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THE FINANCIAL BURDEN OF ILLEGAL ALIENS: DIRECTING ATTENTION TOWARD THE EMPLOYERS OF UNDOCUMENTED WORKERS

*Shane Dola*¹

There are an estimated 12.5 million illegal alien residents in the United States.² In addition, there are an estimated 4.2 million citizen children—that is, children born on United States soil to illegal aliens.³ Due to fears of deportation, illegal aliens have considerable motivation to lie about or withhold their actual legal status, thus, the exact number of illegal aliens in the United States could be larger than studies indicate. Although the subject of illegal immigration is complex, major findings have made clear that the unlawful employment of illegal immigrants causes far-reaching economic problems which negatively affect all legal citizens in the United States. As we will show throughout this paper, across federal, state, and local levels, United States taxpayers spend approximately \$134.9 billion to cover the costs incurred by the 12.5 million illegal aliens and their 4.5 million citizen children.⁴

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- 1 Shane Dola is a senior at Brigham Young University majoring in Sociology and minoring in Business Management. He plans on attending law school in the fall of 2020. He would like to thank Joshua Jorgensen and Brian Ridd for their time and effort in editing this article. Special thanks are also due to all those who helped in the writing process in any way.
 - 2 Matthew O'Brien and Spencer Raley, *The Fiscal Burden of Illegal Immigration on United States Taxpayers*, IMMIGR. REF. L. INST. <https://fairus.org/issue/publications-resources/fiscal-burden-illegal-immigration-united-states-taxpayers> (last visited Jan. 15, 2019).
 - 3 *Id.*
 - 4 *Id.*

Although there are three major classifications of immigrants—economic immigrants, family class immigrants, and refugees—the purpose of this paper is to address the economic costs that hiring illegal immigrants imposes on United States citizens, so we will focus solely on economic immigrants. Economic migration is defined as a choice to move to improve the standard of living by acquiring more lucrative employment.⁵ Unfortunately, many of these forms of employment are being obtained illegally because employers are hiring illegal economic immigrants in the interest of obtaining significant economic gains, and in defiance of long-standing federal law.

In this paper we will examine how employers provide incentive for illegal aliens to violate employment regulations, and how this has imposed substantial fiscal burdens upon the entire nation of the United States. Furthermore, we will propose solutions that would benefit both the native economy and the illegal alien population. Section I will provide a brief history of illegal immigration in the United States and dissect the burden that past failed policies have imposed upon present-day taxpaying Americans. Section II will draw a parallel between the practice of illegally employing undocumented workers and the fraud triangle to reveal both the source and the solution to the problem of illegal economic migration. In Section III we will expose the ineffective enforcement of current legal policies intended to penalize those who employ undocumented workers. In sections IV and V we will suggest several possible political and economic solutions to the issue of unlawful employment, and in section VI we will come to a conclusion on what everyday citizens of the United States need to do to end the tide of illegal immigration.

I. BACKGROUND

A. Trends in Illegal Immigration

Undocumented [illegal] aliens are foreign nationals who have violated the conditions of legal entry into a country, or whose continued

5 Unesco, *Migrant/Migration*, UNESCO <http://www.unesco.org/new/en/social-and-human-sciences/themes/international-migration/glossary/migrant/> (last visited Feb. 4, 2019).

residence is in violation of the laws of the land.⁶ Although “federal immigration regulation began in earnest in the 1880s,”⁷ the economic problems caused by hiring illegal aliens were not addressed by the federal legislature until 1986. The “Immigration Reform and Control Act” (IRCA)⁸—also known as the “1986 amnesty”—made it illegal to hire undocumented aliens and provided a pathway to citizenship for unlawful residents. Although the bill’s primary objective was not to grant amnesty to illegal aliens, but rather to ban employers from knowingly hiring unauthorized immigrants, it allowed many of the 3.2 million illegal residents of the United States to apply for legal status.⁹ However, one of IRCA’s major provisions stipulated that the legalization of undocumented aliens only applied to those who had been continuously, unlawfully present in the country since 1982.¹⁰ As a result, only 2.7 million of the 3.2 million unauthorized immigrants actually obtained legal status under IRCA. By 1988 it was already clear that the bill had fallen short of its goals, since the illegal alien population had climbed back up to 1.9 million, and many illegal aliens were still being hired by native employers.¹¹ This was the beginning of a long and consistently ineffectual effort to address the economic impact of illegal immigration.

6 *Immigration Terms and Definitions Involving Aliens*, I.R.S. <https://www.irs.gov/individuals/international-taxpayers/immigration-terms-and-definitions-involving-aliens> (last visited Jan. 15, 2019).

7 Michael J. Wishnie, *Prohibiting the Employment of Unauthorized Immigrants: The Experiment Fails*, 2007 U. CHI. LEGAL F. 193, 193-95 (2007). While federal immigration regulation began in the 1880s, federal law permitted employers to hire illegal aliens. There were no sanctions against employers hiring illegal aliens until IRCA in 1986.

8 Immigration Reform and Control Act of 1986, 8 U.S.C. § 1101.

9 Betsy Cooper & Kevin O’Neil, *Lessons From The Immigration and Control Act of 1986*, MIGRATION POL’Y INST., Aug. 2005, at 1.

10 *Id.* at 4.

11 *Id.* at 5.

Since 1988 the number of illegal aliens has consistently climbed, although their number has been relatively stable since 2009.¹² In 2017, estimates showed that there were 12.5 million illegal aliens and 4.2 million citizen children, which translates to 5 percent of the total 2017 United States population.¹³ The ever-growing population of undocumented workers and the ineffectiveness of government solutions to the problem has made illegal immigration one of the highest-ranked national problems in the United States.¹⁴

Responding to this national anxiety, the current administration has been pushing for the construction of a 2000-mile wall along the southern border. This rather unimaginative proposal is simply continuation of past policies and projects; several physical barriers on the United States-Mexico border already existed when Mr. Trump was elected in 2016.¹⁵ In 1996 the United States Border Patrol completed construction of a 14-mile-long barrier to deter illegal aliens and drug smugglers from entering the United States at the San Diego border.¹⁶ Furthermore, in accordance with the “Secure Fence Act of 2006,” 700 miles¹⁷ of border fencing had already been completed

12 Jeffrey S. Passel & D’Vera Cohn, *Unauthorized Immigrant Population Stable for Half a Decade*, PEW RES. CTR. (Jan. 15, 2019, 2:56 PM), <http://www.pewresearch.org/fact-tank/2016/09/21/unauthorized-immigrant-population-stable-for-half-a-decade/>.

13 U.S. CENSUS BUREAU (2018).

14 John Gramlich, *How Americans See Illegal Immigration, the Border Wall and Political Compromise*, PEW RES. CTR. (Jan. 16, 2019), <http://www.pewresearch.org/fact-tank/2019/01/16/how-americans-see-illegal-immigration-the-border-wall-and-political-compromise/>; Carroll Doherty et al., *Little Partisan Agreement on the Pressing Problems Facing the U.S.*, PEW RES. CTR. (Apr. 2018), <http://www.people-press.org/wp-content/uploads/sites/4/2018/10/Midterm-Report-for-release.pdf>.

15 Chad C Haddal et al., *Border Security: Barriers Along the U.S. International Border* 1 (2009), <https://fas.org/sgp/crs/homsec/RL33659.pdf>.

16 *Id.*

17 Julia Jacobo and Serena Marshall, *Nearly 700 Miles of Fencing at the US-Mexico Border Already Exist*, ABC NEWS (Jan. 26, 2017), <https://abcnews.go.com/US/700-miles-fencing-us-mexico-border-exist/story?id=45045054>.

when Mr. Trump took office in January of 2017.¹⁸ When combined, these barriers already account for nearly a third of United States-Mexico border.

However, it is clearer now than ever before that physical barriers are ineffective deterrents to illegal immigration. When confronted by walls or barriers, illegal aliens have simply found new ways to cross over onto United States soil.¹⁹ Not only has the placement of border walls/barriers in the past failed to keep illegal aliens out of the United States, the barriers have actually kept more illegal aliens from exiting the United States and returning to their native countries.²⁰ Prior to 1990 migrants were able to come and go across the border at relatively low cost and risk.²¹ Illegal aliens were able to easily sustain a “circular pattern of migration” where they would come to the United States, work, and then usually return home.²² However, by the mid-1990s the construction of physical barriers on the border had made it not only more difficult (but still worthwhile) to enter the United States, but raised the risk of attempting to illegally leave the United States to prohibitive levels.²³ As a result, the pattern of circular migration became significantly suppressed,²⁴ and more illegal aliens opted to remain safely in the United States once they had successfully arrived. Border barriers are therefore mostly ineffective in preventing immigration, but enormously successful at curtailing emigration.

18 *Fact Sheet: The Secure Fence Act of 2006*, THE WHITE HOUSE PRESIDENT GEORGE W. BUSH (Jan. 17, 2019 2:47 PM), <https://georgewbush-whitehouse.archives.gov/news/releases/2006/10/20061026-1.html>.

19 Stephanie Simon, *Border-Fence Project Hits a Snag*, WALL ST. J. (Feb. 4, 2009), <https://www.wsj.com/articles/SB123370523066745559>.

20 *Id.*

21 Douglas S. Massey et al., *Why Border Enforcement Backfired*, 121 AM. J. SOC. 1557, 1581 (2016).

22 *Id.*

23 *Id.*

24 *Id.*

It has become clear that the further construction of barriers along the border is not a viable solution to the problem at hand. Past and current policies have failed because they have focused on the illegal aliens themselves and not on their enablers: the employers who hire them. The federal government has failed to adequately address the huge economic effect of employers who provide financial opportunity for illegal aliens to cross into the United States. As a result, illegal aliens continue to flow into the United States mostly unchecked and unaccounted for. The current laws and legislation used to prosecute the employers of undocumented workers have proven inadequate and ineffective in stemming the tide of illegal labor. As will be demonstrated in this paper, there is a pressing economic need for stricter state and local immigration laws, better enforcement of federal laws, and new legislation targeting employers of illegal aliens.

B. Variations in State Enforcement

i. Border States

One of the major issues with international border security is the lack of unanimity among the so-called “border states” (California, Arizona, New Mexico, and Texas).²⁵ In 2017 Texas spent more than all of the United States-Mexico border states combined on border security with, a final budget totaling \$412 million.²⁶ Arizona and New Mexico also spend a large percentage of their Gross Domestic Product (GDP) on border security, with budgets of \$49.18 million and \$29.6 million per year, respectively.²⁷ While these three states all spend enormous amounts on preventing illegal economic-immigrants from gaining access to illegal employment, California’s government spends so little money on border security that the impact is

25 Greg Walden et al., *Border Security Agencies Need to Better Coordinate Their Strategies and Operations on Federal Lands*, U.S. GEN. ACCT. OFF. (2004), <https://www.gao.gov/assets/250/243053.pdf>.

26 O’BRIEN ET AL., *supra* note 1.

27 *Id.*

widely considered to be negligible.²⁸ In 2014 then-California Governor Jerry Brown openly expressed his animosity towards the other three states' border security efforts and mocked Texas' decision to deploy National Guard troops to the border.²⁹

California's attitude towards immigration enforcement has had several tangible consequences. Even though it has the shortest international border with Mexico, California has the highest population of illegal aliens and their children (3,535,190), while Texas—with a border nearly nine times the size of California's—has fewer illegal aliens (2,482,154) comparatively, not considering proportion of populations in each state.³⁰ In addition, the cost per alien to state taxpayers is calculated to be much higher in California (\$6,517 per alien) than in Texas (\$4,429 per alien).³¹

Until all four border states coordinate their strategies and operations regarding the international United States-Mexico border, employers in the United States will continue to take advantage of the inflow of illegal economic-immigrant aliens. While certain states expend huge amounts of resources to keep illegal aliens at bay, overall border security will continue to be ineffectual as long as securing the border is not a shared endeavor.

28 *Id.*

29 U.S. Customs and Border Protection, *Gov. Brown Takes a Dig at Texas National Guard Border Plan*, KSBW (Jul. 28, 2014), <https://www.ksbw.com/article/gov-brown-takes-dig-at-texas-national-guard-border-plan/1054616>.

30 O'BRIEN ET AL., *supra* note 1.

31 O'BRIEN ET AL., *supra* note 1 at 49 (specifying "Economic Cost Dissection" in subsection "C.").

ii. State vs. Federal Conflict

Although federal law prohibits illegal immigration, the enforcement of the law is often left to state and municipal government.³² This divide between policy and enforcement frequently creates legal tension, such as that which has raged over the “Improper Entry by Alien” bill. Section 1325(a)(b)(d) of Title 8 of the United States Code designates the elements of the crime of illegal immigration and specifies the terms of criminal punishment for those convicted.³³ However, while total federal expenditures on illegal aliens in 2017 came to only \$45.8 billion, total state and local expenditures nearly double that number, exceeding \$88.9 billion.³⁴ The result has been a systemic disparity in enforcement, since state governments vary on their views, policies, and the amount of funding they are willing to allocate to the enforcement of federal mandates. Consequently, employers who knowingly hire illegal aliens are subjected to inconsistent prosecution across different states and municipalities.

iii. Impact of Various Policies (Sanctuary Cities)

In many municipalities the local government has committed to protecting the undocumented residents living in their cities. These cities are known as “sanctuary cities” because most illegal aliens live without fear of federal prosecution and/or deportation threats. For example, Boston’s city council in 2014 directed local law

32 Acceptance of State Services to Carry out Immigration Enforcement, 104th Cong. § 133 (1996). House sections 122 and 365 recede to Senate amendment section 184, with modifications. This section amends INA section 287 to permit the Attorney General to enter into written agreements with State and local authorities to designate qualified officers or employees of the State or locality to perform immigration enforcement functions pertaining to the investigation, apprehension, or detention of aliens unlawfully in the United States, including the transportation of aliens across State lines to detention centers. Such functions shall be carried out at State or local expense and the designated officers and employees shall operate under the direction of the Attorney General.”

33 Daniel I. Morales, *Crimes of Migration*, 49 WAKE FOREST L. REV. 1257, at 1265 (2014).

34 O’BRIEN ET AL., *supra* note 1.

enforcement to not detain individuals based on immigration status except in cases where there is a criminal warrant.³⁵ Policies like this allow predatory employers further opportunity to unlawfully hire illegal aliens. They also further incentivize aliens to immigrate illegally and stay in the country without authorization, knowing that there are certain locations where they can find refuge and have fewer chances of being prosecuted for their illegal immigrant status.

*C. Economic Cost Dissection*³⁶

The total fiscal burden of illegal aliens on United States Taxpayers in 2017 can be calculated by taking the total national cost of immigration (roughly \$134.9 billion) and subtracting from it the total taxes paid by illegal aliens (just under \$19 billion). These calculations reveal that over \$115.8 billion was left on the shoulders of legal residents of the United States in year of 2017 alone. With an estimated 12.5 million illegal aliens and their 4.2 million citizen children, this amounts to a cost of approximately \$8,075 per illegal alien family member.³⁷ A partial breakdown of these costs across national levels is provided here:

35 Rory Carroll et al, *Top 10 U.S. sanctuary cities face roughly \$2.27 billion in cuts by Trump policy*, REUTERS (Jan. 25, 2017), <https://www.reuters.com/article/us-usa-trump-sanctuarycities-idUSKBN1592V9?platform=hootsuite>.

36 All numbers and values in the “Economic Cost Dissection” were obtained from the FAIRUS 2017 Report. See Matthew O’Brien et al., *The Fiscal Burden of Illegal Immigration on United States Tax Payers 2017*, IMMIGR. REF. L. INST (last visited Jan. 15, 2019).

37 O’BRIEN ET AL., *supra* note 2 at 57. An illegal alien family member is defined as any individual, whether that is a mother, father, daughter, son, etc., who currently resides illegally in the United States.

Administration of Justice	State Border Security Costs	Educational Costs	Healthcare Costs
Policing: \$4,727,322,309	Texas: \$412,000,000	Public School Expenditures: \$43,396,433,856	Medicaid Births: \$730,010,218
Judicial: \$2,227,368,973	New Mexico: \$49,180,000	Post-secondary tuition assistance: \$1,040,000,000	Uncompensated Medical Expenses: \$6,930,000,000
Corrections: \$3,622,579,699	Arizona: \$29,600,000		Improper Medicaid Payouts: \$2,031,025,000
	California: <i>negligible</i>		Medicaid for Children of Illegal Aliens: \$2,486,710,800

*Note: the numbers above do not represent the entirety of all the costs incurred by illegal immigration but do show some of the main points of interest where tax-monies are involved.

The United States’ illegal immigration dilemma is causing legal, law-abiding citizens to pay huge amounts of money in an effort to mitigate the economic losses that have been wrought by illegal immigration. While the typical working, law-abiding citizen is put at a disadvantage, many employers benefit from the crisis as they avoid minimum wage laws, overtime laws, payroll taxes, etc. This is not a review of the morality of immigration policies, but it is an analysis of the fiscal facts that demonstrate that employers of undocumented workers are enablers of a broken system that costs United States citizens hundreds of billions of dollars each year.

III. THE FRAUD TRIANGLE AS AN EXPLANATORY FRAMEWORK OF WORKPLACE FRAUD

A. Explaining the Fraud Triangle



Fraud is a wrongful or criminal deception perpetrated for financial or personal gain. Illegal aliens commit fraud when they knowingly obtain employment as an undocumented employee and obtain financial gains from said employment.³⁸ Likewise, employers commit fraud when they knowingly hire and continue to employ illegal aliens. This fits the definition of fraud because employers experience financial gains from the work provided from their illegal alien employees while avoiding taxes and increasing their capital gains.

38 *Fraud Law and Legal Definition*, USLEGAL.COM, <https://definitions.uslegal.com/f/fraud/> (last visited Jan. 16, 2019). Fraud is generally defined in the law as an intentional misrepresentation of material existing fact made by one person to another with knowledge of its falsity and for the purpose of inducing the other person to act, and upon which the other person relies with resulting injury or damage. Fraud may also be made by an omission or purposeful failure to state material facts, which nondisclosure makes other statements misleading.

The cause of fraud can be summarized in an axiom developed by Donald Cressey, known as the Fraud Triangle³⁹ (illustrated above⁴⁰). Within this triangle are three elements: pressure or motive, opportunity, and rationalization, where each stage is categorized by the effect it has on the individual committing fraud. Cressey posits that individuals commit fraud when the three factors are present:

1. A financial need that cannot be shared (*motive*)
2. A perceived opportunity for illicit gain or improper access to funds (*opportunity*)
3. A personal justification of the act to themselves (*rationalization*)

Furthermore, Cressey argues that when any one element is eliminated, then the pressure from the other two dissipates. Or, in other words, for workplace fraud to occur all three stages of the triangle—pressure, opportunity, and rationalization—have to be present.

Using the Fraud Triangle as a model, we can see that United States citizens who hire illegal aliens are responsible for the perpetuation of the fraud that is continuously brought about and reinforced in the current illegal workforce. Due to the failure of border security measures, the rewards of employment in the United States greatly outweigh the risks of being caught. This lack of prosecution at the border creates and promotes greater opportunity for aliens to immigrate illegally. Furthermore, employers are continually providing opportunity (jobs and employment) for illegal aliens, which further incentivizes aliens to immigrate illegally. Finally, illegal aliens

39 Olukayode Abayomi Sorunke, *Personal Ethics and Fraudster Motivation: The Missing Link in Fraud Triangle and Fraud Diamond Theories*, 6 INT'L J. ACAD. RES. BUS. & SOC. SCI. 159, 159–64 (2016). The fraud triangle has been updated/changed to be a fraud diamond with “capability” being a new element that workers usually need to be able to commit fraud. However, the original fraud triangle is sufficient to model our argument as it is assumed that capabilities and skills are a prerequisite for hiring/are learned along the way—or the fact that there are usually not high levels of skills required—in the type workplace fraud we have evidenced here.

40 Katie Yahnke, *The Fraud Triangle*, I-SIGHT (2019) <https://i-sight.com/resources/opportunity-workplace-fraud/>.

can rationalize that they are being unfairly barred from the lucrative labor market in the United States, or that their behavior is necessary for their own survival, the wellbeing of their families and friends, or any number of other essential priorities. Although these issues are complex, if the opportunity that employers provide by hiring undocumented aliens is eliminated by making it too costly and/or risky for both foreign nationals and domestic employers, then the pressures of opportunity and rationalization will disappear.

B. Critics of the Fraud Triangle

Critics of the Fraud Triangle theory often take aim at the issue of rationalization. Although the construct of the rationalization element in the Fraud Triangle is generally understood to occur before a fraudulent act occurs, some critics argue that this is not always the case; often the fraudster does not consider justification for the act until it has been completed.⁴¹ The following are a few possible categories or “types” of rationalization that both employers and employees might reflect:

1. Moral justification: “I’m protecting my family [...]”
2. Ignore or misconstrue consequences: “I can’t see that it hurts anyone”
3. Denial of the victim: “The government is the only one who ends up paying for it”
4. Diffusing responsibility: “I’m not the only one who does it”
5. Entitlement: “I deserve more money”

This is not an all-inclusive list, but it represents the predominant “rationalizations” aligned with typical thinking.⁴² Furthermore, one

41 Clinton Free, *Looking Through the Fraud Triangle: A Review and Call For New Directions*, 23 MEDITARI ACCT. RES. 175, 175-96 (2015).

42 Here are some other possible “just rationalities” that a fraudster may use to justify his committing fraud:

- Advantageous comparison: “This is nothing compared to [...]”
- Euphemistic labeling: “I’m trying to level the playing field”
- Displacing responsibility: “I was just a part of the group that was doing it”
- Disbelief: “What we are doing isn’t really illegal”
- Temporary Loan: “I fully intended to pay back the money that I took”

could be right to say that none of these apply to them and that what is considered to be “rational” is highly subjective. In spite of the debate over the proper definition of rationalization, in the case of illegal aliens obtaining employment from domestic citizens the Fraud Triangle does well to explain the motivation and solutions for the phenomenon of illegal immigration.

IV. SANCTIONS SET IN PLACE AGAINST EMPLOYERS

A list of the major sanctions set in place against employers, and their subsequent level of failure are as follows:

A. The Immigration Reform and Control Act of 1986 (IRCA)

As previously explained, IRCA was the first instance where legislation was put in place specifically to take on the issue of creating sanctions against the unauthorized hiring of illegal aliens. This was to be accomplished by “regularizing migrants already in the country and then implementing stronger enforcement mechanisms to prevent new entries.”⁴³ Employer sanctions made three types of activity illegal: “1) knowingly hiring persons not authorized to work in the United States 2) the continued employment of persons and 3) the hiring of an individual without verifying or correctly documenting the person’s identity and eligibility to work legally in the United States.”⁴⁴

Although IRCA provided a substantial percentage of illegal aliens with the opportunity to become legal citizens, it left out some groups. This exclusion led to the following issues: 1) legalization led to mixed-status families 2) there were “dropouts” from the two-tiered system 3) there was no plan for those who did not qualify and 4) outreach was not universally effective. As a direct result of these issues, immigration backlogs dramatically increased following the passage of IRCA.⁴⁵

43 COOPER ET AL., *supra* note 8.

44 *Id.* at 2, 3.

45 *Id.* at 6.

B. The Passage of the Immigration Act of 1990

The Immigration Act of 1990 was enacted on November 29, 1990 and increased the number of legal immigrants allowed to enter the United States per year from about 500,000 to about 700,000.⁴⁶ Prior to the 1990 Act about 54,000 visas were handed out to workers each year. Following the enforcement of this act the number of visas handed out increased to 140,000.⁴⁷ The act also included special provisions to improve family immigration, business immigration, naturalization, and exclusion and deportation grounds and procedures. President George H.W. Bush stated: “This bill is good for families, good for business, good for crime fighting and good for America.”⁴⁸

Additionally, the 1990 act introduced a preference system which divided the 140,000 visas between five categories instead of the

46 Immigration Act of 1990, Pub. L. No. 101-649, § 104 Stat. 4978 (1990).

47 *Id.*

48 PUBLIC PAPERS OF THE PRESIDENTS OF THE UNITED STATES, GEORGE BUSH 1717 (1991). On the occasion of signing the Immigration Act of 1990 (the “Act”) into law, President Bush stated that it will promote a more competitive economy, respect for the family unit, and swift punishment for drugs and crime. Immigration is not just a link to America’s past, it’s also a link to America’s future. This bill provides for vital increases for entry on the basis of skills-infusing the ranks of our scientists and engineers and educators with new blood and new ideas. And it also boosts our war on drugs and crime, allowing us to send back alien offenders who threaten our streets and who make up nearly a fourth of our federal prison populations. It will help secure our borders—the front lines of the drug war. It also revises the exclusion grounds for the first time since enactment in 1952, putting an end to the kind of political litmus test that might have excluded even some of the heroes of the Eastern Europe’s—the Eastern European revolution of 1989. This bill is good for families, good for business, good for crime fighting, and good for America.

former two. The first category,⁴⁹ “priority workers,” was designed to support business and research in obtaining the highest-level professionals in any given endeavor and was not conditioned on a test of the United States labor market, i.e., labor certification.⁵⁰ Although this allowed more immigrants to seek and obtain legal work than ever before, it did not stop employers from hiring illegal, undocumented workers as well. Consequently, the number of illegal aliens in the United States continued to rise throughout the post-Cold War economic boom, more than doubling by the year 2000.⁵¹

C. Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA) of 1996

With illegal immigration on the rise in the 1990s the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA)

49 Warren R. Leiden and David L. Neal, *Highlights of the U.S. Immigration Act of 1990*, 14 FORDHAM INT’L L. J. 328, 328-39 (1990). On page 330 of the article, the authors say, “The second category, roughly a grade below that of priority workers, is comprised of professionals holding “advanced degrees” and aliens of “exceptional ability.” The third category includes skilled workers, professionals holding bachelor’s degrees, and “other workers.” The third category includes skilled workers, professionals holding bachelor’s degrees, and “other workers.” The Act provides 40,000 visas annually to each of these three categories. The remaining two categories, certain special immigrants and investors are distinct from the others in that they are not strictly employer-sponsored immigrants. The special immigrant’s category allows ministers and religious workers, among others, to immigrate based on established religious affiliation and the continuation of their profession in the United States. The investor’s category is specifically designed to generate U.S. employment by permitting the immigration of entrepreneurs who invest US\$1 million or more in a new commercial enterprise that creates employment for ten or more U.S. workers.”

50 Inadmissible Aliens, 8 U.S.C. § 1182(a) (14) (1988).

51 Steven A. Camarota, *Immigrants in the United States—2000 A Snapshot of America’s Foreign-Born Population*, CTR. IMMIGR. STUD. <https://cis.org/Report/Immigrants-United-States-2000> (last visited Feb. 12, 2019).

was enacted on September 30, 1996.⁵² This act sought to further deter persons from living in the United States illegally. The act states that anyone unlawfully present in the United States for 180 days but fewer than 365 days must remain outside the United States for three years.⁵³ If the illegal resident is in the United States for 365 days or more, they must stay outside the United States for ten years. Unfortunately, these harsh punishments did little to deter illegal immigrants.

D. Section 274A of the Immigration and Nationality Act (INA)

The employer sanction provisions, found in section 274A of the Immigration and Nationality Act (INA), state that it is the sole responsibility of employers to understand and adhere to immigration laws, not only during the hiring process but throughout a worker's employment. Employers must verify the identity and authorization of each person hired after November 6, 1986, and they must complete and retain Form I-9 (titled "Employment Eligibility Verification") for each employee who is required to complete the form. Failure to do so can result in the following violations:⁵⁴

1. Civil Violations:

- Knowingly having hired, or to have knowingly recruited or referred for a fee, an unauthorized alien for employment in the United States or to have knowingly continued to employ an unauthorized alien in the United States
- Failing to comply with Form I-9 employment verification requirements
- Committing or participating in document fraud for satisfying a requirement or benefit of the employment verification process or the INA

52 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 [hereinafter URIRA], Pub. L. No. 104-208, § 110 Stat. 3009 (codified as amended in scattered sections of 8 U.S.C.).

53 It was possible to obtain pardon through certain waivers. If such a person returns to the United States without pardon, he or she may not apply for a waiver for a period of ten years.

54 Bringing In and Harboring Certain Aliens, 8 U.S.C. § 1324 (2019).

- Committing document abuse
 - Failing to notify the Department of Home Security (DHS) of a Final No. confirmation (FNC) of an employee's employment eligibility
2. Criminal Violations:
 - Engaging in a pattern or practice of hiring, recruiting, or referring for a fee unauthorized aliens.
 3. Punishments:
 - Employers who commit civil or criminal violations may be subject to civil fines and/or criminal penalties, and debarment from government contracts.

E. Outcomes

Although IRCA, the Immigration Act of 1990, and the IIRIRA of 1996 all sought to improve the situation, each failed to stem the tide of illegal immigration. If they had been effective the number of illegal aliens in the United States would have decreased, but instead the number has grown quite sizably over time.⁵⁵ If the laws and policies were effective, we would see less employers hiring and employing undocumented laborers, but unfortunately "...unauthorized immigration is still driven by employment. Despite IRCA's employer sanctions statute, demand for unauthorized immigrant workers remains a central factor in unauthorized immigration. In 2005 over 90 percent of unauthorized males are employed."⁵⁶

55 Betsy Cooper & Kevin O'Neil, *Lessons From The Immigration and Control Act of 1986*, MIGRATION POL'Y INST., Aug. 2005, at 3.

56 *Id.* at 8.

V. WHY CURRENT/PAST LAWS HAVE NOT PROVEN EFFECTIVE⁵⁷

According to the United States Government Accountability Office, employers of illegal aliens were only issued citations of intent to fine, on a total of three occasions in 2004.⁵⁸ While the number of how many employers are hiring illegal aliens is unknown, it is worth noting that in 2004 there were an estimated 9.2 million⁵⁹ illegal aliens in the country who were somehow sustaining themselves. The idea that only three citations were issued against employers when such vast numbers of illegal immigrants are present in the United States is almost unimaginable.

VI. POSSIBLE SOLUTIONS

A. Institute Harsher Punishments on Employers

One of the major issues with the ineffectiveness of the current legislation is that the sanctions placed on employers are not harsh enough.⁶⁰ In fact, "...employers would likely recoup the costs associated with any fines in a very short time due to the cost differential between hiring an undocumented worker and a documented worker...a fine as high as \$11,000 can easily be recovered by paying an undocumented worker a substandard salary."⁶¹ Specific examples

57 Some of the other problems faced with illegal immigration not entirely related to illegal aliens alone:

- The Discriminatory Effects
- The Burdens Wrought Upon Lawful Employers
- The Lack of Adequate Data

58 Jeffrey L. Ehrenpreis, *Controlling Our Borders Through Enhanced Employer Sanctions*, 79 S. CAL. L. REV. 1203, at 1208 (2006).

59 Steven A. Camarota, *The Foreign-Born Population, 2000-2004*, CTR. IMMIGR. STUD., (Nov. 1, 2004) <https://cis.org/ForeignBorn-Population-20002004>.

60 Stephanie E. Steele, *Deterrence to Hiring Illegal Immigrant Workers: Will the New Employer Sanction Provisions Work*, 36 GA. J. INT'L & COMP. L. 477, at 493 (2008).

61 EHRENPREIS, *supra* at note 58, at 1221.

of inadequate consequences for predatory employers are almost disturbingly abundant. For example, notorious employer of illegal immigrants Mannem Reddy was placed on house arrest for 1 month (in his \$1.7 million mansion), was allowed to travel for work every day, and was issued only \$5,100 in penalties (allowed to be paid off at a rate of \$250 over a 20-month period).⁶² This was despite his confessing to a federal judge that he had been defrauding the authorities for 12 years and caused "...approximately 24 fraudulent employment applications with [U.S. Citizenship and Immigration Services] to secure lawful permanent resident status and/or H-1B temporary status for aliens who were not eligible to receive those benefits."⁶³ Reddy did not have his assets seized, wasn't jailed, and didn't receive a huge fine. Harsher punishments than these are absolutely necessary if state or federal governments hope to curb the tide of illegal immigration, and the unethical profit-mongering of those who employ them.⁶⁴

At the very least, men and women who employ illegal aliens should have the illicit fruits of their crimes (their personal assets) seized. They should face substantial fines that cripple them financially and deter them from future immigration law violations. We even advocate that implementing mandatory minimum jail sentences might help teach such perpetrators that their illegal actions have major consequences.

B. Creation of More Immigration Courts

Currently the United States only has approximately 400 immigration judges assigned to 62 immigration courts across the nation.⁶⁵

62 *Id.*

63 *Id.*

64 David North, *Slap on the Wrist for a Confessed, Wealthy Employer of Many Illegal Aliens*, CTR. IMMIGR. STUD. [HTTPS://CIS.ORG/SLAP-WRIST-CONFESSED-WEALTHY-EMPLOYER-MANY-ILLEGAL-ALIENS](https://cis.org/Slap-Wrist-Confessed-Wealthy-Employer-Many-Illegal-Aliens) (last visited Jan. 22, 2019).

65 Office of the Chief Immigration Judge, U.S. DEP'T JUST. [HTTPS://WWW.JUSTICE.GOV/EOIR/OFFICE-OF-THE-CHIEF-IMMIGRATION-JUDGE](https://www.justice.gov/eoir/office-of-the-chief-immigration-judge) (last updated Nov. 5, 2018).

Such a limited judicial labor force is not sufficient to meet the demands of processing millions of immigrants—legal and illegal.⁶⁶ As of November 30, 2018, immigration courts had a backlog of 809,041 cases.⁶⁷ “This is nearly a 50% increase when compared to January 2017 when President Trump took office,” and these numbers are expected to continue to rise.⁶⁸

With the implementation of an appropriate number of immigration courts, more illegal aliens can be processed. This will help to ensure that they are not being employed illegally. In fact, in some cases this may provide the proper pathway for more illegal aliens to gain legal status, become legally employed, and pay taxes for the country they have chosen to live in. More importantly, an increased number of immigration courts would allow for more employers to be sanctioned, prosecuted, and held accountable for employing illegal aliens.

C. Recognize a Smaller List of Acceptable Documents

The manufacture and use of fraudulent documents is another significant issue.⁶⁹ The implementation of IRCA brought a myriad of fraud and documentation problems⁷⁰ because affidavits were typically used to meet the IRCA requirement of documentation. However, affidavits are easily falsified and broadly believed to be unreliable as forms of documentation.⁷¹ Further complicating the problem, “many employers encourage or assist in the acceptance or procurement of fraudulent documents.”⁷²

66 *Growth in the Immigration Court Backlog Continues in FY 2019*, TRANS-ACTIONAL RECORDS ACCESS CLEARINGHOUSE <https://trac.syr.edu/whatsnew/email.181218.html> (last visited Jan. 22, 2019).

67 *Id.*

68 *Id.*

69 STEELE, *supra* note 60, at 497.

70 COOPER ET AL., *supra* note 8, at 6.

71 *Id.*

72 Cecelia M. Espinoza, *The Illusory Provisions of Sanctions: The Immigration Reform and Control Act of 1986*, 8 GEO. IMMIGR. L. J. 343, at 377 (1994).

The implementation of a smaller list of acceptable documents (which would not include affidavits) is clearly necessary. Furthermore, we propose that there be an increase in the security of these documents, in order to make them harder to be forged or counterfeited. To accomplish this, we propose that the security measures relating to the production of passports be applied to immigration documents. We expect that the costs saved from the elimination of falsified and fraudulent documents would prove to be greater than the cost of initiating these stricter policies.

D. Eliminate Sanctuary Cities

Sanctuary cities operate in direct opposition to federal law and contrary to the public interest in national security; their harboring of illegal aliens can no longer be accepted. Recently the Department of Justice identified and targeted 29 “Sanctuary Cities”⁷³ and warned them that they may be at risk of losing federal law enforcement funding. The federal government needs to make sure that it follows through with this threat in order to prevent further hiring of illegal aliens by illegal employers in these sanctuary cities.

73 Alan Neuhauser, *DOJ Targets 29 ‘Sanctuary Cities’ in Latest Salvo*, U.S. NEWS (Nov. 15, 2017), [HTTPS://WWW.USNEWS.COM/NEWS/NATIONAL-NEWS/ARTICLES/2017-11-15/JUSTICE-DEPARTMENT-TARGETS-29-SANCTUARY-CITIES-IN-LAT](https://www.usnews.com/news/national-news/articles/2017-11-15/justice-department-targets-29-sanctuary-cities-in-lat)([HTTPS://WWW.USNEWS.COM/NEWS/NATIONAL-NEWS/ARTICLES/2017-11-15/JUSTICE-DEPARTMENT-TARGETS-29-SANCTUARY-CITIES-IN-LATEST-SALVO](https://www.usnews.com/news/national-news/articles/2017-11-15/justice-department-targets-29-sanctuary-cities-in-latest-salvo))EST-SALVO. THESE SANCTUARY CITIES INCLUDE: ALBANY, NEW YORK; BERKELEY, CALIFORNIA; BERNALILLO COUNTY, NEW MEXICO; BURLINGTON, VERMONT; CONTRA COSTA COUNTY, CALIFORNIA; CITY AND COUNTY OF DENVER, COLORADO; FREMONT, CALIFORNIA; JACKSON, MISSISSIPPI; KING COUNTY, WASHINGTON; LAWRENCE, MASSACHUSETTS; LOS ANGELES, CALIFORNIA; LOUISVILLE METRO, KENTUCKY; MIDDLESEX, NEW JERSEY; MONTEREY COUNTY, CALIFORNIA; MULTNOMAH COUNTY, OREGON; NEWARK, NEW JERSEY; RIVERSIDE COUNTY, CALIFORNIA; SACRAMENTO COUNTY, CALIFORNIA; CITY AND COUNTY OF SAN FRANCISCO, CALIFORNIA; SANTA ANA, CALIFORNIA; SANTA CLARA COUNTY, CALIFORNIA; SEATTLE, WASHINGTON; SONOMA COUNTY, CALIFORNIA; WASHINGTON, DISTRICT OF COLUMBIA; WATSONVILLE, CALIFORNIA; WEST PALM BEACH, FLORIDA; STATE OF ILLINOIS; STATE OF OREGON; STATE OF VERMONT.

E. Increase Federal Enforcement

Immigration is a national issue and needs to be directed under federal authority. Since it is not possible for the federal government to have agents in place whenever immigration law needs to be enforced, this authority needs to be respected and followed by state and local law enforcement. Uniform adherence to federal mandates is an essential element in the fight against the illegal employment of illegal aliens. In the disturbing words of Kris Kobach:

It bears reiterating that any assistance that state or local police provide to the federal government in the enforcement of federal immigration laws is entirely voluntary. There is no provision of the U.S. Code or the Code of Federal Regulations that obligates local law enforcement agencies to devote any resources to the enforcement of federal immigration laws. This fact seems to escape those who assert that the federal government has by statute or policy imposed costly enforcement burdens on state and local government. This assertion is false. Indeed, when local law enforcement agencies do arrest and detain aliens for violations of immigration law prior to transfer to federal immigration authorities, it has been the regular practice of the federal government to reimburse such agencies for any detention costs incurred.⁷⁴

Under federal law as it currently stands, local police departments are *not required* to help the federal government uphold federal laws. As a result, the enforcement of immigration law is often neglected by over-worked local governments. This is especially true when there are problems with the disbursement of federal funds to states.⁷⁵ Clearly, it is necessary both for local law enforcement to adhere to federal authority in finding and prosecuting illegal aliens and their

74 Kris W. Kobach, *State and Local Authority to Enforce Immigration Law A Unified Approach for Stopping Terrorists*, CTR. IMMIGR. STUD. <https://cis.org/State-and-Local-Authority-Enforce-Immigration-Law> (last visited Jan. 17, 2019).

75 COOPER ET AL., *supra* note 8, at 6.

employers, and for the federal government to ensure that the appropriate funds are reaching local law enforcement so that they can adequately uphold federal immigration laws.

VII. CONCLUSION

Illegal immigration imposes an enormous monetary burden on all of the taxpaying citizens of the United States. We conclude that although all United States citizens suffer from the costs of illegal labor, employers who violate employment laws suffer less (or are immune to) the negative consequences of their crimes. Employers who hire undocumented aliens reap huge financial rewards while the resulting expenses and liabilities are shifted to taxpayers. Although illegal aliens are not without fault, since they are still breaking immigration and employment laws and regulations, we propose that the government should concentrate its efforts on finding and punishing the employers of illegal immigrants rather than the undocumented workers alone.

The current deterrents, including the laws and sanctions that prohibit the hiring of illegal aliens, are insufficient. The current legislation needs to be augmented by some or all of the proposed solutions listed above. In particular, there is an indisputable need for the punishments for hiring undocumented workers to be harsher in order to curtail illegal hiring practices. With most violations bringing only civil charges—often seen only as slaps on the wrists—there is a need for criminal charges to be established in order for illegal hiring to be prohibitively risky for predatory employers.

United we stand, divided we fall. With varying attitudes and efforts in fighting illegal employment across cities and states, there needs to be a federal, national solution. The Department of Homeland Security is in charge of regulating immigration into the United States, and it is time for this department specifically, and the federal government generally, to start enforcing immigration sanctions across all states equally.