

Fixing Border Security and Immigration

A Memo to President-elect Obama

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And I will make it a top priority in my first year as President not only because we have an obligation to secure our borders and get control of what comes in and out of our country. And not only because we have to crack down on employers who are abusing undocumented immigrants instead of hiring citizens. But because we have to finally bring undocumented immigrants out of the shadows. Yes, they broke the law. And they should have to pay a fine, and learn English, and go to the back of the line.

—Barack Obama, speech before League of United Latin American Citizens, July 8, 2008¹

PRESIDENT-ELECT OBAMA, we applaud your commitment to secure our nation's borders, but securing our borders is simply one step toward protecting America and fixing our broken immigration system. Your statement acknowledges that those who come into our country illegally have broken the law, so you should ensure that immigrants brought "out of the shadows" are not granted amnesty but are instead required to return to their home country with the opportunity to apply for legal entry as lawful visitors, temporary workers, or legal residents at a later date.

America has been good for immigrants, and immigrants have been good for America, but over the past several decades immigration policy has become confused and unfocused. Our current policies are not working. Illegal immigrants are straining federal and state budgets. Local social services find it hard to meet growing needs. Gaping holes in our southern border aggravate this problem and create numerous other

security risks while doing nothing for U.S. employers who are looking for a better solution to our labor shortages.

Recent attempts to fix the problem died largely because they tried to accomplish too much. There is no silver-bullet remedy for failed immigration policies and broken border security, but several practical steps can help you to achieve the ultimate goal of making America free, safe, and prosperous:

- **Secure America's borders.** The United States must have a complete border security system—from the point of origin, in transit, at the border, and within the United States—that strengthens all of the activities, assets, and programs necessary to secure America's borders. At the southern border, the point of entry into the United States for millions of illegal immigrants, rich and powerful smuggling cartels illicitly move drugs, people, arms, and money back and forth between the U.S. and Mexico almost at will. They have seized *de facto* control of broad swaths of land in many areas just across our border with Mexico, and some of the violence caused by their activities has spilled over into our Southwestern states.
- **Undertake a thorough examination of border security efforts** to determine which ones are working and which are not. By December 31, 2008, approximately 370 miles of border fencing will be under construction or will have been built.² While Congress mandated 700 miles of fencing, the Department of Homeland Security (DHS) should assess the need for border infrastructure such as fencing according to the priorities and requirements identified by the Border Patrol, not political fiat. This means that additional infrastructure should be built only where it is efficacious.

The Border Patrol must also clearly define what is needed from *SBinet* and other border security technologies and tailor contractor requirements accordingly. Federal operations should be coordinated more closely so that they complement the efforts of

state and local governments. In particular, community policing along the border and task forces tackling transnational gangs, smuggling, and other organized criminal activities need more DHS support. Finally, your Administration should continue the Merida Initiative and efforts to improve Mexico's capacity to combat organized crime and reduce border violence.³

- **Do not accept amnesty as the answer.** Those who enter, remain in, and work in the United States illegally are in ongoing and extensive violation of our laws. This has a corrosive effect on civil society and undermines confidence in the immigration process and the rule-of-law principles that govern our nation. Forgiving or condoning such violations by granting amnesty will only increase the likelihood of further illegal conduct. Indeed, after legislation granted a general immigration amnesty in 1986, the unlawful population in the United States quadrupled. And bringing illegal immigrants "out of the shadows" sounds like another, much larger general amnesty.

Failure to enforce immigration laws is deeply unfair to the millions who obey the law and abide by the administrative requirements that must be observed to enter the country legally. You should encourage illegal aliens to leave the country voluntarily. Those illegal aliens who have no other criminal violation and wish to return can register with authorities before exiting and later apply for legal entry as lawful visitors, temporary workers, or legal residents without partiality or prejudice.

- **Enforce the law.** We need to enforce the immigration and workplace enforcement laws that already exist. In your July 8, 2008, speech in Washington, D.C., you were right to recognize that immigrants who enter our country illegally are breaking the law. Federal, state, and local law enforcement must be allowed to enforce immigration laws in ways that are consistent with their legal authority. In that same month of July 2008, a report by the Center for Immigration Studies found that

1. "Remarks of Senator Barack Obama: League of United Latin American Citizens," Washington, D.C., July 8, 2008, at http://www.barackobama.com/2008/07/08/remarks_of_senator_barack_obam_89.php (December 9, 2008).

2. U.S. Department of Homeland Security, "Southwest Border Fence," at <http://www.dhs.gov/xpre/vprot/programs/border-fence-southwest.shtm> (December 8, 2008).

3. Ray Walser, Ph.D., "Mexico, Drug Cartels, and the Merida Initiative: A Fight We Cannot Afford to Lose," Heritage Foundation Backgrounder No. 2163, July 23, 2008, at <http://www.heritage.org/Research/LatinAmerica/bg2163.cfm>.

recent enforcement efforts have succeeded in decreasing the illegal immigration population by 11 percent.⁴ Further reforms must allow sharing of Social Security no-match information in a way that will protect privacy rights while allowing the DHS to target employers who intentionally violate the law by hiring illegal workers and giving the government incorrect information.

- **Expand Section 287(g) of the Immigration and Nationality Act of 1996.** This Section should be expanded to allow the Department of Homeland Security and state and local governments to enter into more assistance compacts.⁵ State and local law enforcement officers governed by a Section 287(g) agreement receive full federal authority to enforce immigration law, thereby shifting liability to the federal government and providing the officers with additional immunity when enforcing federal laws.

You should also ensure that DHS continues to develop and expand other programs under the U.S. Immigration and Customs Enforcement (ICE) Access initiative to foster additional cooperation with state and local governments as well as the private sector. Finally, you should ensure that the E-Verify program is adequately funded and expanded to the extent practical to provide employers and employees the means to verify worker eligibility more quickly and accurately.

- **Authenticate identification.** Immigration reform should include full funding and implementation of the Intelligence Reform and Terrorism Prevention Act of 2004 and the REAL ID Act of 2005. Identification documents should be issued only to persons living lawfully in the United States. To prevent tampering, counterfeiting, or fraud, as well as to enhance privacy protections, these laws should also establish standard security features concerning identification cards.

- **Strengthen citizenship and recognize English as our national language.** Each nation has the responsibility—and obligation—to determine for itself what legal requirements will be established for immigration, naturalization, and citizenship. Since the United States Constitution and laws passed by Congress have already established these requirements, you should support programs to promote civics and history education among immigrants and encourage English language proficiency in order to foster political integration and strengthen commitment to our common principles. Immigration reform legislation should recognize English as the national language because clear communication, mutual deliberation, public education, expanding commerce, and common civil principles demand that citizens share one language.⁶
- **Work with Mexico and Central America.** Your Administration should support economic opportunity and development in Mexico and Central America. The largest number of illegal immigrants and undocumented workers comes from Mexico and Central America, and the lack of available jobs and opportunity for wealth creation throughout Latin America is a major factor in creating the “supply push” of foreign workers into the United States. Relieving this pressure will require domestic economic and governance reforms in these countries that create jobs and spur economic growth. It means avoiding new dislocations that might follow an effort to renegotiate the North American Free Trade Agreement (NAFTA). It means working with Mexico to strengthen competitiveness and productivity on both sides of the border.

You can jump-start this cooperation by pressing for immediate congressional approval of the Colombia and Panama Free Trade Agreements. The Millennium Challenge Account is another promising tool that could be used to promote more rapid and effective economic development. Innovative thinking should look for

4. Steven A. Camarota and Karen Jensenius, “Homeward Bound: Recent Immigration Enforcement and the Decline in the Illegal Alien Population,” Center for Immigration Studies *Background*, July 2008, at http://www.cis.org/trends_and_enforcement (September 14, 2008).

5. James Jay Carafano, Ph.D., and Laura Keith, “The Solution for Immigration Enforcement at the State and Local Level,” Heritage Foundation *WebMemo* No. 1096, May 25, 2006, at <http://www.heritage.org/research/nationalsecurity/wm1096.cfm>.

6. Matthew Spalding, Ph.D., and Israel Ortega, “Immigration Reform: The Need for Upholding Our National Language,” Heritage Foundation *WebMemo* No. 1488, June 5, 2007, at <http://www.heritage.org/Research/Immigration/wm1488.cfm>.

ways to assist with the agricultural and commercial development of rural and southern Mexico.

- **Reform the current visa programs and services.**

Employers must have appropriate legal venues to get the workers they need to help the American economy grow and prosper. You should take steps to reform existing visa policies in a manner that appropriately addresses concerns regarding security, sovereignty, citizenship, and economic growth. The current system only makes the broken immigration system worse. These reforms should include both high-skilled and low-skilled temporary visa programs including H-2A, H-2B, and H-1B.

It is also necessary that any improvements in the current visa systems include oversight measures to ensure that visa holders leave the United States when their visas expire. Finally, greater attention must be paid to increasing the capacity and quality of services provided by the U.S. Citizenship and Immigration Services agency.

- **Pilot a new temporary workers program.** A balanced and well-constructed temporary worker program will diminish the incentive for illegal immigration by providing an additional option for legal temporary labor and over time, in combination with other reforms, will

reduce the current population of illegal aliens. This program, however, must be temporary, of defined and limited duration, market-oriented, and feasible. This can be achieved by requiring sponsorship, bilateral agreement between the U.S. and home nations of program participants, and limited status adjustment. It should also be available only to lawful immigrants and foreign temporary workers (who enter the country legally with a non-immigrant status through a worker visa) and not to illegal aliens.

Conclusion

It is imperative that you and your Administration address the many serious problems that plague our border security efforts and threaten to destroy our immigration system. History has demonstrated that the Band-Aid solution of amnesty simply serves to incentivize law breakers.

Tangible improvements in this area will require a clear, comprehensive, meaningful, and long-term policy concerning immigration, naturalization, and citizenship as well as determined and persistent support from the highest levels of government. Our border must be secured through a systematic approach and better integrated into the broader homeland security enterprise to ensure that America is free, safe, and prosperous for years to come.

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