

IMMIGRATION POLICY REFORM

A CALL FOR PAPER PROPOSALS

BACKGROUND AND PURPOSE

The United States is currently experiencing the largest immigration wave in its history. Approximately one million migrants, both documented and undocumented, enter the country each year.¹ There are over 11 million undocumented immigrants living in the United States,² many of whom are low-wage service and agriculture workers. The extent of the impact of this often invisible community of people on our nation's economy, businesses, schools and neighborhoods remains largely unknown. However, we do know that many immigrants, both documented and undocumented have encountered a significant backlash from some sectors of society, a backlash fueled in part by the tense political climate in this country since the 9/11 terrorist attacks. The backlash has shown itself most prominently in the federal and state "anti-terrorism" legislation passed since September 11, 2001. In an effort to balance the calls for greater enforcement and a legalization program for undocumented workers, in May of 2006, the Senate passed a comprehensive immigration reform bill³.

Not surprisingly, immigration reform has recently become a major political, economic and social issue, though it has long been the focus of public debate and federal legislation. In the last two decades, immigration reform efforts have produced several key pieces of federal legislation intended to improve the system but often exacerbating the problems within it. The Immigration Reform and Control Act (IRCA) of 1986, for example, instituted a mix of increased border enforcement, legalization, and employer sanctions to address illegal immigration.⁴ The Immigration Act of 1990 supplemented the 1986 initiative with, among other provisions, a higher annual cap on total legal immigration, increased employment-based immigration, and a new diversity visa lottery.⁵ Later in the 1990s, noncitizens' access to the justice system and eligibility for public benefits were curtailed significantly through the passage of the Antiterrorism and Effective Death Penalty Act of 1996, the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, and the Personal Responsibility and Work Opportunity Reconciliation Act (PRWORA).⁶

¹ This estimate of annual migration into the United States includes lawful permanent residents, undocumented immigrants, and legal nonimmigrants. Jeffrey S. Passel and Robert Suro, "Rise, Peak and Decline: Trends in U.S. Immigration 1992-2004", Pew Hispanic Center, Sept.27, 2005.

² Jeffrey S. Passel, "Size and Characteristics of the Unauthorized Migrant Population in the U.S." Pew Hispanic Center, March 7, 2006, available at <http://pewhispanic.org/files/reports/61.pdf>

³ The Comprehensive Immigration Reform Act of 2006 (S.2611)

⁴ Kevin Jernegan, Migration Policy Institute, "A New Century: Immigration and the US", Feb. 2005.

⁵ Jeanne Batalova, "The Growing Connection Between Temporary and Permanent Immigration Systems", Migration Policy Institute, *Insight* Report No. 14, Jan. 2006, p.2.

⁶ Migration Policy Institute, "A New Century," *supra* n. 4.

Within the next five years, Congress is likely to enact broad immigration reform legislation that will have a dramatic impact on the fate of not only immigrants and their families, but the entire country. Given the complex, highly charged nature of public discourse surrounding immigration policy, the need for credible, solid research to inform policymaking is absolutely critical.

To help address this need, the recently-launched Chief Justice Earl Warren Institute on Race, Ethnicity and Diversity (the Warren Institute) has designated immigration reform as one of its priority topics for research and policy development. The Warren Institute is a multi-disciplinary and collaborative venture designed to produce research and research-based policy prescriptions on issues of racial and ethnic justice. It engages the most difficult topics related to civil rights, race and ethnicity in a wide range of subject areas, and does so by combining several disciplines and professions, including law, the social sciences, public administration, and public health. Central to its methods are concerted efforts to build bridges connecting the world of research with the world of civic action and policy debate so that each informs the other, while preserving the independence and quality of the academic enterprise.

CALL FOR PROPOSALS

To this end, the Warren Institute is inviting a series of research and policy papers in the social sciences and law. We request proposals related to the following topics. We will also review proposals in this general arena, especially ones that address omissions in the framework offered in this document. We will provide a modest honoraria (est. \$1,500) to selected proposals. We will also consider providing additional honoraria to authors completing large, empirical studies.

I. COMPETITION WITH DOMESTIC WORKERS: THE IMPACT OF IMMIGRATION ON LOW-WAGE WORKERS / AFRICAN AMERICANS / PROFESSIONALS

A recurring theme in the debate over immigration reform, and one that is shaped by perception as much as by empirical claims, is the effect of immigration on the domestic workforce. Low-wage workers have received special attention in this discussion. Policymakers seeking to clamp down on immigration frequently cite the need to protect domestic workers from an influx of foreign – and largely low-skilled – competition.

For civil rights advocates and African-American communities, the issue of immigration brings with it concerns about the impact of immigration on African Americans, who are concentrated in the domestic low-wage work force and are often said to face the greatest competition from modern migrant flows into the United States. Similar concerns arise with respect to the impact of new immigration on established immigrant groups. The issue of job competition touches skilled professionals as well as low-skilled workers, men as well as women, and is connected to related topics such as competition for housing, working

conditions for low-wage workers, employer discrimination, and relations between immigrant and African-American communities. In this area, key questions for further research include:

- A. What is the relationship between the undocumented low-wage worker supply and the domestic low-wage workforce? How are wages, job opportunities, working conditions, etc. affected by illegal immigration?
- B. What is the relationship between the legal immigrant, low-wage worker supply and the domestic low-wage workforce? How are wages, job opportunities, working conditions, etc. affected by immigration status?
- C. What is the actual impact of undocumented immigration on the African-American workforce, and how is this impact perceived within African-American communities? Are African Americans actually being displaced by new undocumented immigrant workers, or are domestic and immigrant low-wage workers seeking different jobs for cultural or other reasons? How does entrepreneurship among immigrants compare to that of African Americans in terms of the types of businesses being established, access to credit, and access to/use of other community networks and resources? To what extent is the lack of job opportunities for African Americans a product of employer bias? If displacement is in fact occurring and/or if other negative impacts are being felt by African Americans, what potential policy prescriptions could be implemented to address this?
- D. What are the areas of conflict and common interest between immigrants and African-American communities? How can the conflicts be overcome and the common interests capitalized on to serve the needs of all groups and bridge the gaps between communities of color? In terms of messaging and rhetoric, how has the immigrants rights movement's use of civil rights language been received by African-American communities?
- E. How do African immigrants interact with/impact African-American communities? How do educational levels compare between the two groups, and, if there is a disparity, what are its impacts? Is there a difference in the way affirmative action programs impact African immigrants and African-Americans?
- F. What is the impact of undocumented immigration on workers in second-, third-, etc. generation immigrant communities? Are established immigrant communities being displaced by new undocumented immigrant workers? If displacement is occurring and/or if other negative impacts are being felt by established immigrant communities, what potential policy prescriptions could be implemented to address this?
- G. What role does gender play in determining the impact of legal and illegal immigration on the domestic workforce? If displacement is in fact occurring, is it affecting male or female workers differently? If so, why?

- H. What is the role of unions in this arena? How does immigration affect unionization and collective bargaining in this country? What role do/should unions play in preserving/improving labor conditions in the midst of significant immigration?
- I. What are the obstacles to improving wages/working conditions for the domestic low-wage workforce, and how can they be overcome?
- J. What lessons can be derived from the H-1B visa program for professional immigrant workers? What impact has that program had on opportunities for/incomes of domestic counterparts in the workforce? Based on census data, how do wage profiles of domestic skilled workers and their H-1B visa-holder counterparts compare? What impact has the H-1B skill training program had on the composition and competitiveness of the domestic labor force?
- K. What impact have immigrant populations had on the availability, cost, and condition of housing for them as well as for the domestic workforce?

II. EMPLOYER VERIFICATION SYSTEMS

Since its inception in the Immigration Reform and Control Act of 1986, employment verification has been controversial with both employers and employees. Requiring employers to verify an employee's documents and keep accurate records has become more complicated in practice than in theory. Recent pilot programs which link employers to the Social Security Administration, giving them access to databases often containing incorrect or outdated information, have also resulted in abuses. These concerns are particularly salient in light of the inclusion of employer verification provisions in both the House and Senate immigration reform bills. Research questions that need to be answered in this area include:

- A. How effective and accurate are databases containing immigration status information? What flaws exist? How, if at all, can these flaws be remedied? For example, can an employer verification system be made efficient enough to screen workers with temporary work authorization?
- B. What privacy concerns are raised by this form of database sharing? Would it be possible to incorporate privacy protections into a new verification system to address these concerns adequately?
- C. What civil rights concerns are raised by employer verification programs, and what safeguards might address these concerns? How does the discriminatory impact of a de facto "employer verification system" (based on accent, physical appearance, etc.) compare with the proposed official verification systems in terms of impact on the civil rights of employees?
- D. How do employer verification systems alter the balance of power between the employer and employees? What is the potential for employer abuse of these

systems? Is it possible to design a system that would not increase the employer's power over the employee?

- E. What is the projected impact of expanded employer verification systems on the economy? What employers (e.g., small businesses) will be exempt from employer verification, and what is the projected economic impact of these exemptions? Are such exemptions justified?
- F. How do other countries' experiences with national identity cards – used in European nations, Argentina, the Dominican Republic, etc. – inform the issue of employer verification systems in the United States?

III. THE DETENTION OF NONCITIZENS AND ASYLUM SEEKERS / ADMINISTRATION OF JUSTICE

Under the Department of Homeland Security's new Secure Border Initiative, the detention of undocumented noncitizens, already a widespread occurrence, is expected to increase. Provisions expanding detention were also included in both the House and Senate immigration reform bills. Most detained aliens – including asylum-seekers fleeing persecution in their home countries – are housed alongside convicted criminals in prisons or prison-like detention facilities and are not distinguished from the criminals in the treatment they receive. While harmful conditions, high costs, and impediments to access to counsel are the norm in the nation's DHS detention facilities, alternatives exist and should be explored. More broadly, alternatives to the current administration of the immigration court system merit examination. In addition to access to counsel, administration of justice issues needing further research include resource allocation and appellate review. Specifically, investigation into the detention of immigrants and the administration of justice in the area of immigration should address the following questions:

- A. What should be the model for immigration detention? What are the advantages and disadvantages of the three current models – as represented by DHS facilities, private corporate facilities that contract with the federal government, and local jails and state prisons– and how do these three approaches compare? Would a new model outperform these?
- B. What alternatives should be implemented in place of detention?
- C. How should the DHS manual on detention standards be modified? How do UNHCR guidelines on detention compare to current DHS standards? What sorts of alternatives to the criminal justice model should the DHS manual implement? This research would entail obtaining copies of DHS contracts with correctional corporations to find out how specifications differ among immigration centers with different track records.
- D. How much does it cost to detain aliens as compared to expanding access to counsel, providing “know your rights” trainings, etc.? Would the government ultimately save money by favoring representation over detention, especially in cases where aliens face mental competency issues, are children, or are

detained in remote facilities? Would additional representation lead to fewer non-meritorious cases being brought to a hearing on the merits (because attorneys would advise clients against bringing such cases), and thereby save government resources in the long run?

- E. What are the pre-existing medical and mental health needs of detained asylum-seekers? What is the impact of detention on pre-existing medical and mental health problems? Given the high cost of detention and the difficulty mentally ill individuals have moving forward with their cases, how does data on the prevalence of pre-existing mental disorders among detained aliens inform efforts to maximize government resources through expanded access to legal representation (see III.D. above)? In light of the unique importance of credibility in asylum adjudication, what is the ultimate impact of medical and mental health issues on credibility? How can these findings be used to inform standards for the detention of vulnerable populations?
- F. What should regulations codifying parole criteria for aliens look like? Proposals have been made to provide bond hearings for expedited removal before immigration judges. How should those proposals be elaborated on and developed?
- G. How can the Executive Office for Immigration Review (EOIR) be made more effective? What additional resources – more courts, clerks, written opinions, etc. – does EOIR need? What is the proper balance of decisional independence and accountability with regard to immigration judges? What are the benefits and/or disadvantages of an adversarial model for immigration adjudication, and asylum adjudication in particular? How much and what kind of process should immigrants be afforded in light of advocates' belief that there is presently too little process and some policymakers' push to cut off access even to the limited process that is currently provided?
- H. How does access to counsel affect the outcomes of immigration cases? How does the relationship between the legal representation of aliens and the outcome of immigration cases play out in different parts of the country? How do outcomes compare in places where pilot pro bono programs provide immigrants with attorneys? What data/arguments support the expansion of Legal Orientation Programs (LOP) nationwide?
- I. In what ways/to what extent can other administrative systems in the United States (such as Social Security) and immigration adjudication in other countries inform the administration of immigration in the U.S.? What are useful models? Does it make sense, for example, to concentrate resources at the outset of the proceedings and then limit appellate review?

IV. STATE AND LOCAL LAW ENFORCEMENT OF IMMIGRATION LAWS

Two 1996 laws, the Anti-Terrorism and Effective Death Penalty Act (AEDPA) and the Illegal Immigration Reform and Immigrant Responsibility Act (IIRIRA), allowed federal

law enforcement to use state and local police to enforce immigration laws under certain circumstances. Whether state and local police have the inherent authority to enforce immigration laws issues remains a controversial topic, however, the more pressing question is how their willingness to enforce immigration laws affects their ability to perform other aspects of their jobs, such as crime prevention and witness protection. Even when states and localities do not enforce federal immigration law, they may nonetheless act to regulate immigration by enforcing local laws (governing non-immigration areas like housing and property) against undocumented immigrants. Specific questions that need to be answered relating to this subject include the following:

- A. Do police officers believe that the authority to enforce federal immigration law is beneficial for their communities? This research would require conducting surveys of police departments, including those that have undertaken immigration enforcement duties.
- B. In communities where police have been trained to enforce immigration laws, what are the impacts on the community? Compared with “sanctuary cities,” where law enforcement officers are prevented from inquiring about immigration status, how do these communities fare? Are immigrants less likely to come forward as witnesses to crimes? Is there a way to determine whether there is a “chilling effect” between communities and the police? How have communities addressed these problems and how could those strategies be incorporated into a model protocol?
- C. What are the costs to local governments of requiring police officers to enforce immigration laws? How do these costs compare among different communities?
- D. How does tougher interior enforcement of immigration laws affect workplaces, hospitals, clinics, and residential communities?
- E. How widespread is the phenomenon of state and local governments using housing, property (e.g., trespass) and other local laws to combat illegal immigration? Are these uses of local law legal? What is the impact of this trend?

V. IMMIGRANT INTEGRATION: NATURALIZATION AND CIVIC PARTICIPATION / ACCESS TO ENGLISH INSTRUCTION / LANGUAGE RIGHTS

While border enforcement and illegal immigration are often the primary focus in the present debate over immigration reform, immigration policy can be understood more broadly to encompass the integration of newcomers into American social, cultural, economic, and political life. This aspect of immigration, which includes language issues, naturalization trends, and civic participation, raises the following questions:

- A. To what extent are English classes available to non-English-speaking immigrant adults in the United States? Especially in light of the lack of a

federal ESL/ESOL program, how do other countries' approaches to language instruction for immigrants inform U.S. policies and practices? What are the outcomes in countries where the central government funds and/or administers language instruction programs for immigrants?

- B. Does the provision of ballot materials in languages other than English improve immigrant participation at the polls?
- C. Why are many lawful permanent residents who are eligible for naturalization not naturalizing? How much are naturalization trends the product of government action/inaction and to what extent are they due to factors outside of the government's control? How does the rate of naturalization in the United States compare to that of eligible immigrants in other countries? How do the rates of naturalization compare among different national origin groups within the United States?
- D. How do naturalization trends in this country impact the political representation of immigrants? In particular, to what extent do we see, or will we see in the future, minority white populations with majority white electorates?
- E. In what ways, other than federal voting, can/do noncitizens participate in civic life in the United States? To what extent, for example, do/should noncitizens participate in local elections?

VI. FAMILY REUNIFICATION

The Immigration and Nationality Act of 1965 established family reunification as a central principle in U.S. immigration policy. Today, most new immigrants come to this country through the family reunification program, though reliance on family reunification categories is more pronounced among immigrants from particular countries.⁷ With migration flows and individual lives impacted so profoundly by this program, research is needed to better understand the role that family reunification plays, and should play, in determining who may permanently immigrate to the United States. Specific questions include:

- A. What are the theoretical underpinnings of and justifications for family reunification preferences as currently provided for in U.S. law? In particular, what arguments support maintaining the sibling category? How does the rationale behind family reunification compare to that used to support other immigrant categories (e.g., refugee, diversity visa holder, etc.)?
- B. What is the quantitative impact of family reunification on total migrant flows? What is the impact of immigration backlogs on family reunification?
- C. What are the sociological/economic effects of family presence/absence on immigrant workers in the United States?

⁷ Ramah McKay, Migration Policy Institute, "Family Reunification," *US in Focus*, May 1, 2003.

- D. What are the sociological/economic effects in sending countries of family separation due to migration?
- E. What impact does the family reunification program have on the diversity of the immigrant population? How does this impact compare to that of other immigration streams?
- F. What is the relationship between the family reunification program and remittances to countries of origin?
- G. To what degree, if at all, do limitations placed on immigrating spouses' ability to work (as in the case of spouses of nonimmigrant visa holders under current U.S. law) contribute to the dynamics of domestic violence?
- H. How does family reunification play out in mixed status families? How many families qualified under the extension of Section 245(i) (waiver of 3 and 10-year bars to adjustment of status) in December, 2000. Should Section 245(i) be reinstated? Why? What percentage of undocumented people live in mixed-status families?

GUIDELINES

The proposal's cover page should include (a) the title of the paper; (b) the author(s) and affiliations(s); (c) the name of the primary contact with email and telephone number; and (d) the category into which the proposal fits. Paper proposals should be *no longer than five double-spaced pages*, excluding references, and should include a separate 250-word abstract on a separate page. All proposals should describe (1) the questions and hypotheses to be addressed and the parameters of the research; (2) the data sources to be drawn upon, if applicable; (3) the theoretical framework; (4) an indication of the amount of work already completed; (5) the paper's expected length; and (6) initial conclusions or results, if available. Proposals for empirical studies should address the same questions, but may be more extensive.

As noted above, we will provide a modest honoraria (est. \$1,500) to selected proposals. We will also consider providing additional honoraria to authors completing large, empirical studies. If you are requesting extra funding, please address this in your proposal.

Proposals must be received by December 15, 2006. They will be reviewed with the assistance of an advisory committee (in formation) of researchers and practitioners. Please submit proposals electronically to WarrenInstitute@law.berkeley.edu. Authors will be notified of selection by **February 28, 2006**.

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