

THE THIRD WAY CULTURE PROJECT

A HECK OF A JOB ON IMMIGRATION ENFORCEMENT

A Third Way Report

by

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MAY 2006

Executive Summary

In the halls of Congress, in massive street demonstrations, in border-side confrontations, and on countless radio shows, blogs and barbers' chairs, Americans are debating what to do about illegal immigration. Some demand walls and deportations; others counsel restraint and compassion—many say they seek practical solutions. But most reasonable voices agree on one thing: that we must do better at enforcing the immigration laws already on the books. Even the President and his allies in Congress acknowledge that not enough is being done to staunch the flow of new illegal immigrants or to deal with those who are here already.

But this examination of the data on enforcement of immigration laws reveals that the situation is far worse than the President likes to admit. Third Way believes that as Congress debates passing new laws, it is important to understand what is happening—or rather what is NOT happening—with the current ones. By virtually any standard, current federal laws against illegal immigration are not working the way they were intended.

Some of the numbers are by now well known: there are more than 11 million illegal immigrants in the United States today. Over the last ten years, between 700,000 and 800,000 illegal immigrants arrived in the country every year. Over 70% of the new, undocumented arrivals came over the Mexican border and are of Mexican, Central American, or South American descent.

At the same time, Congress has substantially increased the number of Border Patrol agents, from 4,876 in 1995 to 11,106 in 2005. After 9/11, Congress and the Bush Administration expanded the mission of the Border Patrol from one of simply enforcing our borders to patrolling the front lines against terrorism in the United States. The Border Patrol is now part of the Department of Homeland Security.

But not as widely known is that despite these increases of new illegal immigrants and the more than doubling in the number of Border Patrol agents between 1995 and 2005, federal enforcement of the nation's immigration laws is down significantly during the Bush Administration:

- *At the Border:* The number of apprehensions at the border has declined by 31%—from an average of 1.52 million apprehensions per year between fiscal years 1996 and 2000, compared to an average of 1.05 million apprehensions between 2001 and 2004. The decline in apprehensions has occurred as successful illegal border crossings have held steady.

- *Inside the Country:* The number of illegal immigrants apprehended within the interior of the country has plummeted by 36%—from an average of 40,193 between fiscal years 1996 and 2000 to an average of 25,901 between fiscal years 2001 and 2004. Under the Bush Administration enforcement rates, it would take 228 years to apprehend all of the illegal immigrants already in the country's interior.
- *Employers:* The laws designed to curtail the illegal employment of undocumented workers are enforced so infrequently that they might as well not exist. The Justice Department obtained only 46 convictions for employer violations of illegal immigrant employment laws in FY 2004 (the last year for which data are available).

What is striking is that so many significant enforcement indicators are dramatically down over the first four years of the Bush Administration.* It is especially so for people who have successfully made it to the non-border states. In a phrase—once you're in, *you're in*. Enforcement of laws pertaining to employment and to apprehending those well inside the United States are so infrequent as to negate any deterrent effect.

The data do not explain why the enforcement rate is so poor. It is possible that even though Congress has massively increased the number of border agents, the expanded mission of the Border Patrol (to include terrorism protection) has led or contributed to the decline in enforcement. But the blame for the dismal enforcement record since 2000 cannot rest on the hard-pressed men and women of the Border Patrol. Rather, it seems to be yet another failure of leadership in that deeply troubled and incompetently managed corner of the Bush Administration: the Department of Homeland Security.

* Most recent available full year data.

Background: The Modern Illegal Immigration Problem

Viewed historically, illegal immigration is a relatively new problem in American history. Immigration laws were originally designed to focus on health and safety inspections of those seeking entrance. Later, immigration limitations were aimed at specific racial groups. The first significant restriction—the Chinese Exclusion Act of 1882—banned Chinese laborers from immigrating and naturalizing.

In 1921, immigration laws were altered to specify numerical quotas based on geographic origin. This marked the start of the modern immigration era, in which a specific annual number of legal entrants were permitted and our current conception of illegal immigration begins. For the first time, a large segment of the immigrant population was subjected to application procedures. The Border Patrol was founded soon after, in 1924.

Early enforcement difficulties focused on migrants smuggled from Asia and Eastern Europe through Mexico. Central and South Americans were not subject to quotas until 1965. The number of deportable aliens annually apprehended grew from less than 150,000 in 1965 to over a million by 1979, as those subject to border checks continued to seek entry to the United States regardless of legal status.

By the 1980s, there was general recognition that existing mechanisms of border enforcement were broken. The illegal immigrant population grew to 3.3 million in 1982 and 4 million in 1986. Seeking remedy, the 1986 Immigration Reform and Control Act legalized 2.7 million aliens through a one time only amnesty and took what was then viewed as the crucial step of criminalizing the employment of illegal immigrants.

By 1996, however, the illegal population had swelled to 5 million. In response, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 was enacted, increasing the size and scope of the border patrol and its security efforts.ⁱ

Following 9/11, the Border Patrol was folded into the new Department of Homeland Security (DHS), and its mission was redefined. The National Border Patrol Strategy states, “The priority mission of CBP, specifically including all Border Patrol Agents, is homeland security—nothing less than preventing terrorists and terrorist weapons—including potential weapons of mass destruction—from entering the United States.”ⁱⁱ Under this new scheme, the federal government—with DHS in the lead—retains jurisdiction for enforcement of almost all immigration-related offenses.

Finding #1: Despite the Massive Number of Illegal Crossings, Border Arrests Are Down Significantly.

Today’s immigration enforcement efforts are a far cry from the popular image of federal agents mounted on horseback. The federal government has a broad array of tools at its disposal, ranging from a national network of Border Patrol agents to regulatory enforcement to civil and criminal prosecution. But over the past five years, border apprehensions have fallen dramatically.

Total Apprehensions Are Down by 30%: After reaching a high of over 1.81 million apprehensions in FY 2000 and averaging 1.68 million between FY 1996 and FY 2000, average annual apprehensions fell to 1.18 million between FY 2001 and FY 2004. This belies the claims of the National Border Patrol Strategy, which imply that both anti-terror and immigration enforcement missions can be performed without a significant drop in performance.ⁱⁱⁱ

Border Apprehensions Are Down by 31%: The number of apprehensions at or near the Mexican border has declined by 31%—from an average of 1.52 million apprehensions per year between fiscal years 1996 and 2000, compared to an average of 1.05 million apprehensions between 2001 and 2004. The decline in border apprehensions has occurred as successful illegal border crossings have held steady.^{iv}

Few Criminal Immigration Investigations Result in Conviction: In FY 2004, the Immigration and Custom Enforcement Office of Investigations, “the largest investigative arm of the Department of Homeland Security,” secured only 4,007 convictions from the over 58,727 criminal immigration investigations it initiated regarding human smuggling, trafficking, illegal employment, identity fraud and criminal alien investigations.^v

Immigration And Custom Enforcement Office Of Investigations: Fiscal Year 2004	Cases Initiated	Cases Closed	Criminal Arrests	Criminal Indictments	Criminal Convictions
Immigration and Customs Enforcement Office of Investigations, FY 2004: Total, All Immigration Categories	58,727	46,656	9,455	5,363	4,007

This trend was particularly acute in several key categories:

Offense Category: FY 2004	Criminal Convictions
Alien smuggling individuals/groups investigations	491
Alien smuggling organizations investigations	408
Human trafficking investigations	70
Employers of unauthorized illegal aliens	46

Finding #2: Enforcement Outside the Border Region Is Rare and Declining.

Once illegal immigrants have successfully entered the United States and traveled beyond the Mexican border states,* they stand little risk of location and deportation. Interior state border patrol apprehensions and employer penalties are rare. Thus, illegal immigrants in the other 46 states are capable of establishing residence and finding employment with little chance of being caught.

Non-Border State Apprehensions are almost Non-Existent: The number of deportable aliens located in non-border areas—i.e. states not bordering with Mexico—have declined by 36% from an average of 40,193 per year between fiscal years 1996 and 2000, compared to an average of 25,901 between fiscal years 2001 and 2004. Apprehensions reached an all time low of 21,113 in fiscal year 2004.

This declining trend, and low overall total, suggests that illegal immigrants who escape beyond the border are more or less here to stay if they choose.^{vi}

Under the Bush DHS Enforcement Rates it would take 228 years to Apprehend all of the Illegal Immigrants Currently Residing in the

Non-Border States: This is a conservative estimate. In 2004, there were 10.3 million illegal immigrants in the United States, 5.915 million of which were located in the 46 non-Mexican border states. The number of illegal immigrants apprehended in non-border states under President Bush has averaged 25,901 per year. At this rate, it would take 228 years to locate all of the illegal aliens currently residing in the U.S. interior.^{vii}

Audits and Fines of Employers are Down Significantly: Audits of employers suspected of utilizing illegal labor have dropped from a peak of almost 8,000 under President Clinton to less than 2,200 in FY 2003.^{viii} The number of employer cases resulting in fines has declined from a peak of nearly 900 under President Clinton to a total of 124 in FY 2003.^{ix}

Only 46 Employers Were Convicted of Illegal Immigrant Employment in FY 2004: The USCIS 2004 immigration enforcement report cites its chartered

“It appears she's got a tremendous amount of experience in money laundering, in banking and the financial areas. My question is: Who the hell is going to enforce the immigration laws?”

* The border states are Texas, New Mexico, Arizona, and parts of California.

commitment to illegal employment enforcement stating: "Immigration law prohibits the unlawful employment of aliens and provides for penalties and fines against employers who hire, recruit or refer aliens for employment for a fee. Employer cases may also originate as referrals from the Department of Labor... Employer arrests represented 2 percent of the total immigration-related criminal arrests by ICE investigations. Yet, in FY 2004, only 46 convictions were obtained.^x

It is worth noting that if DHS-level leadership is to blame, this situation is not likely to get any better under Bush. ICE is now led by Julie Myers, a lawyer with virtually no relevant management or substantive experience. When she was appointed to the job in September 2005, *The Washington Post* reported on the outcry, quoting the president of a union representing 7,800 ICE agents, officers and support staff as saying: "It appears she's got a tremendous amount of experience in money laundering, in banking and the financial areas. My question is: Who the hell is going to enforce the immigration laws?"^{xi}

Conclusion

Time for a Change in Leadership at DHS and For Practical Solutions to Repair a Broken System

Like its preparation for natural disasters, which was revealed to be woefully lacking by Hurricane Katrina, it is now clear that DHS has made the enforcement of federal immigration laws a backburner issue, and the appointment of unqualified cronies to fill high-level immigration enforcement positions only underscores this point.

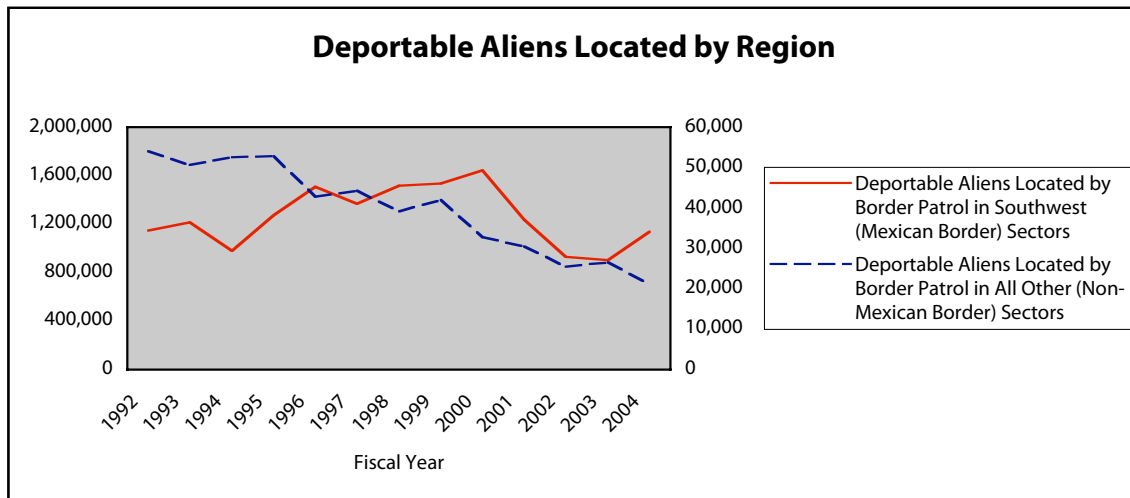
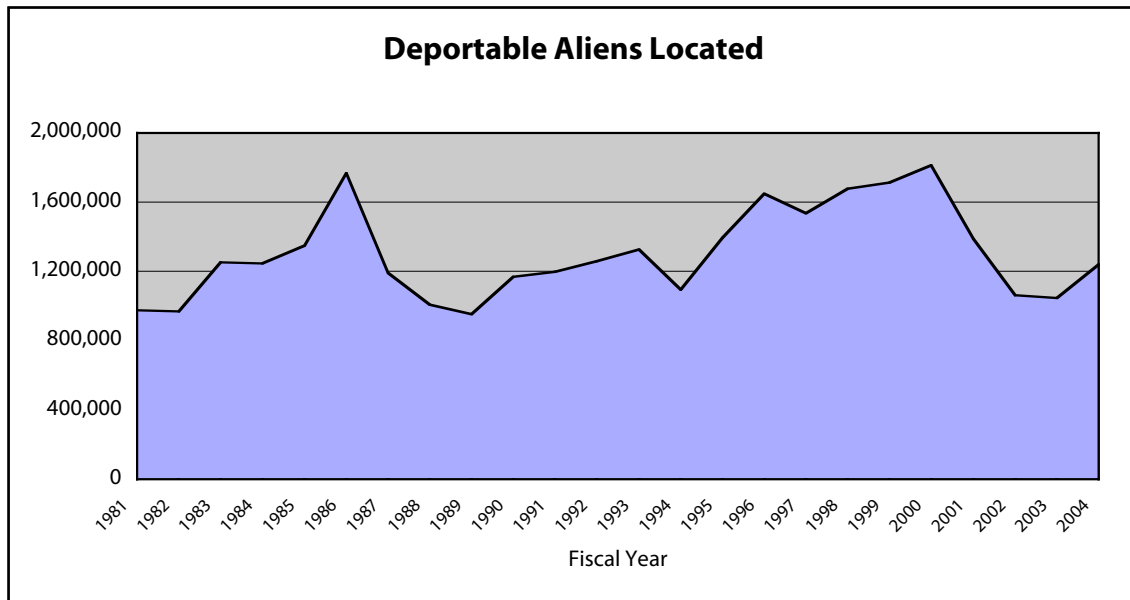
The data lead to unmistakable conclusions: border enforcement is stagnant, and despite the occasional high profile arrest, there is no realistic threat to an employer of getting caught or suffering the legal consequences of hiring illegal immigrants. This situation is intolerable—the President must replace the leadership of our broken immigration enforcement infrastructure. And Congress should demand that DHS clean up its act and focus much more intently on the primary mission of the immigration enforcement — stopping the flow of illegal immigrants and cracking down on employers who break the law.

But the numbers reveal a stark reality—even if DHS were turned around overnight, mass deportations (whatever their moral implications) would be totally impractical. It would take over two centuries to apprehend all of the illegal immigrants currently in the interior of the country under the Bush enforcement rate. We must find another way.

One of the bipartisan legislative solutions seeks to provide a path to legality and citizenship for most of these illegal aliens. This legislation would create a better identification system to stop future illegal immigrants from gaining employment and would crack down on employers who continue to break the law. In addition, the proposal would strengthen border security.

This seems like a tough and practical solution to the illegal immigration problem facing America. But if this law is enacted, and if the current and future administrations follow the lead of the Bush DHS and neglects to enforce the laws on the books, we will face the same problem in the future. The levees on our border are saturated and leaking badly; this time, DHS must find a way to manage the flood and repair the damage.

Appendix 1: Illegal Immigration Apprehension Trends



Endnotes

- ⁱ An Immigrant Nation: United States Regulation of Immigration, 1978-1992, INS; <http://uscis.gov/graphics/aboutus/history/cover.htm>; Population Resource Center: U.S. Immigration—a Legislative History; Federation for American Immigration Reform: U.S. Immigration History
- ⁱⁱ National Border Patrol Strategy, Office of Border Patrol; http://www.cbp.gov/linkhandler/cgov/border_security/border_patrol/national_bp_strategy.ctt/national_bp_strategy.pdf
- ⁱⁱⁱ Department of Homeland Security, Yearbook of Immigration Statistics, 2004
- ^{iv} Ibid.
- ^v Immigration And Custom Enforcement, Office Of Investigations: Fiscal Year 2004.
- ^{vi} Ibid.
- ^{vii} USCIS Border Patrol Statistics (2001-2005); Pew Hispanic Center for immigration numbers.
- ^{viii} The Declining Enforcement of Employer Sanctions, Peter Brownell, University of California, Berkeley, 9/1/05
- ^{ix} Ibid.
- ^x Ibid.
- ^{xi} Dan Eggen and Spencer Hu, "Immigration Nominee's Credentials Questioned," The Washington Post, September 20, 2005, (p. A1).