent residents and siblings of U.S. citizens enter the United States. Much of the growth in the backlog for spouses and children is attributable to the large number of legalized aliens who are now seeking to reunify with their families.
- **Employment-based immigration** represents a sizeable increase over the 58,000 average employment-based immigration pre-IMMACT. Nevertheless, employment-related admissions under the new legislation have been well below the statutory ceiling of 140,000. Many of those who entered, particularly in 1992, were

in the backlog of individuals who had applied prior to IMMACT. In addition, Chinese nationals who adjusted status under the provisions of the Chinese Student Protection Act were counted in this category. The economic recession may have led employers to petition for fewer immigrant workers than allowable under the IMMACT ceilings.

- **Diversity immigration** has not yet begun in its permanent form. The diversity transition program averaged 34,000 in FY 1992-93. As of FY 1995, 55,000 visa numbers will be available for the permanent diversity program.

## **Immigrants outside the Statutory Cap**

The number of immigrants considered in the categories outside the statutory cap varies each year, largely depending on the number of refugees admitted in prior years who adjust to permanent resident status. Refugees are initially admitted under conditional status and may adjust to permanent resident status after one year. Because of the increase in refugee admissions from the former Soviet Union that began in 1988, the 1990s have seen an increase in refugee adjustments.

## **Characteristics of Legal Immigrants**

INS maintains data on the countries of origin, age, gender, occupation, and place of intended residence of new immigrants.

- **Places of origin.** IMMACT has not changed the regional origins of immigrants significantly. Asia accounts for more than 40 percent of new admissions, while North America, including Mexico, accounts for another 30 percent. Mexico appears to have almost doubled its number of new arrivals since IMMACT passed, largely because of the legalization dependents program and the

elimination of per-country limits for some second preference family visas.

- **Age and gender.** The median age of immigrants admitted in FYs 1992 and 1993 was 28. About 54 percent of the immigrants were female and 46 percent were male. By contrast, during the 1980s, men and women were equally represented. The trend toward more women admitted as legal immigrants began prior to IMMACT. It is likely to be reinforced by the entry of the family members of aliens legalized under IRCA. Very high proportions of young adult legalized aliens were men, many of whom have already petitioned for their wives.
- **Intended residence.** Immigration follows much the same pattern as in the 1980s regarding intended residence. Approximately 70 percent of the immigrants intend to live in the six states of California, New York, Texas, Florida, New Jersey, and Illinois. More than 25 percent of immigrants intend to live either in New York City or Los Angeles. Other metropolitan areas with significant immigrant arrivals are Chicago, Miami, Washington, D.C., and San Francisco.
- **Occupation.** Among those who reported an occupation, the percentage of immigrants of working age who were professionals or executives increased slightly from 15 percent in the two years before IMMACT to 17 percent in fiscal years 1992 and 1993. Every other occupation group declined, except for operators, fabricators, and laborers, which increased from 9.2 to 9.7 percent.

## Looking to the Future

Much has changed in the U.S. and the world since passage of IMMACT—for example, the end of the Cold War, cutbacks in many defense industries, and such new trade arrangements as NAFTA and the most recent round of GATT. Commission recommendations must take into account this changing context, along with the changes brought about by IMMACT.

Future Commission activities will include:

- Exercising the Commission's mandate to assess the impact which the establishment of a national level of immigration has upon the availability and priority of family preference visas.
- Developing an understanding of both the long- and short-term interconnections between immigration and the U.S. economy and labor market with an eye toward formulating sound immigration policy.
- Examining the effects of our immigrant population on social and community relations, as well as the effects of American life on immigrants. A further area of interest is the civic integration of immigrants, including participation in local, state, and national political affairs, development of political constituencies, and other manifestations of civic involvement.
- Looking at data and analyses regarding population pursuant to IMMACT's instruction to determine and report on the effects of immigration on demographics and natural resources.
- Analyzing and reporting on the relationship between immigration and the environment as mandated by IMMACT.

- Examining the interconnections between U.S. immigration and international trade and foreign policy.

## Plans for FY 1995—FY 1997

The Commission will launch a new research program to gauge the effects of IMMACT upon the size and characteristics of the incoming immigrant population and to evaluate the impacts that legal immigration poses for family reunification, the U.S. economy, social relations, demographics, the environment, foreign policy, and national security.

The Commission will also develop further recommendations to address two of the issues touched on in this report—removal of deportable aliens and handling of immigration emergencies.

The Commission plans to continue its schedule of public hearings, roundtable consultations and fact-finding missions. The Commission's assessments will be discussed and recommendations offered in future reports.

*Future  
Commission  
activities  
will examine:  
immigration  
and  
family  
reunification,  
the U.S.  
economy,  
social and  
community  
relations,  
population,  
environment,  
and  
international  
trade  
and foreign  
policy.*