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## Economic Effects of Immigration: A voiding Past Mistakes and Preparing for the Future.

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## ECONOMIC EFFECTS OF IMMIGRATION: AVOIDING PAST MISTAKES AND PREPARING FOR THE FUTURE

NATALYA SHATNIY\*

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## I. INTRODUCTION

In the small city of Central Falls, Rhode Island, people in the community suddenly began to disappear: a leader of a Roman Catholic Church prayer group, a second grader's father, and a janitor at the courthouse.<sup>1</sup> The distraught families found their missing family members days later in a completely isolated universe; cut off from the world, yet only blocks from their homes.<sup>2</sup> This isolated universe, the Wyatt Detention Facility, that was seen by the Central Falls community as an "economic engine" that brought jobs and much needed federal funds into the small city of 19,000, became a prison to these individuals incarcerated in an effort to round-up undocumented immigrants.<sup>3</sup>

The main purpose of the facility was to house people charged with felonies; however, surprisingly, this jail also held hundreds of people who were not felons, including many who had not been charged with a crime. But the individuals above—like prayer group leader Maynor Canté who was detained in 2007—are bystanders caught in the crossfire of the recent immigration crackdown.<sup>4</sup> Canté worked two jobs and spent thousands of dollars attempting to legalize his immigration status, only to be swept up by immigration officers on his way to work and taken to the Wyatt Detention Facility.<sup>5</sup> What happened to the small community of Central Falls when people like Canté began disappearing? Local businesses lost

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1. Nina Bernstein, *Dependent on Jail, City of Immigrants Fills Jail Cells with its Own*, N.Y. TIMES, Dec. 27, 2008, at A1 (discussing the devastating impact of "immigration crackdown" on a small community).

2. *Id.*

3. *Id.* The people of Central Falls saw Wyatt as the economic savior of the city, a source of jobs and federal funds. *Id.* Initially, the jail was intended to house federal inmates, but to help pay off the cost of its construction, Wyatt looked to make money on prisoners like Mr. Canté—"administrative detainees not charged with a crime, but held while the government tries to deport them." *Id.*

4. *Id.*

5. *Id.*

He ended up one of 2,000 detainees packed into a windowless tent city that had sprung up only a year earlier in Raymondville, Tex[as]—the nation's largest immigration prison camp, run for profit and still growing.

crowds of customers and many people went into hiding.<sup>6</sup> This aggressive immigration crackdown that began with a story about one distraught family quickly escalated to become a disturbing reality for the entire Central Falls community<sup>7</sup> effecting the town emotionally and economically.

What would happen if all illegal immigrants suddenly disappeared like Canté? The devastating impact of lost tax revenues and the reduced labor market on the U.S. economy would be the equivalent of eliminating the entire population of Pennsylvania, and could easily cause one of the biggest economic disasters in American history.<sup>8</sup>

Undocumented immigrants contribute to the economy through consumption, taxes, and the labor market and are especially helpful to small businesses trying to hold down labor costs.<sup>9</sup> For example, economists be-

For weeks after his lawyer reopened his case for a hearing in Boston, she could not locate him. He was on the verge of deportation by the time she managed to persuade the government to fly him back from Texas, two days before last Christmas.

Mr. Canté finally appeared before an immigration judge on Jan[uary] 2, after three months in the detention maze. Because his case fell under the more lenient laws in force before 1997, he not only was released on bond, but allowed to work until his immigration hearing in December 2009. He is now trying to pay back thousands of dollars in loans and legal fees.

*Id.*

6. Bernstein, *supra* note 1.

In Central Falls, the crackdown sowed panic. At the public charter school two blocks from Wyatt, parents, already afraid to be photographed at school events, were now reluctant to drive to meetings, said Sarah Friedman, a founder of the school.

An [eight]-year-old girl, one of the school's high-scoring students, stopped speaking in class when her father disappeared into detention, the girl's mother said. Without his income, mother and daughter, United States citizens, were almost evicted from their apartment.

At Central Falls High School, some students stopped coming to class because their families had gone into hiding, said Margie Cruz, a school-home liaison: "The child was born here, the child is legal. But the family has to hide because the father will be deported."

*Id.*

7. *Id.*

8. *Comprehensive Immigration Reform: Examining the Need For a Guest Worker Program Before the S. Judiciary Comm.*, 109th Cong. (2006) (statement of Mayor Michael Bloomberg), available at <http://www.gpo.gov/fdsys/pkg/CHRG-109shrg30254/html/CHRG-109shrg30254.htm> [hereinafter Bloomberg].

9. See *Is the Legalization of Illegal Aliens a Good Solution to Illegal Immigration in America?*, PROCON.ORG, <http://immigration.procon.org/view.answers.php?questionID=001362> (last updated Sept. 7, 2010); Gene Cubbison, *Illegal Immigrant Costs, Benefits Disputed*, NBC SAN DIEGO (May 3, 2010), <http://www.nbcsandiego.com/news/politics/Illegal-Immigrant-Costs-Benefits-Disputed—92549134.html> (discussing that the costs of illegal immigration do not outweigh the benefits and emphasizing that the immigrant labor force is crucial for small businesses).

lieve that the San Diego tourist industry “could not exist in anything near its present form without undocumented immigrants” and have said that undocumented immigrants “add an element of . . . entrepreneurial activity to the economy.”<sup>10</sup> With these stark statistics and economic predictions, it is difficult to ignore the parallel between the crackdown on immigration and the current economic downfall.

Is it possible to keep enjoying the economic benefits undocumented immigrants bring to the United States while simultaneously eliminating the costs? Looking at the big picture, the solution seems simple. Since the majority of the cost of undocumented immigration comes from healthcare, education, and social security, why not just let the undocumented immigrants pay into the system and give them the same rights as legal immigrants?<sup>11</sup> In order to address this issue in an adequate manner, it is important to focus on two of the main problems with the creation of a social support system funded by undocumented immigrants: (1) how to deal with the current economic costs of these immigrants already in the United States, and (2) how to proceed in the future.

The first issue pertaining to economic costs of currently present undocumented immigrants in the United States was previously addressed during the Reagan Era through the Immigration Reform and Control Act of 1986 (IRCA).<sup>12</sup> IRCA gave undocumented aliens in the United States an opportunity to legalize their status and enjoy the same benefits available to documented immigrants.<sup>13</sup> Segrereo Mendez was one of three million unauthorized immigrants who took advantage of this amnesty opportunity.<sup>14</sup> She is now a U.S. citizen who has worked a tough manual labor job in the garment industry for the past twenty-seven years while

10. Cubbison, *supra* note 9.

11. See *Is the Legalization of Illegal Aliens a Good Solution to Illegal Immigration in America?*, *supra* note 9; see generally Fed. for Am. Immigration Reform, *The Cost of Immigration*, FAIRUS.ORG, [http://www.fairus.org/site/News2?page=NewsArticle&id=16980&security=1601&news\\_iv\\_ctrl=1017](http://www.fairus.org/site/News2?page=NewsArticle&id=16980&security=1601&news_iv_ctrl=1017) (last updated July 2003) (outlining general costs of immigration).

12. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359; see Jerry Kammer, *The Road to IRCA, June 1986*, CTR. FOR IMMIGR. STUDIES BLOG (June 29, 2011), <http://cis.org/kammer/irca-25-years> (“In November of 1986, President Ronald Reagan signed into law the Immigration Reform and Control Act (IRCA), which offered amnesty to millions of illegal immigrants and established sanctions for employers who hired those not authorized to work in the country.”).

13. Immigration Reform and Control Act of 1986.

14. Steven Thrasher, *Ronald Reagan Immigration Amnesty 25 Years Later*, MIAMI NEW TIMES (July 15, 2010), <http://www.miaminewtimes.com/2010-07-15/news/ronald-reagan-immigration-amnesty-25-years-later/>. Thrasher writes:

When President Ronald Reagan re-lit the Statue of Liberty torch in July 1986 and then, later that year, signed the Simpson-Mazzoli Act (also known as the Immigration Reform and Control Act), Mendez got lucky. An illegal immigrant herself, she was

paying into the system.<sup>15</sup> This one-time amnesty provided by IRCA was similar to winning a lottery ticket for Mendez and also brought benefits to the U.S. economy by offsetting the costs of undocumented immigrants.<sup>16</sup> It seemed like a win-win situation for the U.S. economy and the three million individuals who received amnesty at that time. So where is Mendez twenty-five years after becoming a legal immigrant under IRCA? Recently, Mendez traveled to Miami, where her legal, U.S. resident son had been jailed for a traffic incident.<sup>17</sup> Even after he paid his bail, he was held in custody for two extra days while “the authorities checked out his papers.”<sup>18</sup> This highlights the importance of discussing the impact that measures like the IRCA have on children that legally enter the United States through their parents’ amnesty. The IRCA may have been a beneficial one-time amnesty solution for undocumented aliens already in the United States, but it did not solve the issue of immigration for future immigrants, such as Mendez’s son.<sup>19</sup>

These issues—both dealing with economic impact of illegal aliens already in the United States and creating remedies for future immigrants—have not been properly addressed by the legislature in the past, and have led to the current debate about immigration reform.<sup>20</sup> In June 2011, the Comprehensive Immigration Reform Act (CIRA) was introduced as a

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granted amnesty. A one-in-a-million outcome for Mendez in ‘86—more precisely, one in three million.

*Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. See Thrasher, *supra* note 14 (discussing how even legal immigrants are still lost in the process). In detailing the situation of Mendez’s son, Thrasher writes:

[B]ecause he was an immigrant—even though his work permit was in order—he was held in custody for two more days while authorities checked out his papers. It didn’t have to be this way: When she became a citizen through Reagan’s amnesty program, she was allowed to sponsor her two Honduran sons for legal status, but one of them chose not to become a full citizen. Now that was causing him trouble—at a particularly touchy and turbulent time for immigrants.

*Id.* However, the social impact is far beyond the scope of this Comment, and only probable economic implications will be discussed. What is certain is that current immigration laws are not sufficient to keep up with the fast-developing U.S. economy. DONALD M. KERWIN, MIGRATION POL’Y INST., MORE THAN IRCA: U.S. LEGALIZATION PROGRAMS AND THE CURRENT POLICY DEBATE 1 (2010), available at <http://www.migrationpolicy.org/pubs/legalization-historical.pdf> (explaining that the impact of future immigrants is uncertain). For a full discussion on the impact of citizenship on children, see Lee J. Terán, *Mexican Children of U.S. Citizens: “Viges Prin” and Other Tales of Challenges to Asserting Acquired U.S. Citizenship*, 14 SCHOLAR \_\_\_\_ (2012).

20. See KERWIN, *supra* note 19, at 3.

possible solution.<sup>21</sup> CIRA's main proposals include amnesty, increased border security, and a new employment verification system.<sup>22</sup> But is it enough? Past mistakes in the history of immigration reform must be examined and compared to CIRA to determine whether CIRA will truly solve both current and future immigration problems.

## II. THE ROAD THAT LEADS TO THE CURRENT NEED FOR IMMIGRATION REFORM

How did we get here? How did the United States end up with approximately eleven million undocumented immigrants in the midst of an economic depression and an urgent need for immigration reform?<sup>23</sup> In the midst of these current immigration debates, it is important to remember that immigrants founded the United States.<sup>24</sup> Immigrants are this country's roots, the bedrock, and heart and soul of what this country has represented since the Pilgrims first arrived.<sup>25</sup> In 1620, the United States was founded by people aspiring to live what we now call the "American

21. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011) (introduced in Senate Jun. 22, 2011); Press Release, Robert Menendez, Colleagues Re-Introduce Comprehensive Immigration Reform (June 22, 2011) (available at <http://menendez.senate.gov/newsroom/press/release/?id=0c6c73f2-5366-4fde-bd9d-4e5d85c1b8f3>) [hereinafter Menendez Press Release].

22. Comprehensive Immigration Reform Act of 2011; Menendez Press Release, *supra* note 21.

23. Julia Preston, *11.2 Million Illegal Immigrants in U.S. in 2010, Report Says; No Change from '09*, N.Y. TIMES, Feb. 1, 2011, <http://www.nytimes.com/2011/02/02/us/02immig.html>.

24. See *Immigration to the United States*, U.S. IMMIGR. SUPPORT, <http://www.usimmigrationsupport.org/immigration-us.html> (last visited Jan. 7, 2012) (discussing immigration trends in the United States).

25. *Id.*; *U.S. Immigration History*, RAPID IMMIGR., [http://www.rapidimmigration.com/1\\_eng\\_immigration\\_history.html](http://www.rapidimmigration.com/1_eng_immigration_history.html) (last visited Dec. 18, 2011).

Discoveries made by various anthropologists of human remains over the past few decades provide evidence that long before Ellis Island opened its doors to welcome those seeking political and religious freedom as well as the "adventurer, the wanderer, the persecuted, the fortune seekers, and others" America was a kaleidoscope of ethnic and cultural groups! Thus, the history of [U.S.] immigration spans a long period of migration of many different peoples from various parts of the world. One common belief is that America was originally peopled by wanderers from Northeast Asia about 20,000 years ago. These wanderers were believed by some to be the founding population (and ancestors!) of today's Native Americans. Others believe that the first Americans came from Polynesia, South Asia or even Europe. Even others believe that the very first Americans were killed by later arrivals and that they left no descendants. The debate rages on! However, not to be lost in this debate is the fact that whether 20,000, 10,000 or 1,000 years ago, most immigrant groups to America came full of hopes and dreams of the "Promised Land."

*Id.*

Dream.”<sup>26</sup> Today, people attempting to live the “American Dream” can be charged with “aggravated felonies,” and thousands of immigrants are currently being held in detention facilities.<sup>27</sup> In fact, 380,000 immigrants were detained in 2009 alone.<sup>28</sup>

The United States fell a long way from the 1800s, when immigrants laid a foundation for the freedom we all enjoy today, to 2012, when immigrants are being treated as felons. The following are key events in immigration history leading to the current need for immigration reform:<sup>29</sup>

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26. *U.S. Immigration History*, *supra* note 25; TODAY’S AM. DREAM, <http://todaysamericandream.com/> (last visited Jan. 8, 2012) (defining “American Dream”). See also *Immigration to the United States*, *supra* note 24 (outlining immigration history).

27. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009; *About the U.S. Detention and Deportation System*, DETENTION WATCH NETWORK, <http://www.detentionwatchnetwork.org/aboutdetention> (last visited Dec. 18, 2011).

28. *About the U.S. Detention and Deportation System*, *supra* note 27 (including “survivors of torture, asylum seekers and other vulnerable groups including pregnant women, children, and individuals who are seriously ill without proper medication or care”).

29. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); Illegal Immigration Reform and Immigrant Responsibility Act of 1996; Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359; Immigration and Nationality Act of 1952, Pub. L. No. 82-414, 66 Stat. 163 (codified as amended at 8 U.S.C. § 1254(a) (1982)); The Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1965); The Immigration Act of 1924, ch. 190, 43 Stat. 153 (repealed 1965); Naturalization Act of 1906, ch. 3592, 34 Stat. 596 (repealed 1940); Page Act of 1875, ch. 141, 18 Stat. 477; Naturalization Act of 1798, ch. 54, 1 Stat. 566 (repealed 1802); Naturalization Act of 1795, ch. 19-20, 1 Stat. 414 (repealed 1802); Naturalization Act of 1790, ch. 3, 1 Stat. 103 (repealed 1795).



## MAJOR IMMIGRATION REFORMS PASSED BY THE U.S. CONGRESS

Year	Name of the Act	Description
Prior to 1800	Naturalization Act of 1790, Naturalization Act of 1795, Naturalization Act of 1798	Established basic requirements for citizenship, including residency
1875	The Page Act of 1875	The first act that restricted immigration
1906	The Naturalization Act of 1906	Standardized naturalization procedures, made some knowledge of English a requirement for citizenship, and established the Bureau of Immigration and Naturalization
1921	The Emergency Quota Act	Restricted annual immigration
1924	The Immigration Act of 1924 and The National Origins Formula	Established quota and divided immigrants into quota and non-quota nations in response to rising immigration from Europe and Asia
1952	The Immigration and Nationality Act of 1952	Established national guidelines and combined statutes
1965	The Immigration and Nationality Act of 1965	Mexican immigration became restricted for the first time and national quotas were discontinued
1986	The Immigration Reform and Control Act of 1986 (IRCA)	Granted amnesty to qualifying illegal immigrants, increased funding for INS, and imposed penalties on employers
1996	The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IRIRA)	Attempted to correct shortfalls of IRCA of 1986
2011	Comprehensive Immigration and Reform Act of 2011 (CIRA)	Proposed: amnesty, stricter penalties, increased border security

From the early ages of American history until 1952, there were scattered statutes regarding several aspects of immigration law.<sup>30</sup> However, 1952 marked the first significant attempt by the federal government to create a national immigration policy with the passage of the Immigration and Nationality Act, which established immigration guidelines nationwide.<sup>31</sup>

Because CIRA, the most recent piece of proposed legislation for immigration reform has similar goals as IRCA, the two most important pieces of past legislative reform that need to be examined are IRCA and a revision of IRCA, the Illegal Immigration Reform and Immigrant Responsi-

30. *Landmarks in Immigration History*, DIGITAL HISTORY, [http://www.digitalhistory.uh.edu/historyonline/immigration\\_chron.cfm](http://www.digitalhistory.uh.edu/historyonline/immigration_chron.cfm) (last updated Jan. 7, 2012).

31. Immigration and Nationality Act of 1952 (INA), Pub. L. No. 82-414, 66 Stat. 163); *Landmarks in Immigration History*, *supra* note 30.

bility Act (IIRIRA).<sup>32</sup> It is important to examine these two major past reforms in order to understand how the United States arrived at its current need for immigration reform, and more importantly to determine how to avoid prior immigration reform mistakes.

The first major federal immigration reform that granted amnesty was IRCA, which was passed in 1986 and increased funding for United States Immigration and Naturalization Service (INS) while imposing penalties on employers.<sup>33</sup> The second major piece of immigration legislation was IIRIRA, which was passed in 1996 in an attempt to correct the shortfalls of IRCA.<sup>34</sup> The current attempt at immigration reform is the CIRA, which was introduced in 2011 and seems to be a revised version of IRCA.<sup>35</sup> The common factor between each of these major reforms is economic recession.<sup>36</sup> As history shows, immigration reform is closely related to the economic state of the country, or more specifically, a slump in the economy leads to a call for immigration reform.<sup>37</sup>

In order to determine what led to IRCA, it is important to examine the economic state of the country prior to 1986. From the 1950s to the early 1980s, the United States experienced the lowest immigration levels in the past 100 years.<sup>38</sup> For example, 1970 was the lowest point of immigration, with immigrants making up only 4.7 percent of the population of the

32. Immigration Reform and Control Act of 1986, § 702; Illegal Immigration Reform and Immigrant Responsibility Act of 1996; *see*, KERWIN, *supra* note 19 (discussing the effects of IRCA).

33. Immigration Reform and Control Act of 1986; *see* NANCY RYTINA, U.S. IMMIGRATION AND NATURALIZATION SERV.—OFFICE OF POLICY AND PLANNING, IRCA LEGALIZATION EFFECTS: LAWFUL PERMANENT RESIDENCE AND NATURALIZATION THROUGH 2001, at 2 (Oct. 2002), *available at* <http://www.dhs.gov/xlibrary/assets/statistics/publications/irca0114int.pdf> (discussing the purpose and guidelines of IRCA, and explaining that the highest rate of IRCA naturalizations occurred in 1996 when one quarter million immigrants became citizens).

34. Illegal Immigration Reform and Immigrant Responsibility Act of 1996; Immigration Reform and Control Act of 1986.

35. Comprehensive Immigration Reform Act of 2011. *See* SEN. ROBERT MENENDEZ, ET AL., THE COMPREHENSIVE IMMIGRATION REFORM ACT OF 2011, SHORT SUMMARY OF MENENDEZ CIRA BILL 1, *available at* [http://www.micevhill.com/attachments/immigration\\_documents/hosted\\_documents/112th\\_congress/ShortSummaryOfMenendezCIRBill.pdf](http://www.micevhill.com/attachments/immigration_documents/hosted_documents/112th_congress/ShortSummaryOfMenendezCIRBill.pdf) [hereinafter SHORT SUMMARY OF MENENDEZ CIRA BILL] (summarizing CIRA and outlining CIRA's major goals).

36. *See Labor Force Statistics from the Current Population Survey*, U.S. DEP'T OF LABOR—BUREAU OF LABOR STATISTICS, <http://www.bls.gov/web/empsit/cpseea01.htm> (last modified Jan. 6, 2012) (showing high rates of unemployment in the early 1980s and late 2000s, the same time frame as IRCA and CIRA).

37. *Id.*

38. STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, BACKGROUND: IMMIGRANTS IN THE U.S., 2007 A PROFILE OF AMERICA'S FOREIGN-BORN POPULATION 4 (Nov. 2007), *available at* <http://www.cis.org/articles/2007/back1007.pdf>.

United States.<sup>39</sup> In the late 1970s and early 1980s, as the U.S. economy entered a recession, the immigrant population jumped to 6.2 percent<sup>40</sup> with Mexican immigrants accounting for the majority of the increase.<sup>41</sup> In fact, legal Mexican immigrants accounted for forty-two percent of all new immigrants arriving between 1980 and 1984, and undocumented Mexican immigrants were estimated to cross the border at a rate of approximately 40,000 per year.<sup>42</sup> Between the 1980s and the early 1990s, this number doubled.<sup>43</sup> During this period of rapidly increasing immigrant population, the U.S. economy was declining. By 1982, the unemployment rate was at 9.7 percent<sup>44</sup>—similar to today's unemployment rate.<sup>45</sup> The high unemployment rate combined with the struggling economy created frustration that led to the passage of IRCA in 1986.<sup>46</sup> However, it is still hard to believe that the downfall of the economy and a skyrocketing unemployment rate was a result of the forty to eighty thousand undocumented Mexican immigrants that entered the United States at this time.<sup>47</sup> However, over twenty years later, current illegal immigration rates and unemployment rates appear to be connected.<sup>48</sup>

A. *How the Immigration Reform and Control Act of 1986 Attempted to Correct Undocumented Immigration*

IRCA was the legislature's first major attempt to address the growing number of undocumented aliens entering the United States in the midst

39. *Id.*

40. *Id.*

41. *Id.*

42. JEFFREY S. PASSEL, PEW HISPANIC CTR., UNAUTHORIZED MIGRANTS: NUMBERS AND CHARACTERISTICS 16 (June 2005), available at <http://www.pewhispanic.org/files/reports/46.pdf>.

43. *Id.* at 6.

44. BUREAU OF LABOR STATISTICS, EMPLOYMENT STATUS OF THE CIVILIAN NONINSTITUTIONAL POPULATION, 1940 TO DATE (2011), available at <http://www.bls.gov/cps/cpsaat1.pdf> [hereinafter BUREAU OF LABOR STATISTICS].

45. In January 2012, the seasonally adjusted unemployment rate, as reported by the Department of Labor was 8.3 percent. *Employment Situation Summary*, BUREAU OF LABOR STATISTICS (Feb. 3, 2012), <http://www.bls.gov/news.release/empsit.nr0.htm>. The annual rate for 2011 was 9.6 percent. BUREAU OF LABOR STATISTICS, *supra* note 44.

46. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359; see also Richard E. Blum, *Labor Standards Enforcement and the Results of Labor Migration: Protecting Undocumented Workers After Sure-Tan, the IRCA, and Patel*, 63 N.Y.U. L. REV. 1342, 1360-68 (1988) (discussing the history behind what led up to the IRCA).

47. PASSEL, *supra* note 42.

48. See *An Amnesty for the UK's Illegal Immigrants*, THE WEEK WITH THE FIRST POST, <http://www.theweek.co.uk/24011/amnesty-uk's-illegal-immigrants> (last updated Apr. 15, 2009) (explaining that the same view is also common in other countries, such as the United Kingdom).

of an economic recession.<sup>49</sup> It contained three major elements: (1) amnesty of undocumented aliens already in U.S. territory, (2) stricter penalties for employers hiring these aliens, and (3) provided funding for border protection to prevent aliens from entering U.S. territory.<sup>50</sup> Although IRCA seemed to be great in theory, it failed in practice.<sup>51</sup> While attempting to correct a present immigration problem, IRCA failed to foresee, and properly address, future immigration issues.<sup>52</sup> The main elements of IRCA are also reflected in the currently proposed CIRA, which is why it is important to examine IRCA to avoid past mistakes.<sup>53</sup>

The first major element of IRCA was providing amnesty to undocumented aliens already in the United States by granting temporary legal resident status through the general legalization program, or permanent residency to qualifying agricultural workers.<sup>54</sup> Almost three million people were granted amnesty and became legal U. S. residents.<sup>55</sup> The second element of IRCA addressed employers hiring undocumented workers through enforcement of stricter penalties on the employers who did so.<sup>56</sup> IRCA made the following punishable by law: (1) to knowingly hire someone who did not have the proper authorization and documentation to work in the United States, (2) continue to employ an unauthorized worker, and (3) it made the employer responsible for verifying a person's identity and eligibility to work in the United States.<sup>57</sup> The actual enforcement of this last element was one of the failures of the implementation of IRCA.<sup>58</sup>

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49. Immigration Reform and Control Act of 1986; BETSY COOPER & KEVIN O'NEIL, *MIGRATION POL'Y INST., LESSONS FROM THE IMMIGRATION REFORM AND CONTROL ACT OF 1986*, at 1 (Aug. 2005), available at [http://www.migrationpolicy.org/pubs/PolicyBrief\\_No3\\_Aug05.pdf](http://www.migrationpolicy.org/pubs/PolicyBrief_No3_Aug05.pdf).

50. Immigration Reform and Control Act of 1986; COOPER & O'NEIL, *supra* note 49.

51. COOPER & O'NEIL, *supra* note 49, at 4–8.

52. Immigration Reform and Control Act of 1986; COOPER & O'NEIL, *supra* note 49, at 4.

53. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); Immigration Reform and Control Act of 1986; COOPER & O'NEIL, *supra* note 49, at 4.

54. Immigration Reform and Control Act of 1986; COOPER & O'NEIL, *supra* note 49, at 4.

55. COOPER & O'NEIL, *supra* note 49, at 3.

56. Immigration Reform and Control Act of 1986, sec. 101, § 274A, 100 Stat. at 3360 (codified at 8 U.S.C. § 1324a); COOPER & O'NEIL, *supra* note 49, at 2–3.

57. Immigration Reform and Control Act of 1986, sec. 101, § 274A, COOPER & O'NEIL, *supra* note 49, at 2–3.

58. COOPER & O'NEIL, *supra* note 49.

The third major element of IRCA was to increase funding for border patrol, especially along the Mexican border.<sup>59</sup> This element also failed in practice and implementation.<sup>60</sup> Although the lawmaker's ideas in IRCA seemed realistic, the government agency in charge of implementing those processes, the INS, was not able to implement them properly.<sup>61</sup> IRCA is often deemed a failure; however, it is important to recognize why IRCA did not yield the result that lawmakers expected.<sup>62</sup>

B. *Fixing IRCA: Illegal Immigration Reform and Immigrant Responsibility Act of 1996*

The lawmakers attempted to correct the downfalls of IRCA with the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA).<sup>63</sup> IIRIRA imposed stricter penalties on immigrants remaining in the United States after expiration of their authorized period.<sup>64</sup> IIRIRA also restricted such immigrants from re-entering the United States for several years after deportation.<sup>65</sup> IIRIRA's stricter penalties were designed to discourage unauthorized immigration; however, actually detaining immigrants who overstayed their visa periods was another failed process.<sup>66</sup> Some deportees were held in U.S. prisons for years awaiting their hearing.<sup>67</sup> Not only was this an inefficient and inhumane process, it was also costly to the states.<sup>68</sup> Again, while lawmakers attempted to regulate immigration because it was perceived to be harmful

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59. Immigration Reform and Control Act of 1986, § 111; COOPER & O'NEIL, *supra* note 49, at 3.

60. COOPER & O'NEIL, *supra* note 49, at 3

61. *Id.* at 5.

62. *See id.* at 7–8 (discussing the current relevance of IRCA).

63. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, div. C, 110 Stat. 3009-546 (codified in scattered section of the U.S.C.); *IIRIRA 96 - A Summary of the New Immigration Bill*, VISALAW.COM, <http://www.visalaw.com/96nov/3nov96.html> (last visited Jan. 7, 2012).

64. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, tit. 3, sec. 301, § 212a1.

65. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, sec. 324, § 276(a)(1); *IIRIRA 96 - A Summary of the New Immigration Bill*, *supra* note 63.

66. *See* Bernstein, *supra* note 1 (illustrating an example of the disastrous effects when city tried to detain deportee).

67. *See id.* (illustrating multiple deportee's incarceration experiences, and explaining that once detained, the deportees were often transferred to another facility before their families had a chance to visit them).

68. *Id.*; *see How Much Does it Cost to Feds Estimate Deportation Costs \$12,500 per person*, THE SEATTLE TIMES, Jan. 26, 2011, [http://seattletimes.nwsourc.com/html/nationworld/2014046941\\_apusimmigrationcosts.html?syndication=rss](http://seattletimes.nwsourc.com/html/nationworld/2014046941_apusimmigrationcosts.html?syndication=rss) [hereinafter *Feds Estimate*] (estimating the United States spent five billion dollars to deport 400,000 immigrants).

to the U.S. economy, the actual implementation of these newly passed regulations ended up backfiring and becoming more costly for the United States.<sup>69</sup>

After the failure of IRCA and IIRIRA, Congress is once again proposing major immigration reform through CIRA.<sup>70</sup> Is CIRA the answer to today's need for immigration reform, or is there a better answer? This Comment will examine the economic impact of IRCA, the proposed changes of CIRA, and how other countries have dealt with immigration issues. Since the economic impact of undocumented aliens seems to be the center of immigration debate, this Comment focuses on the costs and benefits of immigration in the midst of an economic recession.

### C. *The Current Immigration System in the United States*

There are currently four ways to become a naturalized U.S. citizen: (1) permanent U.S. residency for five years,<sup>71</sup> (2) permanent U.S. residency for three years and a spouse who is a U.S. citizen,<sup>72</sup> (3) serving in the U.S. Armed Forces,<sup>73</sup> or (4) being a child of a U.S. citizen.<sup>74</sup> The majority of immigrants become a naturalized U.S. citizen through permanent residence by obtaining a "Green Card."<sup>75</sup> A Green Card can be obtained through family, employment, asylee or refugee status, and other special programs that apply to a very small class of immigrants.<sup>76</sup> In order to obtain a Green Card, you must first acquire a visa in order to enter the United States.<sup>77</sup> In 2010, there were 482,052 immigrant visas issued.<sup>78</sup>

69. Bernstein, *supra* note 1; *Feds Estimate*, *supra* note 68.

70. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

71. 8 U.S.C. § 1427(a) (2006).

72. *Id.* § 1430(a).

73. *Id.* § 1439(a).

74. *Id.* § 1401; Terán, *supra* note 19.

75. U.S. DEP'T OF HOMELAND SEC.—CITIZENSHIP AND IMMIGRATION SERVICES, A GUIDE TO NATURALIZATION 46 (2011), available at <http://www.uscis.gov/files/article/M-476.pdf>; USCIS Green Card, U.S. CITIZENSHIP & IMMIGRATION SERVICES, <http://www.uscis.gov/greencard> (last updated May 13, 2011).

76. USCIS Green Card, *supra* note 75; U.S. CITIZENSHIP & IMMIGR. SERVICES, *supra* note 75.

77. Green Card Procedure and Processes, U.S. CITIZENSHIP & IMMIGR. SERVICES, <http://www.uscis.gov/greencard> (click on "Green Card Processes & Procedures") (last updated Sept. 9, 2009); see *Visa Types for Immigrants*, U.S. DEP'T OF STATE—BUREAU OF CONSULAR AFF., [http://travel.state.gov/visa/immigrants/types/types\\_1326.html](http://travel.state.gov/visa/immigrants/types/types_1326.html) (last visited Jan. 7, 2012) (explaining that an immigrant must obtain at least one type of visa before they can get a Green Card).

78. Multi-Year Graphs, U.S. DEP'T OF STATE—BUREAU OF CONSULAR AFF., [http://travel.state.gov/visa/statistics/graphs/graphs\\_4399.html](http://travel.state.gov/visa/statistics/graphs/graphs_4399.html) (last visited Jan. 7, 2012).

The current waiting list for family-based visas alone is 4,552,774,<sup>79</sup> while the number of visas issued per year for family category is only 226,000.<sup>80</sup> At this rate, it will take fifteen years to process the current waiting list. While some children may qualify for a family visa through their parents before they reach the age of twenty-one, many of them will have reached, or exceeded twenty-one by the time they make it through the waiting list, and will no longer qualify for a family-based visa. As of October 2011, the cutoff date for a majority of sibling-sponsored immigration visas was May 15, 2000.<sup>81</sup> This means that brothers and sisters of U.S. citizens who applied prior to that date are just now up for eligibility review.<sup>82</sup> While waiting “in line” for those eleven years, the likelihood that the sibling’s children turned twenty-one years of age and therefore no longer qualify is pretty high. For citizens of the Philippines, the sibling-sponsored visa waitlist is currently processing applications from 1988.<sup>83</sup> It is hard to imagine what it must feel like to wait twenty-three years just to be able to live in the same country as your brother or sister. Additionally, the permanent resident application fee is currently \$1,020; many application fees are increasing, and some are as high as \$6,230.<sup>84</sup> This is unmistakably a broken system that separates families for decades. Keeping these stark

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79. *Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center as of November 1, 2011*, U.S. DEP’T OF STATE-BUREAU OF CONSULAR AFF., <http://www.travel.state.gov/pdf/WaitingListItem.pdf> (last visited Jan. 8, 2012).

80. *Visa Availability and Priority Dates*, U.S. DEP’T OF HOMELAND SEC.—CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=aa290a5659083210VgnVCM100000082ca60aRCRD&vgnnextchannel=AA290a5659083210VgnVCM100000082ca60aRCRD> (last updated June 15, 2011) [hereinafter *Visa Availability and Priority Dates*] (excluding immediate family, such as parents and children, for which there is no limit; however, processing still takes a substantial amount of time).

81. *Visa Bulletin for October 2011*, U.S. DEP’T OF STATE-BUREAU OF CONSULAR AFF., [http://travel.state.gov/visa/bulletin/bulletin\\_5560.html](http://travel.state.gov/visa/bulletin/bulletin_5560.html) (last visited Dec. 19, 2011).

82. *Id.*

This bulletin summarizes the availability of immigrant numbers during OCTOBER. Consular officers are required to report to the Department of State documentarily qualified applicants for numerically limited visas; U.S. Citizenship and Immigration Services in the Department of Homeland Security reports applicants for adjustment of status. Allocations were made, to the extent possible, in chronological order of reported priority dates, for demand received by September 9TH.

*Id.*

83. *Id.*

84. *Check Filing Fees*, U.S. DEP’T OF HOMELAND SEC.—CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD&vgnnextchannel=b1ae408b1c4b3210VgnVCM100000b92ca60aRCRD> (last updated Mar. 18, 2011) (outlining the range of fees per category).

numbers in mind, it is not surprising that there are somewhere between eleven and twelve million undocumented immigrants currently in the United States.<sup>85</sup> This immigrant population, estimated at 3.7 percent of the U.S. population, has a noticeable and significant impact on the U.S. economy—both in positive and negative respects.<sup>86</sup>

### III. THE ECONOMIC IMPACT OF ILLEGAL IMMIGRATION

And while immigrants surely have contributed to some extent to the ranks of the poor, that was also true of previous waves of immigrants; the point is, most of these immigrants didn't stay poor.<sup>87</sup>

Such transitions do not happen overnight without action or change. The widespread opinion among the American public is that undocumented aliens take advantage of government services and have a negative effect to the U.S. economy.<sup>88</sup> This general misconception is simply and “undeniably false.”<sup>89</sup> A survey obtained in 2006 illustrated that eighty-five percent of economists believed that the U.S. economy has benefited from its alien population more than it had been harmed.<sup>90</sup> Even in 1995, seventy-four percent of economists believed that undocumented aliens positively influenced the U.S. economy.<sup>91</sup> The alien population grew from about five million in 1996 to 11.3 million in 2006.<sup>92</sup> Even though the population more than doubled, more economists believe that the benefits that come from immigration outweigh the costs.<sup>93</sup>

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85. JEFFERY PASSEL & D'VERA COHN, PEW HISPANIC CTR., UNAUTHORIZED IMMIGRANT POPULATION: NATIONAL AND STATE TRENDS, 2010, at 1 (Feb. 2011), *available at* <http://www.pewhispanic.org/files/reports/133.pdf>. Researchers state that as of March 2010 the number of unauthorized immigrants was around 11.2 million, but over the past five years the number has fluctuated between eleven and twelve million. *Id.* For the sake of consistency in this Comment I will use eleven million, or between eleven and twelve million.

86. *Id.*

87. Editorial, *Immigrants Equal Growth . . . Reform Isn't Just Human. It's Self-Interest*, WASH. POST, June 4, 2007, at A14.

88. Francine J. Lipman, *Taxing Undocumented Immigrants: Separate, Unequal and Without Representation*, 59 TAX LAW 813, 813 (2006).

89. *Id.*

90. *Id.* at 824.

91. *Id.*

92. ILLEGAL RESIDENT ALIEN POPULATION 1 (n.d.), *available at* <http://www.dhs.gov/xlibrary/assets/statistics/illegal.pdf> (placing the number of undocumented aliens living in the United States between 4.5 and 5.6 million); PASSEL & COHN, *supra* note 85 (tracking the undocumented alien population from 2000 to 2010).

93. *Comprehensive Immigration Reform in 2009, Can We Do It and How?*, S. Judiciary Comm., Subcomm. on Immigration, Border Security and Citizenship, 111th Cong. (2009) (statement of Alan Greenspan, former Chair. Fed. Reserve), *available at* <http://>



What are the costs and benefits associated with the immigration of undocumented aliens? It is hard to calculate the exact numbers since these are undocumented residents; however, most economists agree on general estimates. On the national level, the yearly cost of immigration is estimated at \$113 billion,<sup>94</sup> while the benefits of consumption by these individuals is estimated to be \$400–450 billion.<sup>95</sup> The main costs of immigration include healthcare, education, and criminal justice system expenses.<sup>96</sup> While the main benefits of include consumption of goods and services, affordable labor for small businesses, and contribution in taxes—while not receiving the benefits of federal welfare.<sup>97</sup>

#### A. *The Major Costs of Immigration*

As stated above, a major cost of unauthorized immigration is healthcare.<sup>98</sup> The costs are especially high in border states such as Texas, Arizona, and California, where several hospitals have been closed or are on the brink of bankruptcy because of the federal requirement to supply emergency room care to all uninsured individuals—including undocumented immigrants.<sup>99</sup> The estimated cost of providing healthcare to all uninsured individuals may reach \$2.2 billion.<sup>100</sup> The key word here is “uninsured.” Healthcare insurance is often times provided as one of the benefits through an employer, which is clearly an unattainable option for

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[www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da147e5ee&wit\\_id=ce655f9e2809e5476862f735da147e5ee-1-2](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da147e5ee&wit_id=ce655f9e2809e5476862f735da147e5ee-1-2) [hereinafter Greenspan].

94. JACK MARTIN & ERIC A. RUARK, FEDERATION FOR AMERICAN IMMIGRATION REFORM 1 (Feb. 2011), available at [http://www.fairus.org/site/DocServer/USCostStudy\\_2010.pdf?docID=4921](http://www.fairus.org/site/DocServer/USCostStudy_2010.pdf?docID=4921). The report estimates that the “annual costs of illegal immigration at the federal, state and local level to be about \$113 billion; nearly \$29 billion at the federal level and \$84 billion at the state and local level.” *Id.*

95. Patricia O’Connell, *A Massive Economic Development Boom*, BUSINESSWEEK, July 18, 2005, [http://www.businessweek.com/magazine/content/05\\_29/b3943005\\_mz001.htm](http://www.businessweek.com/magazine/content/05_29/b3943005_mz001.htm) (interview with UCLA professor Raul Hinojosa discussing the capacity for consumption of undocumented immigrants in the United States).

96. STEVEN A. CAMAROTA, CNTR. FOR IMMIGRATION STUDIES, THE HIGH COST OF CHEAP LABOR: ILLEGAL IMMIGRATION AND THE FEDERAL BUDGET 5, 25 (2004), available at <http://www.cis.org/articles/2004/fiscal.pdf> [hereinafter CAMAROTA, THE HIGH COST OF CHEAP LABOR].

97. Lipman, *supra* note 88.

98. *E.g.*, CAMAROTA, THE HIGH COST OF CHEAP LABOR, *supra* note 96; MARTIN & RUARK, *supra* note 94, at 1, 15, 55; Statement by Lindsay B. Lowell, Dir. of Policy Studies, Inst. for the Study of Int’l Migration, Georgetown Univ., August 25, 2004, *The Cost of Illegal Immigration: The Impact of Illegal Aliens on the Federal Budget*, <http://www.cis.org/articles/2004/fiscaltranscript.html>.

99. MARTIN & RUARK, *supra* note 94, at 55; *The Economic Costs of Legal and Illegal Immigration*, COLO. ALLIANCE FOR IMMIGR. REFORM, <http://www.cairco.org/econ/econ.html> (last visited Feb. 7, 2012).

100. CAMAROTA, THE HIGH COST OF CHEAP LABOR, *supra* note 96.

undocumented workers. The fact that these individuals are undocumented keeps them from obtaining legal employment and its benefits, leaving them uninsured and resulting in a devastating impact on the U.S. healthcare system.<sup>101</sup> There are no statistics to compare the cost of providing healthcare to documented immigrants because they have access to legal employment benefits, such as health insurance. However, when putting a documented and an undocumented immigrant side by side, the only major difference is “a piece of paper”—a Green Card. This piece of paper seems to be the key to reducing healthcare costs.<sup>102</sup>

Another major cost of unauthorized immigration is education, estimated at \$52 billion per year.<sup>103</sup> Taxpayer contribution is the main source of education funding,<sup>104</sup> as taxes for education are generally included in the yearly property tax bill, which every homeowner is obligated to pay.<sup>105</sup> Since home ownership is another unattainable option for undocumented immigrants, they are unable to significantly contribute to national education costs. In an indirect way, they contribute by paying rent to a landowner, who in turn pays the property taxes; however, it would be impossible to calculate the actual amount contributed in this manner. Again, the “piece of paper” that separates an documented and an undocumented immigrant has a huge impact on the cost of education because without it, immigrants are unable to contribute to education costs.

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101. See KAISER FAMILY FOUND., KEY FACTS ON MEDICAID AND THE UNINSURED (Aug. 2003), available at <http://www.kff.org/uninsured/upload/Immigrants-Health-Care-Coverage-and-Access-fact-sheet.pdf> (explaining access to healthcare coverage for legal and illegal immigrants, where it was estimated that thirteen percent of unauthorized immigrants have access to Medicaid).

102. See MARTIN & RUARK, *supra* note 94, at 15–18 (explaining that paying for the treatment of uninsured individuals is extremely high, and illegal immigrants who do not have any means to legally pay into the system are included in the category of uninsured).

103. *Id.* at 1 (stating that this cost is almost completely absorbed by state and local governments).

104. MARGARET SPELLINGS, U.S. DEP’T OF EDUC., NO CHILD LEFT BEHIND—10 FACTS ABOUT K-12 EDUCATION FUNDING 1 (June 2005), available at <http://www2.ed.gov/about/overview/fed/10facts/index.html>. The report states that:

Even in this current time of the war against terror, taxpayer investment in education exceeds that for national defense. In addition to the K-12 money mentioned above, taxpayers will spend an estimated \$373 billion for higher education in the same school year . . . the United States is a world leader in education investment. However, nations that spend far less achieve higher levels of student performance.

*Id.*

105. See Susan Combs, *Appraisal*, WINDOW ON STATE GOV’T, <http://www.window.state.tx.us/taxinfo/proptax/basics/ch02.html> (last visited Jan. 7, 2012) (illustrating an example of a property tax bill and showing how taxes are allocated towards education).

The third, and perhaps most misunderstood and debated cost of unauthorized immigration, is the cost to the U.S. criminal justice system—estimated at \$500 million dollars per year.<sup>106</sup> Undocumented aliens comprise an estimated seventeen percent of the federal prison population.<sup>107</sup> However, such statistics fail to disclose that the majority of aliens detained are not charged with a crime, but are simply being detained because of their status.<sup>108</sup> Such skewed statistics give the American public a general misconception that a high number of undocumented immigrants are criminals.

The majority of highly debated economic costs of illegal immigration can be eliminated with yet another “piece of paper”—amnesty. Granting amnesty to unregistered aliens would give them the same opportunities as legal immigrants, which would enable them to contribute to costs such as healthcare and education. As previously mentioned, the immigrant population brings extraordinary benefits to the U.S. economy.<sup>109</sup>

#### B. *The Economic Benefits of Immigration*

The first major benefit to the U.S. economy stemming from undocumented immigrants is the consumption of goods and services.<sup>110</sup> There are currently an estimated eleven million unregistered immigrants in the United States—all of whom are inevitably consumers.<sup>111</sup> In today's economic crisis, consumer confidence and spending are the keys to economic recovery.<sup>112</sup> Eliminating the alien population would eliminate over eleven million consumers at a time when every consumer is desperately needed.<sup>113</sup> In fact, consumption of goods and services by undocumented immigrants who spend their paychecks in the United States and also in-

106. COLORADO ALLIANCE FOR IMMIGRATION REFORM, *supra* note 99 (“Taxpayers pay half-a-billion dollars per year incarcerating illegal alien criminals.”).

107. CAMAROTA, *THE HIGH COST OF CHEAP LABOR*, *supra* note 96, at 20.

108. *See* Bernstein, *supra* note 1 (relating the situation at the Donald W. Wyatt Detention Facility where the facility held individuals not charged with any crime, but waiting for deportation).

109. Lipman, *supra* note 88, at 816–17 (discussing the positive impact to the U.S. economy through consumption, provision of essential work services, and other contributions to the economy).

110. *Id.* at 816.

111. PASSEL & COHN, *supra* note 85.

112. *See* Kimberly Amadeo, *What is GDP? ABOUT.COM: U.S. ECON.*, <http://useconomy.about.com/od/grossdomesticproduct/p/GDP.htm> (last updated Sept. 5, 2011) (defining Gross Domestic Product (GDP) and explaining that it is the best measure to analyze the strength of the U.S. economy).

113. *See* Lipman, *supra* note 88, at 816–17 (explaining the large contribution immigrants make to the economy through the consumption of goods and services).

crease production for their employers is estimated at \$800 billion.<sup>114</sup> Some argue that those individuals are not contributing to the U.S. economy because they send their paychecks to their families in their native countries instead of spending it in the United States.<sup>115</sup> But even after remittance, immigrants are estimated to have consumptive capacity of \$400–450 billion per year.<sup>116</sup> Because of this, eliminating the alien population today would also eliminate this consumption and cause “the worst economic disaster in the history of the [United States].”<sup>117</sup>

The labor force created by undocumented immigrants is extremely helpful to small businesses and benefits the U.S. economy.<sup>118</sup> Employing these immigrants keeps labor costs down for small businesses, which keeps the cost of goods down and benefits all Americans.<sup>119</sup> Undocumented immigrants fill millions of worker positions that are essential to the U.S. economy, which results in further job creation.<sup>120</sup> In fact, undocumented workers accounted for a sixteen percent increase in the U.S. labor force between 2000 and 2007 and composed five percent of the labor force in 2008.<sup>121</sup> It is important to note that despite this significant contribution, these illegal immigrants do not have access to any type of federal welfare benefits.<sup>122</sup> Furthermore, they are considered to be a flexible element of the U.S. labor force and are the first to be laid off during an economic crisis.<sup>123</sup> Although some studies suggest that employing undocumented workers decreases the wages of Americans who do not have a high-school education, such wage suppression does not have a significant impact on the U.S. economy and any affect it may have is outweighed by the economic benefits of an undocumented workforce.<sup>124</sup>

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114. O’Connell, *supra* note 95.

115. COLORADO ALLIANCE FOR IMMIGRATION REFORM, *supra* note 99 (discussing the fact that undocumented immigrants tend to send a large amount of their income to relatives living in their native land). The economic term for this behavior is remittance. *Id.*

116. O’Connell, *supra* note 95.

117. *Id.*

118. Greenspan, *supra* note 93.

119. *Id.*

120. Lipman, *supra* note 88, at 816–17.

121. Greenspan, *supra* note 93.

122. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009 (even after Congress passed IRCA in 1986 and IIRIRA in 1996, which left business owners feeling that the benefits and need to hire illegal immigrants outweighed the possible punishment); Editorial, *supra* note 87. For a more detailed discussion of the impact of immigration on employment see Nicole E. Merritt, Comment, *The Conflicting Interests of Labor Demands and Employer Based Immigration Laws: Old Problems Require New Solutions*, 11 SCHOLAR 281 (2009).

123. Greenspan, *supra* note 93.

124. *Id.*

Additionally, immigrants benefit the economy by contributing to tax revenues.<sup>125</sup> For example, the Texas Comptroller's office reported costs to the government of \$1.16 billion for services in education and health-care to undocumented immigrants and their children, but also reported a tax revenue of \$1.58 billion from the same.<sup>126</sup> These figures show that Texas actually profited \$427.7 million from its population of undocumented immigrants in 2006.<sup>127</sup> Simply stated, immigrants that obtain false documentation for employment still contribute taxes through payroll.<sup>128</sup> Those same immigrants that contribute taxes through payroll will never actually have a chance to collect the benefits, such as Medicare.<sup>129</sup> Furthermore, all undocumented immigrants inevitably pay the sales tax when they purchase goods.<sup>130</sup> Again, this means that there are over eleven million consumers that contribute to the economy each time they spend money by paying sales tax.<sup>131</sup> Because of this, it is important to carefully consider all of the economic costs and benefits of unauthorized immigration when drafting U.S. immigration reform. Today's economic crisis emphasizes the need for immigration reform to eliminate the costs, keep the benefits, and help revive the economy.

#### IV. POSSIBLE SOLUTIONS

The idea of deporting these [eleven] or [twelve] million people[—] about as many as live in the entire state of Pennsylvania[—] is pure fantasy . . . . [E]conomic consequences would be devastating.<sup>132</sup>

The above quote represent exactly what the current U.S. immigration system is in the process of doing by hunting down undocumented aliens, most of whom are not criminals, confining them in detention centers and letting the taxpayers pay for the cost.<sup>133</sup> Obviously, the current system of deporting *all* the undocumented immigrants that are currently in the United States is not realistic or economically feasible.<sup>134</sup> Another way Congress has attempted to get rid of the undocumented immigrant popu-

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125. Editorial, *supra* note 87.

126. *Despite Rhetoric, Illegal Immigration Provides Benefits to States*, FOXBUSINESS, available at <http://m.foxbusiness.com/quickPage.html?page=19453&content=38441598&pageNum=-1> (last visited Feb. 7, 2012) [hereinafter *Despite Rhetoric*].

127. *Id.*

128. Editorial, *supra* note 87.

129. *Despite Rhetoric*, *supra* note 126.

130. *Id.*

131. *Id.*

132. Bloomberg, *supra* note 8.

133. See Bernstein, *supra* note 1 (detailing the story of Mr. Canté, mentioned above in the Introduction).

134. Bloomberg, *supra* note 8.

lation in the United States is by providing incentives for voluntary leave and imposing stricter punishments for those who stay.<sup>135</sup> This attempt has been unsuccessful, as the undocumented immigrant population has significantly increased since the passage of the regulations in 1996—rather than decreasing as Congress had hoped.<sup>136</sup>

The bottom line is the United States has more than eleven million undocumented immigrants present today, past attempts to get these immigrants to leave the United States created an adverse effect, and current attempts can best be described as mere “fantasy.”<sup>137</sup> And despite all of the efforts to expel these immigrants from the United States, the majority of economists believe undocumented immigrants are more of a benefit to our economy than a problem.<sup>138</sup> So why is the U.S. government trying so hard to achieve what would ultimately result in an economic disaster? After weighing the costs and benefits of immigration on the U.S. economy, it seems that allowing undocumented immigrants to stay in the United States by granting amnesty, would be the most economically beneficial option.<sup>139</sup> Not only is it the most economically beneficial option, but it seems to be the only economically realistic option based on prior immigration reform attempts. However, granting amnesty will not be sufficient to prevent future immigration issues and steps must be made toward a long term solution.

#### A. *Why Amnesty is the Only Answer*

There are two options regarding undocumented immigrants in the United States today: (1) keep them in U.S. territory or (2) get them out of the United States. The first option, granting amnesty to deserving immigrants and letting them pay into the system similar to legal immigrants, would offset most of the costs of unauthorized immigration described above. The second option, deporting all undocumented immigrants—all eleven to twelve million—is what the current immigration system is attempting to do at the cost of \$12,500 per immigrant.<sup>140</sup> Putting aside all the social and moral arguments of forgiving an “illegal” by granting am-

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135. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub. L. No. 104-208, §§ 304, 334, 110 Stat. 3009, 3009-587, 3009-635.

136. RYTINA, *supra* note 33, at 3.

137. Bloomberg, *supra* note 8.

138. *Id.*

139. See *Is Illegal Immigration an Economic Burden to America?*, PROCON.ORG, <http://immigration.procon.org/view.answers.php?questionID=000788> (last updated Oct. 20, 2011) (quoting various sources stating that despite clear evidence that immigrants put a substantial drain on the economy, the overall effect, after considering taxes paid and jobs created, is one that results in a benefit to the U.S. economy).

140. *Feds Estimate*, *supra* note 68

nesty, it is important to examine each option and compare them in economic terms.

### 1. Option I: Deportation-Current Enforcement and Costs

Deportation is currently handled by Immigration and Customs Enforcement (ICE).<sup>141</sup> Since 1996 the yearly deportation rate has increased by 400 percent.<sup>142</sup> In fact, since Obama took office in 2009, over one million people have been deported.<sup>143</sup> At this rate of deportation, rough estimates and simple math reveal that it will take over twenty years and cost around \$140 billion to deport all the undocumented aliens that reside in the United States.<sup>144</sup> Furthermore, deportations will also eliminate economic benefits of immigration, by removing over eleven million consumers from the United States.<sup>145</sup> Disregarding the argument that it is inhumane to break apart millions of families, it would have a devastating effect on the U.S. economy.<sup>146</sup>

Furthermore, the fact that more undocumented aliens are being deported does not mean that the United States is becoming a safer place. In fact, the increase in ICE deportation quotas has had an adverse effect.<sup>147</sup>

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141. *ICE Overview*, U.S. IMMIGR. AND CUSTOMS ENFORCEMENT, <http://www.ice.gov/about/overview/> (last visited Feb. 7, 2012). The website states that:

[The] Immigration and Customs Enforcement is the principal investigative arm of the U.S. Department of Homeland Security (DHS) and the second largest investigative agency in the federal government. Created in 2003 through a merger of the investigative and interior enforcement elements of the U.S. Customs Service and the Immigration and Naturalization Service, ICE now has more than 20,000 employees in offices in all [fifty] states and [forty-seven] foreign countries.

*Id.*

142. AARTI KOHLI, ET AL., *SECURE COMMUNITIES BY THE NUMBERS: AN ANALYSIS OF DEMOGRAPHICS AND DUE PROCESS*, THE CHIEF JUSTICE EARL WARREN INST. ON LAW AND SOC. POLICY 1 (Oct. 2011), available at [http://www.law.berkeley.edu/files/Secure\\_Communities\\_by\\_the\\_Numbers.pdf](http://www.law.berkeley.edu/files/Secure_Communities_by_the_Numbers.pdf).

143. *Id.*

144. *Feds Estimate*, *supra* note 68.

145. See Lipman, *supra* note 88, at 816–17 (explaining that the economic benefits outweigh the costs of illegal immigration).

146. See RAÚL HINOJOSA-OJEDA, CTR. FOR AM. PROGRESS, *RAISING THE FLOOR FOR AMERICAN WORKERS: THE ECONOMIC BENEFITS OF COMPREHENSIVE IMMIGRATION REFORM*, 1 (Jan. 2010), available at <http://www.americanprogress.org/issues/2010/01/pdf/immigrationeconreport.pdf> (stating that removal of the undocumented immigrant population would be detrimental to the U.S. economy).

147. Spencer S. Hsu & Andrew Becker, *ICE Officials Set Quota to Deport More Illegal Immigrants*, THE WASH. POST, Mar. 27, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/26/AR2010032604891.html>. “Under the Bush administration, ICE officials in 2006 increased an annual quota from 125 to 1,000 arrests for each fugitive operations team. At the same time, the agency dropped its policy that agents focus on criminals and deportation violators.” *Id.*

ICE currently has a goal of 400,000 deportations per year, and came close to achieving that goal in 2009 with 387,000 deportations.<sup>148</sup> One of the ways ICE plans on achieving the goal is “with a ‘surge’ in efforts to catch undocumented immigrants whose only violation was lying on immigration or visa applications or reentering the United States after being deported.”<sup>149</sup> According to an ICE agent in the San Francisco area, such a push to meet quotas causes ICE agents to detain undocumented immigrants with noncriminal charges, rather than detaining undocumented immigrants with criminal convictions because it takes longer to process more dangerous criminal aliens.<sup>150</sup> The less time it takes to process a detained undocumented alien, the more undocumented aliens can be detained, which is ICE’s major goal.<sup>151</sup> This leads one to question how this procedure of establishing quotas corresponds to ICE’s mission to “promote homeland security and public safety?”<sup>152</sup>

## 2. Option II: Amnesty

Amnesty is not the most desired option of many politicians, including past presidents; however, even amnesty opponents realize that it is the only realistic answer to dealing with the current undocumented immigrant population in the United States.<sup>153</sup>

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148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.*

152. *ICE Overview*, *supra* note 141.

153. Press Release, President Bush Discusses Comprehensive Immigration Reform in Texas (Aug. 3, 2006), (available at <http://georgewbush-whitehouse.archives.gov/news/releases/2006/08/20060803-8.html>). The press release states that:

I do not think we ought to grant amnesty to people who are here illegally. And the reason I don't is I think that will encourage a whole other bunch of people to come. But I know you cannot deport [ten] million people who have been here working. It's unrealistic. It may sound good in certain circles and political circles. It's not going to work. The best plan is to say to somebody who has been here illegally, if you've been paying your taxes, and you've got a good criminal record, that you can pay a fine for being here illegally, and you can learn English, like the rest of us have done, and you can get in a citizenship line to apply for citizenship. You don't get to get in the front, you get to get in the back of the line. But this idea of deporting people is just not—it doesn't make any sense to me, and it doesn't make any sense to a lot of people who understand this issue. So here's a reasonable way to treat people with respect and accomplish what we want to accomplish, which is to be a country of law and a country of decency and respect . . . .

*Id.*



## a. Past Amnesty Reform

The first and only mass amnesty program in the history of United States was the Immigration Reform and Control Act of 1986 (IRCA).<sup>154</sup> In 1986, the undocumented immigrant population was estimated to be around three million.<sup>155</sup> IRCA granted amnesty to approximately 2.7 million of these individuals.<sup>156</sup> That is, nine out of ten applicants met the strict requirement of IRCA and were approved for permanent residency.<sup>157</sup> About one-third of those applicants became naturalized U.S. citizens by 2001, with the highest number of approvals occurring in 1996 when 250,000 immigrants were naturalized.<sup>158</sup>

IRCA created four paths to legalization: general amnesty in Section 245(A), the Seasonal Agricultural Worker (SAW) program for seasonal agricultural workers, and two very narrow paths that cause very little controversy and only applied to a select group of aliens.<sup>159</sup> The first path of general amnesty under Section 245(A) produced the most applicants with a total of 1,763,434.<sup>160</sup> To qualify, applicants had to meet the following requirements: (1) they had to have lived in the United States continuously since January 1, 1982, (2) they could not have a criminal record with serious offenses, and (3) they were required to meet other general stipulations.<sup>161</sup> The second path to legalization, the SAW program, produced 1,277,041 applications.<sup>162</sup> SAW gave amnesty to seasonal agricultural workers who performed farm work for at least ninety days between 1984 and 1986.<sup>163</sup>

Some sources show that after ten years from obtaining amnesty, the average person only had a seventh grade education and an income of less than \$9,000 per year.<sup>164</sup> Opponents to amnesty suggest that because of this, these legalized aliens cause a financial strain on American taxpay-

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154. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359; RYTINA, *supra* note 33, at 2.

155. RYTINA, *supra* note 33, at 3.

156. *Id.*

157. *Id.*

158. *Id.*

159. Immigration Reform and Control Act of 1986; DAVID NORTH, CTR. FOR IMMIGRATION STUDIES, BACKGROUND: A BAILOUT FOR ILLEGAL IMMIGRANTS? LESSONS FROM THE IMPLEMENTATION OF THE 1986 IRCA AMNESTY 2 (Jan. 2007), available at <http://www.cis.org/articles/2010/irca-amnesty.pdf>.

160. NORTH, *supra* note 159; RYTINA, *supra* note 33, at 3.

161. Immigration Reform and Control Act of 1986; NORTH, *supra* note 159.

162. Immigration Reform and Control Act of 1986; NORTH, *supra* note 159.

163. Immigration Reform and Control Act of 1986; NORTH, *supra* note 159.

164. *Amnesty for Illegal Aliens*, THE AM. RESISTANCE, <http://www.theamericanresistance.com/issues/amnesty.html> (last visited Jan. 8, 2012).

ers.<sup>165</sup> However, these statements are contradictory because these immigrants had to wait five years before they were provided with access to any federal benefits.<sup>166</sup> And during this time, many were still paying into the system, which they could not access.<sup>167</sup> It does not seem likely that paying into the system while not being able to take anything out of it would create a financial burden. In reality, it would seem to have the opposite effect. Other studies show that five years after legalization, most IRCA legalized immigrants had better jobs than prior to legalization.<sup>168</sup> Furthermore, apprehensions of undocumented immigrants declined after IRCA, which eliminated some of the costs shouldered by the U.S. government and taxpayers.<sup>169</sup>

IRCA had both positive and negative effects on the U.S. economy.<sup>170</sup> On the plus side, IRCA allowed the United States to keep 2.7 million consumers—letting them pay into the system and offset costs such as healthcare and education—and reduced the number of deportations which also reduced criminal justice costs.<sup>171</sup> However, there were also negative effects that included an influx of unauthorized immigrants hoping to receive amnesty, and a backlog of visas because relatives of newly legalized immigrants now qualified for legal entry into the United States.

165. *Id.* “The toleration of illegal immigration undermines all of our labor . . . It’s a race to the bottom. The one who plays by the rules is penalized . . . a guest worker program guarantees wages will never go up, and there is no way American citizens can compete with guest workers.” *Id.* (quoting Cornell Univ. Professor Vernon Briggs).

166. *POMS Section: SI 00501.440 Immigration Reform and Control Act of 1986*, SOC. SECURITY ONLINE (Aug. 26, 1999), <https://secure.ssa.gov/poms.nsf/lnx/0500501440> (explaining that for Social Security benefits, “during the [five]-year period beginning on the date LTR status is granted, LTR’s are ineligible for any Federal program of financial assistance”). LTR is defined as “[t]he status that may be granted [to] an illegal alien who has applied for adjustment of status on May 5, 1987 or later, a special agricultural worker who has applied for adjustment of status June 1, 1987 or later, or certain aliens on extended voluntary departure status who applied for adjustment of status in the [twenty-four]-month period beginning December 22, 1987.” *Id.*

167. Editorial, *supra* note 87.

168. Mary G. Powers et al., *IRCA: Lessons of the Last US Legalization Program*, *CTR. FOR HUM. RTS. AND CONST. LAW—THE LEGALIZATION SITE* (Jul. 1, 2004), [http://www.nationalimmigrationreform.org/research/IRCA\\_study](http://www.nationalimmigrationreform.org/research/IRCA_study).

169. Pia M. Orrenius & Madeline Zavodny, *Do Amnesty Programs Reduce Undocumented Immigration?: Evidence from IRCA*, 40–3 *DEMOGRAPHY* 437, 444 (2003), available at [http://ecademy.agnesscott.edu/~mzavodny/documents/Demography\\_amnesty.pdf](http://ecademy.agnesscott.edu/~mzavodny/documents/Demography_amnesty.pdf).

170. HINOJOSA-OJEDA, *supra* note 146.

171. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359; see *Is Illegal Immigration an Economic Burden to America?*, *supra* note 139 (describing the benefits of allowing illegal immigrants to stay in the United States and contribute to the economy).

### b. Current Amnesty Proposals

The current immigration reform bill proposing amnesty is the Comprehensive Immigration Reform Act of 2011 (CIRA), introduced in the Senate by Senator Mendez on June 22, 2011.<sup>172</sup> CIRA proposes solutions to deal with the current undocumented alien population in a practical and humane way and also takes economic factors into consideration.<sup>173</sup> In addition, the bill proposes a creation of a special committee comprised of several government entities working together to analyze the economic and labor force effects of immigration.<sup>174</sup> The bill focuses on providing amnesty to deserving undocumented aliens, enforcement, and employer penalties for hiring undocumented workers.<sup>175</sup> The bill also stresses the importance of English proficiency, steady employment, and continuous residency in the United States; the bill proposes funding for the program through fees and fines.<sup>176</sup> CIRA consists of two major parts: Title I: Immigration and Title II: Immigration Enforcement and Reform.<sup>177</sup>

#### i. CIRA Title I: Immigration

Title I of CIRA proposes registration of undocumented individuals and reforms for worksite enforcement.<sup>178</sup> The first section of Title I, *Registration of Undocumented Immigrants*, outlines guidelines for amnesty to undocumented immigrants present in the United States before June 1, 2011.<sup>179</sup> These immigrants will be labeled as “Lawful Prospective Immi-

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172. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); Menendez Press Release, *supra* note 21. Robert Mendez explained the meaning behind the bill:

This legislation signals to the American people that we are serious about fixing our broken immigration system. We stand for a complete solution[—]a real solution[—]to end undocumented immigration and restore the rule of law. This is common-sense legislation that addresses the realities of the situation, stops the flow across our borders, and contributes to our economic recovery.

*Id.*

173. Comprehensive Immigration Reform Act of 2011; Menendez Press Release, *supra* note 21.

174. Comprehensive Immigration Reform Act of 2011, Menendez Press Release, *supra* note 21.

175. Comprehensive Immigration Reform Act of 2011; Menendez Press Release, *supra* note 21.

176. Comprehensive Immigration Reform Act of 2011; Menendez Press Release, *supra* note 21.

177. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

178. Comprehensive Immigration Reform Act of 2011; Menendez Press Release, *supra* note 21.

179. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

grants” (LPI) and must meet stringent requirements to qualify.<sup>180</sup> On top of the general requirements for immigrants outlined in the Immigration and Nationality Act,<sup>181</sup> CIRA requires all immigrants must pass a background check.<sup>182</sup> After meeting all the requirements and receiving LPI status, which lasts for four years, the LPI will be eligible to apply for permanent residency at the price of \$1,000 and must wait six to eight years.<sup>183</sup> This means that it will take at least ten years before an undocumented immigrant can qualify for the benefits afforded to permanent residents.

In addition, the first section of Title I also incorporates the DREAM Act and AgJOBS bill.<sup>184</sup> Some forms of the DREAM Act have been already enacted by individual states.<sup>185</sup> For example, Texas Governor Rick Perry signed the Texas DREAM Act into law in 2001.<sup>186</sup> The Texas version of the DREAM Act allows children of undocumented immigrants who have resided in the United States and graduated from a U.S. high school to pay in-state college tuition.<sup>187</sup> The federal version of the DREAM Act provides a path to naturalization for children of undocumented immigrants.<sup>188</sup> In order to qualify for permanent resident status and eventually citizenship through the DREAM Act, the child must have arrived in the United States as a minor, attended and graduated from a U.S. high school, and met the residency requirement of five years.<sup>189</sup> If the legislature were to pass the DREAM Act the result would create a

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180. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

181. Comprehensive Immigration Reform Act of 2011; Menendez Press Release, *supra* note 21.

182. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

183. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

184. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

185. MYTHS & FACTS ABOUT THE DREAM ACT, U. S. STUDENT ASS'N 2 (2008), available at <http://www.usstudents.org/our-work/legislative/dream-act-factsheet> (stating that Illinois, New York, Utah, Kansas, Texas, Oklahoma, Nebraska, California, Washington, and New Mexico all have in state benefits for students who are in the United States as undocumented aliens).

186. H.B. 1403, 77th Leg. Sess. (2001) (codified at TEX. EDUC. CODE § 54.051(m)); Mallie J. Kim, *Rick Perry Stands by Texas DREAM Act*, U.S. NEWS (July 25, 2011), <http://www.usnews.com/news/articles/2011/07/25/rick-perry-stands-by-texas-dream-act>.

187. Kim, *supra* note 186.

188. Development, Relief and Education of Alien Minors Act (DREAM ACT), H.R. 1842, 112th Cong. (1st Sess. 2011).

189. *Id.*

substantial taxable income for the U.S. economy.<sup>190</sup> In addition, the DREAM Act would cause a reduction in deficits by an estimated \$1.4 billion and an increase in revenues estimated at \$2.3 billion in the next ten years.<sup>191</sup>

Another act previously introduced and incorporated into Title I of CIRA is The Agricultural Job Opportunities, Benefits and Security Act (AgJOBS).<sup>192</sup> AgJOBS was introduced in 2009 but no compromise has been reached to pass it into law; it provides a path to legal permanent residency for immigrant farm workers.<sup>193</sup> AgJOBS was a result of a compromise between the United Farm Workers and agricultural business employers.<sup>194</sup> The bill provides an opportunity for undocumented immigrants working in the agricultural field to pay into the system and offset some of the major costs of illegal immigration.<sup>195</sup>

The second section of Title I, *Worksite Enforcement*, is aimed at discouraging the use of fraudulent documentation and puts further responsibilities on employers.<sup>196</sup> The bill provides the necessary tools to employers by implementing an employment verification system and adding criminal penalties for failure to comply.<sup>197</sup> Since employment is one of the major incentives for undocumented immigrants to come to the United States, employers' responsibility and compliance is crucial to immigration reform.<sup>198</sup> The enforcement of employer's compliance and lack of an efficient verification system have been major downfalls of past immigration reform.<sup>199</sup> Employers simply did not have the proper tools

190. RAUL HINOJOSA-OJEDA ET AL., UCLA AM. INTEGRATION AND DEV. CTR., NO DREAMERS LEFT BEHIND: THE ECONOMIC POTENTIAL OF DREAM ACT BENEFICIARIES 2–3 (2010), available at [http://naid.ucla.edu/uploads/4/2/1/9/4219226/no\\_dreamers\\_left\\_behind.pdf](http://naid.ucla.edu/uploads/4/2/1/9/4219226/no_dreamers_left_behind.pdf) (estimating a taxable income of \$1.4 trillion to \$3.6 trillion in the next forty years as a result of DREAM Act).

191. JONATHAN MORANCY ET AL., CONG. BUDGET OFFICE COST ESTIMATE: S. 3992 DEVELOPMENT, RELIEF, AND EDUCATION FOR ALIEN MINORS ACT OF 2010 (2010), available at <http://www.cbo.gov/ftpdocs/119xx/doc11991/s3992.pdf>.

192. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

193. AGJOBS–FARMWORKER JUSTICE BULL., SUMMARY OF AGJOBS: THE AGRICULTURAL JOB OPPORTUNITIES, BENEFITS, AND SECURITIES ACT 1 (May 2009), available at <http://www.fwjustice.org/files/AgJOBSPolicyBrief5-09-FINAL.pdf>.

194. *Id.*

195. *Id.*

196. SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

197. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

198. COOPER & O'NEIL, *supra* 49 (explaining that over ninety percent of illegal male immigrants are employed).

199. *Id.* at 3.

to comply with prior legislative requirements.<sup>200</sup> The new proposals in CIRA should address the issue properly and correct the downfalls of past legislation.

In summary, Title I of CIRA outlines the stringent requirements for amnesty for over eleven million undocumented immigrants and introduces a new system for preventing fraud in the workplace.<sup>201</sup> CIRA's amnesty provision gives undocumented aliens an opportunity to offset the major economic costs of immigration by letting them pay into the system.<sup>202</sup> Furthermore, the costs of this amnesty reform will be funded by the undocumented immigrants themselves through application fees.<sup>203</sup> CIRA's amnesty will also eliminate deportation costs of millions of people.<sup>204</sup> This seems like the most economically sensible solution to the problem of illegal immigration currently faced by the United States,<sup>205</sup> and is the preferred solution of most economists.<sup>206</sup> Although some argue that amnesty encourages unauthorized immigration, the addition of CIRA's Worksite Enforcement will deter future undocumented immigrants by making it harder for them to obtain employment.<sup>207</sup>

## ii. CIRA Title II: Immigration Enforcement and Reform

Title II of CIRA outlines procedures for border enforcement, interior enforcement, reforming America's legal immigration system, and immigration integration and other reforms.<sup>208</sup> CIRA makes it clear that regulating immigration is a function of the federal government, not individual states.<sup>209</sup> Title II proposes expansion Customs and Border Protection (CBP) and Immigrant and Customs Enforcement (ICE) agencies to ensure border enforcement.<sup>210</sup> For internal enforcement, the bill expands

200. *Id.*

201. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

202. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

203. Comprehensive Immigration Reform Act of 2011, § 338; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

204. *See* SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35 (outlining amnesty options provided to immigrants under CIRA).

205. Bloomberg, *supra* note 8.

206. O'Connell, *supra* note 95.

207. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

208. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

209. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

210. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

penalties and provides new guidelines for agencies handling undocumented immigrants.<sup>211</sup> It is difficult to predict whether changes proposed in Title II will have a significant impact on deterring unauthorized immigration. However, from an economic standpoint, it makes more sense to allocate funds towards border and interior enforcement reform to prevent future unwanted immigration than to deport such a large number of people.<sup>212</sup>

Another key proposal of Title II is the creation of a Standing Commission on Immigration, Labor Markets, and the National Interests.<sup>213</sup> This commission will evaluate economic needs and impacts of immigration to help prevent future downfalls.<sup>214</sup> This commission is uniquely valuable because it is to be comprised of representatives from numerous federal agencies, including the Social Security Commissioner, the Secretary of Commerce, and Department of Homeland Security.<sup>215</sup> This will give a picture of how the immigration system functions as a whole in conjunction with other agencies, instead of trying to piece together small amounts of information to determine the economic impact of immigration. Moreover, the commission will address the effect of increasing the legal immigration quota.<sup>216</sup> A higher legal immigration quota correlates to a lower number of undocumented immigrants and vice versa.<sup>217</sup> However, very few studies are currently available to determine the true economic impact of a higher quota.

In summary, CIRA proposes an economically efficient way to deal with undocumented aliens through amnesty, workforce regulations, border and internal enforcement reforms.<sup>218</sup> Even opponents of amnesty support other sections of CIRA.<sup>219</sup> But if amnesty is replaced with the deportation of over eleven million people, as desired by the opponents of

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211. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

212. O'Connell, *supra* note 95.

213. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

214. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

215. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

216. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

217. *Infra* Part IV.B.

218. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

219. See generally, *Is the Legalization of Illegal Aliens a Good Solution to Illegal Immigration in America?*, *supra* note 9 (discussing pro's and con's of amnesty).

amnesty, the economic impact will be devastating.<sup>220</sup> Both amnesty and deportation will eliminate major costs of immigration such as healthcare and education, but deportation will require even more funding, while amnesty will fund itself and allow the U.S. economy to retain the benefits of millions of consumers.<sup>221</sup>

### iii. Defining the Differences Between IRCA and CIRA

Opponents of amnesty argue that amnesty causes an increase in undocumented immigration and backlogs in processing based on the failures of IRCA.<sup>222</sup> It is true that CIRA's proposals are very similar to IRCA,<sup>223</sup> and it is only natural to assume that the same type of legislation will create the same type of effect. However, there are significant differences that would cause CIRA to have a substantially different economic impact than IRCA.<sup>224</sup>

First, IRCA was designed for a population of approximately three million undocumented immigrants in the United States in 1986.<sup>225</sup> CIRA, on the other hand, is designed to deal with the approximately eleven million undocumented immigrants currently living in the United States.<sup>226</sup> This is almost four times as many people, which creates an even stronger economic impact. Furthermore, one of the major downfalls of IRCA was the lack of an efficient system to enforce fraud in the workplace.<sup>227</sup> Employers themselves were responsible for verifying documents, but they had no feasible way of actually doing so. As a result, IRCA's guidelines for employers did not provide an efficient means of enforcement when the guidelines were violated.<sup>228</sup>

IRRIRA attempted to correct this downfall in 1996 by imposing penalties on employers; however, it still failed to prevent fraud and provide an efficient means for employers to follow the guidelines.<sup>229</sup> As a result,

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220. O'Connell, *supra* note 95.

221. *Id.*

222. *See Is the Legalization of Illegal Aliens a Good Solution to Illegal Immigration in America?*, *supra* note 9 (outlining con's).

223. Comprehensive Immigration Reform Act of 2011; Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359.

224. Comprehensive Immigration Reform Act of 2011; Immigration Reform and Control Act of 1986.

225. Immigration Reform and Control Act of 1986; NORTH, *supra* note 159.

226. Menendez Press Release, *supra* note 21.

227. NORTH, *supra* note 159, at 4.

228. *Id.*

229. O'Connell, *supra* note 95; *IIRIRA 96-A Summary of the New Immigration Bill*, VISALAW.COM, <http://www.visalaw.com/96nov/3nov96.html> (last visited Jan. 7, 2012).



unregistered immigrants still had an incentive to cross the border for employment which was easy for them to obtain under the IRRIRA.<sup>230</sup>

After IRRIRA, a pilot program was launched to provide a tool for employers to check fraudulent documents.<sup>231</sup> The program called eVerify was launched in 1997 and became available to employers in 2001.<sup>232</sup> Only about one thousand employers participated in the pilot program in 2001.<sup>233</sup> As improvements were made to eVerify the number of employers participating also increased.<sup>234</sup> Currently, there are over 300,000 employers participating in the program.<sup>235</sup> Additionally, as the system keeps improving and more employers begin participating, the number of errors decrease.<sup>236</sup> This is the type of efficient system CIRA is incorporating in the bill.<sup>237</sup> Unlike IRCA and IRRIRA, CIRA provides a tool that will help employers follow guidelines, rather than simply setting guidelines with no efficient means of following them.<sup>238</sup>

Finally, perhaps the most important difference between IRCA and CIRA, is that CIRA provides more reforms for enforcement of immigration laws.<sup>239</sup> IRCA was deemed a failure because of the influx of immigrants seeking amnesty.<sup>240</sup> An increase in undocumented immigrant population from three million to over eleven million is a failed attempt at immigration reform.<sup>241</sup> However, it is important to examine exactly why IRCA failed. The idea of IRCA looked great on paper but provided no efficient means to turn the paper promise into reality.<sup>242</sup> IRCA failed to address the actual implementation of the bill and to foresee the effect it

230. O'Connell, *supra* note 95.

231. *History and Milestones*, U.S. DEP'T OF HOMELAND SEC.—CITIZENSHIP AND IMMIGR. SERVICES, <http://www.uscis.gov/portal/site/uscis/menuitem.eb1d4c2a3e5b9ac89243c6a7543f6d1a/?vgnnextoid=84979589cdb76210VgnVCM100000b92ca60aRCRD&vgnnextchannel=84979589cdb76210VgnVCM100000b92ca60aRCRD> (last updated Nov. 22, 2011).

232. *Id.*

233. *Id.*

234. *Id.*

235. *Id.*

236. *History and Milestones*, *supra* note 231.

237. Comprehensive Immigration Reform Act of 2011, S. 1258, 112th Cong. (1st Sess. 2011); SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

238. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

239. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

240. See PASSEL & COHN, *supra* note 85 (indicating that the only significant reversal in the growing undocumented immigrant population occurred in 2010).

241. See *id.* (indicating the undocumented immigrant population reached twelve million in 2007).

242. Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, § 702, 100 Stat. 3359; COOPER & O'NEIL, *supra* note 49

would have on enforcement agencies.<sup>243</sup> For example, although there was increased funding for border security under IRCA, border enforcement continues to be inadequate and is unable to deter undocumented immigrants.<sup>244</sup> In order to solve a problem, only a plan is not enough.<sup>245</sup> Proper implementation tools are key to executing any plan.

In order for CIRA to be more successful than IRCA, all the involved government agencies must be prepared to properly execute CIRA as it was written.<sup>246</sup> Failure to execute was the primary reason IRCA was unsuccessful, not because it was a bad plan. That being said, CIRA has a similar chance of failure if it is not properly executed.<sup>247</sup> Although CIRA does establish more guidelines for internal enforcement than IRCA and provides tools, such as eVerify,<sup>248</sup> it is hard to predict whether all of CIRA's guidelines will be enough to implement an efficient system of immigration reform, but it is clearly an improvement from IRCA.<sup>249</sup> In order for CIRA to avoid the same downfall of IRCA, proper execution and enforcement are necessary. Success requires more than passing a bill to solve the problem; it takes everyone involved, including all government agencies, employers, and even the immigrants themselves.

Another negative effect of IRCA was the backlog of immigration applications because newly legalized immigrants were suddenly eligible to bring their relatives into the United States legally.<sup>250</sup> CIRA also fails to address this issue.<sup>251</sup> CIRA is targeted at about four times as many people than IRCA, and the backlog can be expected to increase substantially.<sup>252</sup> CIRA fails to acknowledge and propose solutions for this clearly inevitable effect of amnesty.<sup>253</sup> IRCA's failure leads to the conclusion that the idea of amnesty alone is not enough for efficient immigration reform. To accommodate the current and future possible

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243. Immigration Reform and Control Act of 1986; COOPER & O'NEIL, *supra* note 49.

244. COOPER & O'NEIL, *supra* note 49, at 8.

245. *Id.* at 1.

246. *Id.* at 4–8.

247. *Id.* at 4.

248. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

249. *See* Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35 (detailing improved procedures for the enforcement of immigration reform).

250. COOPER & O'NEIL, *supra* note 49, at 6.

251. SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

252. *See* PASSEL & COHN, *supra* note 85; NORTH, *supra* note 159 (indicating that almost three million undocumented immigrants benefitted from the amnesty provision of IRCA).

253. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

backlog, the legal immigration quota per year and per country must be adjusted.<sup>254</sup>

CIRA partially addresses the issue of increasing the legal immigration quota by creating a committee to analyze the need for an increasing immigration quota for employment visas.<sup>255</sup> However, CIRA falls short of being a complete and comprehensive immigration reform bill. Based on the effects of IRCA, the immigration backlog will inevitably increase substantially.<sup>256</sup> Before implementing an immigration reform bill, future foreseeable effects must be examined in order to avoid past mistakes. IRCA failed to foresee future economic effects and CIRA fails in this respect as well.<sup>257</sup>

Even putting the amnesty issue aside, the current backlog of immigration visas in the United States is unacceptable compared to other countries. Countries with higher immigrant population percentages and higher immigration quotas have a substantially lower processing time and backlogs for visas.<sup>258</sup> Furthermore, opponents of increasing the immigration quota in the United States argue that it will encourage more overall immigration; however, statistics from other countries show that a higher legal immigration quota corresponds to a much lower number of undocumented immigrants.<sup>259</sup> Not only will increasing the quota solve the backlog, but it will also provide more legal paths for deserving immigrants to migrate to the United States, fill up the demand for manual labor force in a legal way, and in turn, reduce unauthorized immigration.<sup>260</sup>

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254. *Hearing on Comprehensive Immigration Reform Before the S Judiciary Comm.*, 109th Cong. (July 26, 2005) (statement of Tamar Jacoby, Sr. Fellow, Manhattan Inst.), available at [http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da10951ff&wit\\_id=e655f9e2809e5476862f735da10951ff-2-2](http://www.judiciary.senate.gov/hearings/testimony.cfm?id=e655f9e2809e5476862f735da10951ff&wit_id=e655f9e2809e5476862f735da10951ff-2-2) [hereinafter Jacoby Statement]. In her testimony Ms. Jacoby states that:

The problem is that our immigration quotas provide so few opportunities for most of them to enter the country legally . . . there are only 5,000 visas available for unskilled foreigners seeking year-round work. A Mexican without family in the [United States], who wants to do something other than farm work has virtually no legal way to enter the country. And even a man with family here must wait from [six] to [twenty-two] years for a visa, depending on what kind of relatives he has and what their legal status is.

*Id.*

255. Comprehensive Immigration Reform Act of 2011; SHORT SUMMARY OF MENENDEZ CIRA BILL, *supra* note 35.

256. See COOPER & O'NEIL, *supra* note 49 (explaining the increase in immigration backlogs following the implementation of IRCA).

257. See COOPER & O'NEIL, *supra* note 49 (detailing the lessons learned from IRCA).

258. *Infra* Part IV.B.

259. *Id.*

260. Jacoby Statement, *supra* note 254. "We need the labor; foreign workers want the jobs. But there are no legal channels – so inevitably people come illegally. And it is this

### B. Increasing Legal Immigration Quotas

The majority of undocumented immigrants enter the United States for employment, and since there is always a demand for manual labor, undocumented immigrants will always have an incentive to cross the border.<sup>261</sup> Decreasing this incentive would be the most effective way to prevent unauthorized immigration.<sup>262</sup> Undoubtedly, decreasing the demand for labor is not a practical solution in the midst of the current economic crisis. An increase in the immigration quota will satisfy the demand for much needed manual labor jobs through a legal channel, rather than the current system of satisfying the demand with undocumented immigrants.<sup>263</sup>

Compared to immigration systems in other countries, such as Canada and United Kingdom, the statistics are troublesome. According to the 2010 Census, the United States net migration rate is four per 1,000 population,<sup>264</sup> while Canada's rate is six per 1,000 population<sup>265</sup> and United Kingdom is at a mere three per 1,000.<sup>266</sup> This means that the number of people leaving and entering each country yearly is very close. The United Kingdom's estimated migration rate in 2010 was 163,000 people,<sup>267</sup> estimated at 0.26 percent of the total U.K. population.<sup>268</sup> In contrast, the U.S.'s quota is estimated at 0.16 percent of the total U.S. population.<sup>269</sup>

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mismatch – the mismatch between the size of the flow and our quotas – that creates most of the problems we associate with immigration.” *Id.*

261. *Id.*

262. Bloomberg, *supra* note 8.

263. Michele Waslin, The Nat'l Council of La Raza, speech delivered at the 2004 Meeting of the Latin American Studies Association, Immigration Reform: Comprehensive Solutions for Complex Problems 9–10 (Oct. 2004) [hereinafter Waslin] (available at [http://lasa.international.pitt.edu/members/congress-papers/lasa2004/files/WaslinMichele\\_xCD.pdf](http://lasa.international.pitt.edu/members/congress-papers/lasa2004/files/WaslinMichele_xCD.pdf)). Noted Scholar Michael A. Olivas agrees with this premise and argues that the quotas assigned to Mexico are unrealistic. Michael A. Olivas, Keynote Speech at *The Scholar: St. Mary's Law Review on Minority Issues*, Immigration Symposium, Mar. 2, 2012.

264. *International Data Base*, U.S. CENSUS BUREAU, <http://www.census.gov/population/international/data/idb/country.php> (last revised June 27, 2011) (enter “United States,” select “2010” under year).

265. *Id.* (enter “Canada,” select “2010” under year) (Net Migration Rate defined as “[t]he difference between the number of migrants entering and those leaving a country in a year, per 1,000 midyear population”).

266. *Id.* (enter “United Kingdom,” select “2010” under year).

267. David Stringer, *UK Warned Immigration Quota Could Dent Growth*, BLOOMBERG BUSINESSWEEK (July 25, 2010), <http://www.businessweek.com/ap/financialnews/D9H634200.htm>.

268. *International Data Base*, *supra* note 264 (enter “United Kingdom,” select “2010” under year) (percentage calculated based on total population of 62,348,000 in 2010).

269. *Id.* (enter “United States,” select “2010” under year) (percentage calculated based on total population of 308,282,000 in 2010).

The United States has the lowest percentage of immigrants allowed per population and by far the highest percentage of undocumented immigrants, estimated at 3.7 percent of the total population.<sup>270</sup> For example, the U.K.'s undocumented immigrant population was 1.21 percent in 2006<sup>271</sup> three times lower than in the United States.

Yet some opponents to increasing the legal immigration quota argue that in order to decrease unauthorized immigration, the legal immigration quota must also be decreased.<sup>272</sup> To support their argument, these opponents present evidence that all immigrant populations have increased since the 1960s.<sup>273</sup> This trend in numbers causes opponents to come to a conclusion that documented immigration directly causes undocumented immigration.<sup>274</sup> Concluding that reducing the legal immigration quota will reduce non-legal immigration would require a multitude of connecting links to make a full chain of cause and effect. Opponents of increasing the immigration quota fail to explain how the root causes of unauthorized immigration lead to the conclusion that decreasing the legal immigration quota will solve the problem.

### 1. Historical Trends

In order to determine the true impact of the legal immigration quota on the undocumented immigrant population, it is important to examine historical trends in the United States. The first immigration law in the United States, The Page Act, was passed in 1875, and created basic guidelines for immigration.<sup>275</sup> Quota for annual immigration was first established by the Emergency Quota Act of 1921 at three percent of the population of an immigrant's native country that was residing in the United States at the time of the 1910 census.<sup>276</sup> The immigration quota

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270. PASSEL & COHN, *supra* note 85

271. Dominic Casciani, *An Illegal Immigration Amnesty?*, BBC NEWS (June 14, 2006), [http://news.bbc.co.uk/2/hi/uk\\_news/politics/4989874.stm](http://news.bbc.co.uk/2/hi/uk_news/politics/4989874.stm); *International Data Base*, *supra* note 264 (enter "United Kingdom," select "2006" under year) (percentage calculated based on total population of 60,847,000).

272. JAMES R. EDWARDS JR., CNTR. ON IMMIGRATION STUDIES, *TWO SIDES OF THE SAME COIN: THE CONNECTION BETWEEN LEGAL AND ILLEGAL IMMIGRATION* 14 (Feb. 2006), available at <http://www.cis.org/articles/2006/back106.pdf>.

273. Mark Kirkorian, *The Link: Legal and Illegal Immigration*, CNTR. FOR IMMIGR. STUDIES, <http://www.cis.org/Link-Legal%2526IllegalImmigration> (last visited Feb. 15, 2012) (reprinting an article appearing on Feb. 16, 1997 in the *New York Post*).

274. *Id.*

275. Page Act of 1875, ch. 141, 18 Stat. 477; *Historical Timeline: History of Legal and Illegal Immigration in the United States*, PROCON.ORG, <http://immigration.procon.org/view.resource.php?resourceID=002690> (last updated May 27, 2011).

276. Emergency Quota Act of 1921, ch. 8, § 2(a), 42 Stat. 5; HANNIBAL GERALD DUNCAN, *IMMIGRATION AND ASSIMILATION* 497 (1933). In addition, not more than twenty

was reduced to two percent by The Immigration Act of 1924 and additional restrictions were placed on the origins of those immigrants.<sup>277</sup> In addition, border security and patrol was implemented to prevent unauthorized immigration.<sup>278</sup> Three years after the decrease in the legal immigration quota, the undocumented immigrant population of Mexican natives in the United States spiked to an estimated one million individuals.<sup>279</sup> In response, Mexican immigration became even more restricted by The Immigration and Nationality Act of 1965 and border patrol was further expanded.<sup>280</sup> By the 1980s, almost twenty years after restrictions on legal Mexican immigration, the United States was faced with a need for immigration reform due to the almost three million unauthorized immigrants that had entered the country.<sup>281</sup> Decreasing the legal immigration quota led to an increase in illegal immigration, despite the newly implemented border patrol program that began in 1924.<sup>282</sup> This trend shows that as the U.S. legislature was restricting legal paths for immigrants to

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percent of the quota could enter the United States in one month. DUNCAN, *supra*. The effect of the law was two-fold: first, it reduced the number of immigrants coming into the country by more than half, and second, it encouraged immigration from Protestant Northwest Europeans. *Id.*

277. The Immigration Act of 1924, ch. 190, § 11(a) 43 Stat. 153 (repealed in 1965).

278. The Immigration Act of 1924: *Historical Timeline: History of Legal and Illegal Immigration in the United States*, *supra* note 275.

279. LINNA E. BRESSETTE, MEXICANS IN THE UNITED STATES: A REPORT OF A BRIEF SURVEY 7 (1929). The report discusses Department of Labor statistics which estimated that in just Texas, California, New Mexico, Colorado and Arizona alone there were 1.2 million Mexicans. *Id.* It further stated that Mexican nationals were no longer confined to the Southwest and could be found in almost all states. *Id.*

280. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, § 21, 79 Stat. 911, 920; *U.S. Immigration and Naturalization Service-Populating a Nation: A History of Immigration and Naturalization*, CPB.GOV, [http://www.cbp.gov/xp/cgov/about/history/legacy/ins\\_history.xml](http://www.cbp.gov/xp/cgov/about/history/legacy/ins_history.xml) (last visited Feb. 8, 2012) [hereinafter *A History of Immigration and Naturalization*]. The Immigration Reform and Control Act of 1986 expanded the responsibilities of the Border Patrol, turning it into a modern-day law-enforcement agency. *Id.* The official history of the Border Patrol states that:

The numbers of illegal migrants entering the country was growing at an alarming rate, especially in the California and Rio Grande Valley areas along the Mexican border. Citizen groups alleged that these migrants were responsible for the growing violent crime rate and implored the Immigration Service to put a stop to their entry. The Patrol responded by moving resources-sixty-two Canadian border units were transferred south for a large-scale repatriation effort. In 1952, the government airlifted 52,000 illegal immigrants back to the Mexican interior.

*U.S. Border Patrol-Protecting Our Sovereign Borders*, [http://www.cbp.gov/xp/cgov/about/history/legacy/bp\\_historcut.xml](http://www.cbp.gov/xp/cgov/about/history/legacy/bp_historcut.xml) (last visited Feb. 8, 2012) [hereinafter *U.S. Border Patrol*].

281. *Historical Timeline: History of Legal and Illegal Immigration in the United States*, *supra* note 275.

282. Immigration and Nationality Act of 1965, Pub. L. No. 89-236, 79 Stat. 911; *A History of Immigration and Naturalization*, *supra* note 275.

enter the United States, unauthorized immigration substantially increased.

The quota failed to grow across the decades and failed to keep up with our economic demands. There are many factors that lead to an increase in unauthorized immigration, but it is difficult to separate the impact a decrease in the immigration quota has on this influx of undocumented immigrants. Nevertheless, it is clear from the past that after a decrease in the legal immigration quota, unauthorized immigration does not necessarily decrease, but instead tends to increase. Those who oppose increasing the immigration quota argue that lowering the legal immigration quota will cause unauthorized immigration to decline, but history has proven the exact opposite to be true.<sup>283</sup> In fact, other countries that have a substantially high legal immigration quotas have a substantially lower undocumented immigrant population.<sup>284</sup>

In order to discourage future flows of undocumented immigrants, the true reasons behind unauthorized immigration must be addressed.<sup>285</sup> Putting a patch on the wound is not enough to make it heal properly. Undocumented immigrants come to the United States for jobs.<sup>286</sup> In fact, this incentive is so strong, that it overpowers the risks of strict punish-

Laws passed in 1921 and 1924 limited the numbers of newcomers by assigning a quota to each nationality based upon its representation in previous U.S. census figures. Each year, the State Department issued a limited number of visas; only those immigrants who had obtained them and could present valid visas were permitted entry.

A corollary to severely restricted legal immigration is increased illegal immigration. So the quota-visa policy led to many of the immigration challenges that we see today. Illegal entries and alien smuggling began to rise along land borders, so Congress created the Border Patrol, in 1924, within the Immigration Service. Stricter immigration policies coupled with Border Patrol apprehensions meant that agency staff and resources were becoming more heavily involved in deportations. And a corollary of deportations was that more aliens were conducting more court battles in order to stay.

*A History of Immigration and Naturalization*, *supra* note 280. Congress established the United States Border Patrol as part of the Immigration Bureau the patrol areas were expanded in 1925 to include over 2,000 miles of seacoast extending along the Gulf and Florida coasts. *U.S. Border Patrol*, *supra* note 280.

283. *Would an Increase in Immigration Quotas Reduce Illegal Immigration?*, PROCON.ORG, <http://immigration.procon.org/view.answers.php?questionID=000762> (last updated Sept. 7, 2010); *Historical Timeline: History of Legal and Illegal Immigration in the United States*, PROCON.ORG, <http://immigration.procon.org/view.resource.php?resourceID=002690> (last updated May 27, 2011).

284. *Supra* Part IV.B.

285. Waslin, *supra* note 263.

286. See JEFFERY S. PASSEL ET AL., UNDOCUMENTED IMMIGRANTS: FACTS AND FIGURES, URBAN INSTITUTION IMMIGRATION STUDIES PROGRAM 1 (2004), available at [http://www.urban.org/UploadedPDF/1000587\\_undoc\\_immigrants\\_facts.pdf](http://www.urban.org/UploadedPDF/1000587_undoc_immigrants_facts.pdf) (indicating that ninety-six percent of undocumented male immigrants were actively participating in the workforce).

ment and the obstacles surrounding a secure border.<sup>287</sup> The demand for manual labor in the U.S. workforce will always exist.<sup>288</sup> It would be more economically beneficial to fulfill this demand through legal channels rather than illegal, and un-taxable, means.<sup>289</sup>

Opponents of increasing the legal immigration quota argue that immigrants will take away jobs from Americans.<sup>290</sup> There are two parts to this argument: (1) undocumented immigrants currently in the United States take away jobs from lower class Americans, and (2) legal immigrants take away higher skilled jobs.<sup>291</sup> With a historically high number of unemployed individuals and the current economic crisis, the undocumented immigrant population often becomes an easy scapegoat. In order to determine the validity and true economic impact of these arguments, real life statistics and factors must be taken into consideration.

## 2. Immigration Effects on the Labor Force

There is a general misconception among Americans that immigrants take away Americans' jobs and drain the welfare system.<sup>292</sup> The reality is there is little research to support such claims.<sup>293</sup> In order to determine the validity of such statements, it is helpful to compare an immigrant to an unemployed U.S. born citizen on welfare.

Welfare benefits translate into an hourly wage higher than a janitor's wage in forty-seven states.<sup>294</sup> Why would an unemployed American ever want to work as a janitor? In New York City, the average "welfare salary" is calculated at \$14.75 per hour.<sup>295</sup> A first-year, college-educated

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287. Bloomberg, *supra* note 8.

288. *Id.*

289. Jacoby Statement, *supra* note 254.

290. PEW HISPANIC CNTR., THE STATE OF AMERICAN PUBLIC OPINION ON IMMIGRATION IN SPRING 2006: A REVIEW OF MAJOR SURVEYS 3 (May 2006), available at <http://www.pewhispanic.org/files/2011/10/18.pdf> [hereinafter STATE OF AMERICAN PUBLIC OPINION]. In 2006 fifty-two percent of Americans felt that immigrants are a burden on the country because they "they take our jobs, housing and health care." *Id.*

291. *Id.*

292. *Id.*

293. *Are American workers harmed (such as through job displacement or lower wages) by an illegal alien workforce?*, PROCON.ORG, <http://immigration.procon.org/view.answers.php?questionID=000852> (last updated April 14, 2009) ("The best available evidence does not support the view that large waves of immigrants in the past have had a detrimental effect on the labor market opportunities of natives, including the less skilled and minorities. Any claim that increased immigration . . . will necessarily reduce the wages of incumbent workers should be viewed as speculation with little solid research support.").

294. CATO INSTITUTE, WELFARE PAYS BETTER THAN WORK, STUDY FINDS (Nov./Dec. 1995), available at <http://www.cato.org/research/pr-nd-st.html>.

295. *Id.*



teacher makes less than a person on welfare in nine states.<sup>296</sup> A secretary makes less than a person on welfare in twenty-nine states.<sup>297</sup> The average welfare salary is over \$8 per hour in forty states.<sup>298</sup>

In contrast, many undocumented immigrants work under false documents and some pay into the welfare system without having any access to the benefits.<sup>299</sup> They are not taking away jobs, they are filling essential positions in the U.S. labor force that no one else has the desire to fill.<sup>300</sup> As a result, the undocumented alien labor force provides lower consumer prices for all Americans.<sup>301</sup> As long as there is an inexpensive alien labor force, socio-economically disadvantaged Americans are deterred to work unskilled jobs.

As far as the argument that undocumented immigrants are taking away Americans' jobs, it is hard to believe that the employment based visa limit of 140,000 per year<sup>302</sup> would hardly have any significant impact. The natural functioning of the employment market is the reason many skilled workers are unemployed, not the high number of immigrants.<sup>303</sup> Even if the undocumented immigrants are given a chance to legalize and have the same opportunities as most Americans, such as higher education, they will still have more obstacles to overcome when getting a job than an average American. For example, the language barrier and lack of experience in a U.S. employment environment will still be a disadvantage when competing for skilled jobs.

Perhaps the biggest concern should not be losing jobs to undocumented and documented immigrants, but rather losing jobs to workers overseas. More than 2.4 million jobs were outsourced to workers outside

296. *Id.*

297. *Id.*

298. *Id.*

299. Editorial, *supra* note 88.

300. Greenspan, *supra* note 93.

301. HINOJOSA-OJEDA, *supra* note 146.

302. *Visa Availability and Priority Dates*, *supra* note 80.

303. DAVID A. JAEGER, CNTR. FOR AM. PROGRESS, REPLACING THE UNDOCUMENTED WORKFORCE 1 (Mar. 2006), available at [http://www.americanprogress.org/kf/undocumented\\_workforce.pdf](http://www.americanprogress.org/kf/undocumented_workforce.pdf). The report states that:

While we find that, overall, there are enough out-of-work natives to replace undocumented workers, there is a severe mismatch between the skills of undocumented workers and the natives who would potentially replace them. Moreover . . . all out-of-work natives would not otherwise find work. Clearly, a certain share of natives are unemployed due to the normal functioning of the labor market (so-called 'frictional' unemployment) and will find work regardless of what happens with undocumented workers . . . ."

*Id.*

the United States in the past ten years.<sup>304</sup> Those are jobs going to people who do not consume or pay taxes in the United States. It makes more sense economically to give those jobs to people who live in the United States, consume, and pay into the system.

In order to find a more economically efficient solution to immigration problems today, it is important to consider both the current status and the future of the U.S. economy. Deportation will cause an economic disaster; therefore, amnesty is the only viable solution.<sup>305</sup> Learning from the past, it is clear that amnesty alone is not enough, and the future effects of amnesty must be addressed.<sup>306</sup> Amnesty coupled with an increase in the legal immigration quota have proven to cause a low undocumented immigrant population in other countries, while a decrease in a legal immigration quota has proven to cause an increase in the undocumented immigrant population in the United States in the past.<sup>307</sup> Therefore, it would be best to increase the legal immigration quota.

#### V. PRESENT, PAST, AND FUTURE IMPACTS OF IMMIGRATION ON THE U.S. ECONOMY

Undocumented immigrants did break a law; they broke a law once they crossed the border of the United States. How does everyone else, an average American, get the right to be present in the United States? They get the right simply by being born in the United States. How does an immigrant get the right to be in the United States? By going through an arduous and expensive process of proving they are worthy of becoming a U.S. citizen.

The “illegal is illegal” argument that is often used to approach immigration today was used on numerous civil rights issues throughout U.S. history. For instance, it was once illegal for a Black person to marry a White person.<sup>308</sup> It seems absurd today that an interracial marriage was once considered a criminal offense. The fact that something is labeled “illegal” is not justification to ignore the big picture and close one’s eyes to what is truly behind that word. Not all “illegal” things are equal, and, therefore, they must be addressed with an open and informed mind. The future of the immigration system in the United States is unclear. What is

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304. Zaid Jilani, *CHART: Top ‘U.S.’ Corporations Outsourced More Than 2.4 Million American Jobs Over The Last Decade*, THINKPROGRESS (April 19, 2011), <http://think-progress.org/economy/2011/04/19/159555/us-corporations-outsourced-americans/>.

305. *Supra* Part IV.A.

306. *Supra* Parts IV.A, B.

307. *Id.*

308. *See generally* *Loving v. Virginia*, 388 U.S. 1 (1967) (holding that a Virginia statute banning interracial marriage violated the due process and equal protection clauses of the fourteenth amendment).

clear is that the current immigration system is not working. Effective immigration reform must take into consideration the present state of the economy, past failures, and the future impact of such reform.

#### A. *Fixing the Present*

As previously stated, there are currently an estimated eleven to twelve million undocumented immigrants, or 3.7 percent of the population, in the United States today.<sup>309</sup> The legal immigration quota in the U.S. is only 0.16 percent of the total population.<sup>310</sup> The waiting list to enter the United States as a legal permanent resident is over ten years.<sup>311</sup> Undoubtedly, the current immigration system in the United States is in dire need of reform. In the midst of a current economic crisis, economic factors are perhaps the most important to examine when drafting immigration reform.

The current undocumented immigrant population brings both significant benefits and costs to the U.S. economy. The proper immigration reform should offset major costs of the undocumented immigrant population, such as healthcare and education, while preserving the major benefits, such as consumption and tax revenue.<sup>312</sup> The bottom line is that the only two options to deal with the high number of undocumented immigrants in the United States today are deportation and amnesty. Deportation, even if deemed realistic for eleven to twelve million people, will cost \$12,500 per person.<sup>313</sup> Amnesty, on the other hand, will offset major costs while retaining the benefits.<sup>314</sup>

#### B. *Learning from the Past*

It seems natural to be skeptical of amnesty based on prior failures of IRCA. But most critics of IRCA agree that the failure was in implementation and planning for the future, not the actual granting of amnesty. Further attempts to correct IRCA with IIRIRA in 1996 by implementing stricter punishments on employers and immigrants have also failed because the root causes of illegal immigration were overlooked. The past shows that a decrease in the immigration quota has led to a spike in illegal immigration. An analysis of reasons for past failure is key to creating effective immigration reform in the future.

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309. *Supra* Part IV.B.

310. *Id.*

311. *Id.*

312. *Supra* Part III.B.

313. *Id.*

314. *Id.*

### C. *Preparing for the Future*

Attempting to learn from the past, the current proposal for immigration reform, CIRA, addresses some failures; however, it still overlooks future effects. Amnesty alone, even if properly implemented, will not address the future flow of immigrants. A higher legal immigration quota is directly tied to a low number of undocumented immigrants. Immigrants do not take away jobs from Americans; they contribute to economic growth and development, unlike the 2.4 million jobs currently outsourced to other countries. To prepare for the future, the effects of amnesty or deportation on the U.S. economy must be considered.

Is it even realistic to make over eleven million people, as many as the entire state of Pennsylvania, disappear? As people suddenly began disappearing in Central Falls, Rhode Island, the negative economic impact was clearly felt by small businesses in that town because of the reduction in consumption. Is Central Falls a small scale example of what the United States will become once millions of consumers also disappear? Why is the U.S. government trying so hard and spending billions of dollars to cause “the worst economic disaster in the history of the United States?”<sup>315</sup> The only economically sensible and realistic paths to avoiding this disaster are granting amnesty to current undocumented immigrants and increasing immigration quotas. Perhaps the U.S. government can learn their lesson from the small scale example of Central Falls and discontinue current immigration procedures.

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315. O’Connell, *supra* note 95.