

## **THE CRISIS IN UNITED STATES IMMIGRATION REFORM**

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### **ABSTRACT**

Immigration reform in the United States (US) has been quite politically contentious. This is partly because of the array of vested interests that have galvanized around the policy, each making its own demands on government. These multitudes of public demands have, in turn, engendered conflicts and contradictions within the immigration policy process. Because the conflicting demands directed at government have led to the promulgation of contradictory policies, it has made it difficult to determine whether or not a particular immigration policy is actually what it purports to represent.

Based on these prevailing set of circumstances, therefore, the primary purpose of this study is fourfold: one, to explain the conditions which underlie the political divisiveness among competing interests in US immigration reform; two, to link this divisiveness to the behavior of policymakers in their immigration reform proposals; three, to assess the effectiveness of the traditional benchmarks of immigration reform; and four, to demonstrate that, given the intractability of these prevailing conditions, the outcome of future US immigration laws may not be radically different from the *Immigration Reform and Control Act (ICRA)* of 1986.

### **Introduction**

The first major immigration reform effort, which gathered momentum in the 1980's, was eventually legitimized in 1986 through the enactment of the *Immigration Reform and Control Act (IRCA)* also referred to as Simpson-Mazzoli; following the last names of its major Congressional sponsors. This bipartisan Congressional bill, which President

*Ronald Reagan* signed into law on November 6th of 1986 (*Immigration Reform and Control Act 1986, 1*) gave legal status to approximately 2.7 million of the 3 million foreign residents that tendered applications (*Doris Meissner 2005, 1*). There were, however, media speculations that the total number of illegal immigrants at that time could have been as high as 5 million individuals.

The following are highlights of the bill's provisions (*Immigration Reform and Control Act 1986, 1*). One, it will be illegal for *employers* to recruit or employ undocumented workers knowingly. Two, employers must attest to the immigration status of their *employees* when requested to do so. Three, *amnesty* will be granted to certain illegal immigrants who had entered the United States prior to January 1st of 1982, and had resided in the country continuously. Four, those immigrants who qualify may be granted citizenship in the future. In addition, the bill also included a caveat on *border enforcement* (*Doris Meissner 2005, 1*). In sum, the legislation stipulated the traditional benchmarks of immigration reform which were: *employer sanctions* to deter the employment of undocumented workers; *amnesty* (*forgiveness* or a *path to citizenship*) for qualified illegal immigrants; and, *border security* to control and deter illegal border crossings into the US from Mexico.

By enacting IRCA, the goal of the federal government was purportedly to resolve a dysfunctional immigration system, the effort of which was a reflection of the government's acknowledgement of its inability, hitherto-fore, to control and deter illegal immigration. However, approximately two decades following the enactment of IRCA, which was supposed to have addressed this dysfunctional immigration system, it once again became necessary for US lawmakers to revisit the issue. This necessity stemmed from the fact that even much larger numbers of illegal immigrants had continued to infiltrate the southern border of the US; a clear manifestation of the total failure of ICRA.

Given this situation, the writer posits that, because of the public's *political divisiveness* regarding the granting of *amnesty*, the *economic contributions* made by illegal

immigrants to the US economy, and the *structural* and *political problems* encountered in the enforcement of *employer sanctions* and *border protection*, US governments (national and state) will be ineffective in their attempts to formulate and implement immigration policies which would control and deter illegal immigration. This stalemate is also facilitated by conflicts and contradictions in the policymaking process. On one hand, *conflicts* are generated because of the failure, on the part of the various political factions with an interest, to compromise on policies that might bring about immigration reform. On the other hand, *contradictions* are generated because government responses appear to be reactions to pressure applied by competing interests, rather than a genuine effort at embarking on the promulgation of policies that might address the issue concretely. Because this stalemate has caused continued confusion and uncertainty regarding the actual outcome of any future immigration reform measure, this writer regards this state of affairs as constituting the crisis in US immigration reform.

This crisis will be demonstrated through *analyses* posited in four *paradigms* which will highlight the limitations on immigration reform that are imposed by political, economic, and structural factors, along with their respective conflicts and contradictions. The first paradigm will address brief case studies in a recent *history* of immigration reform efforts post ICRA. Because of the various uncompromising groups that were involved in the process, this paradigm will show factional polarizations and policy stalemates. The second paradigm, which is *amnesty*, will show attempts to address the calamity of the illegal immigrants who have resided in the US for a period of time. In terms of factional politics, this paradigm will also demonstrate that amnesty has been the most stalemated, most contentious, and most polarizing of the three benchmarks of immigration reform. The third paradigm is *employer sanctions* or the punitive measures imposed on employers, by government, in order to deter the employment of illegal immigrants. This paradigm will address the ineffectiveness of the employer sanctions regime by revealing several of its inherent weaknesses. The fourth paradigm is *border security* or the attempted blocking of the border in order to control and deter illegal border crossings

from Mexico. This paradigm will also address the ineffectiveness of the border protection regime by revealing its own set of major weaknesses.

### **Recent History of Immigration Reform**

Although Congress attempted to address continued illegal immigration between 2005 and 2007, in response to the failure of ICRA, none of the four proposals legislated ever became law. Further, with the exception of the current 2013 Congressional proposals, there had been no other immigration legislation that Congress had been seriously contemplating on enacting into law immediately after the failure of the 2007 proposal.

The following are the names of the failed immigration bills or proposals, in the order in which they were introduced in the Senate: one, the *Secure America and Orderly Immigration Act of 2005*; two, the *Comprehensive Enforcement and Immigration Reform Act of 2005*; three, the *Comprehensive Immigration Reform Act of 2006*; and four, the *Secure Borders, Economic Opportunity and Immigration Reform Act of 2007 (Comprehensive Immigration Reform Act 2007, 1-4)*. These proposals are analyzed below briefly in an attempt to reveal the intractable nature of the obstacles that led to their failure, thereby setting the stage for what might become the norm for future immigration reform efforts.

### **The Secure America and Orderly Immigration Act of 2005**

This bipartisan piece of legislation was sponsored by Republican Party Senator *John McCain* and Democratic Party Senator *Edward Kennedy*. The bill incorporated legalization, a guest worker program, border enforcement, and an employment eligibility confirmation system.

Conservative factions were the major foes of this bill. These forces opposed the bill because they regarded its legalization provision, which would have allowed illegal immigrants to remain in the country through a program that would have required them to pay a minimum fine of \$1, 500.00, as tantamount to a de facto amnesty. In addition, these

forces also envisioned that if this disguised amnesty stipulation became operational, rather than deter illegal immigration, it would have the effect of encouraging more of it (*James Carafano 2005, 1*).

### **The Comprehensive Enforcement and Immigration Reform Act of 2005**

This legislation was sponsored by conservative Republican Senators *John Cornyn* and *Jon Kyl*. It was a bill that appeared to have been a counter-measure to the apparently perceived liberal McCain-Kennedy initiative. The attributes of the Cornyn-Kyl bill were: one, the enforcement of existing immigration laws; two, border enforcement; three, worksite enforcement; four, no amnesty considerations; and five, allowing certain illegal immigrants to apply for mandatory departure in order to re-enter the US legally (*National Conference of State Legislatures 2006, 2*).

As regards this proposal, it is interesting to note that it appeared not to have laid much emphasis on the consequences for a violation of mandatory departure, given that some immigrants would either have been unwilling or unable to depart. In addition, since the bill was bereft of an amnesty provision, it also appeared not to have addressed the issue of exactly what would have happened to the millions of illegal immigrants that were already residing in the US.

### **The Comprehensive Immigration Reform Act (CIRA) of 2006**

This legislation was sponsored by Republican Senator *Arlen Specter*. The bill was *comprehensive* in the sense that it at least addressed all the traditional immigration reform benchmarks of amnesty, employer sanctions, and border security (*Council on Foreign Relations 2006, 1*)

These were the stipulations of the proposal: one, an offer of amnesty and citizenship to 85 percent of the nation's current 11.9 million illegal immigrants; two, an offer of immediate amnesty to illegal immigrants who have resided in the United States for five years or more; three, illegal immigrants who have resided in the country between two and five

years will be allowed to travel to anyone of 16 *ports of entry* to receive amnesty and lawful work permits (*Robert Rector 2006, 2*); and four, a border fencing of 370 miles as compared to the House's version of 700 miles (*Council on Foreign Relations 2006, 1*).

As regards this bill, it is interesting to note that even though the border with Mexico has been estimated to be approximately 1, 951 miles in length (*Mexico-United States Barrier 2013, 2*), it is therefore not clear as to exactly what a partial fence of only 370 miles, or even 700 miles for that matter, would accomplish in deterring illegal border crossings. Nevertheless, Congress decided to pass the *Secure Fence Act* in 2006 as a separate piece of emergency legislation that was designed to control and deter the continuous flow of illegal immigrants through the southern border (*USA Today 2007, 1*). Finally, even though the Senate eventually approved this bill, persistent squabbles over the benchmarks, especially in the intricacies involving border security, prevented it from becoming law.

### **The Secure Borders, Economic Opportunity, and Immigration Reform Act of 2007**

This piece of legislation, also referred to as the *Comprehensive Immigration Reform Act of 2007*, was proposed by Democratic Senator *Harry Reid*. It had bipartisan support and support from the Republican President *George W. Bush*. The bill's stipulations were: one, a guest worker program; two, an offer of *legal status*; and three, an offer of a *path to citizenship* for an estimated 12 to 20 million illegal immigrants (*Comprehensive Immigration Reform Act 2007, 1-4*). In addition, this legislation also addressed the status of *young* illegal immigrants who, because of their youth, are seen as a category that should not be held culpable for having broken immigration laws. This consideration was carried out through the adoption of a separate bill referred to as *the Dream Act*. This act specifically offered a path to citizenship for young immigrants who entered the country before they were 16 years old; in addition to being willing to attend college or serve in the US military (*Comprehensive Immigration Reform Act 2007, 4*).

However, because of conflicting views, regarding the impact of the entire 2007 proposal if it became law, it failed in the Senate in 2010. The death of the bill appeared rather

unavoidable because both conservative and liberal forces expressed reservations about it. For example, a primary concern of conservatives is that the Dream Act would be tantamount to a *blanket amnesty* that will encourage more illegal immigration; and a primary concern of liberals, including Hispanic pressure groups, is that the guest worker program would create an underclass of immigrants who might be deprived of benefits (*Comprehensive Immigration Reform Act 2007, 4*).

Thus, despite the fact that Congress, in 2013, had not even passed its own *Dream Act* as yet, certain states have already started to pass their own versions of the Dream Act; perhaps because of the realization that an amnesty provision in any future immigration reform measure will most probably be inevitable. In 2012, approximately twelve out of the fifty states in the US were said to have passed *Dream Acts* (*Visa-Now Global Immigration 2012, 1-2*). This development, from the standpoint of federalism (the division of powers between the federal and state governments), is interesting given the fact that immigration policy is constitutionally regarded as the jurisdiction of the federal government, not that of the states.

### **Amnesty**

In this category, it will be demonstrated that, primarily because of the enormous political pressure applied by Hispanic interests and their supporters in immigration reform within US democracy, Congress will be unable to enact a new immigration reform law that will be devoid of an amnesty provision. This thesis will be addressed through analyses of immigration pressure politics and its impact on immigration reform policymaking. Specifically, these sub-components will be addressed: one, impact of Hispanic political pressure; two, the political power base of Hispanics; and three, Hispanic grass roots mobilization strategies.

### **Impact of Hispanic Political Pressure**

The American political system is a *plural democracy* because the driving forces behind government policy-making are *interest groups* which compete among themselves; and in

certain cases balancing power in the process, for access to government decision-making. An interest group is defined as an organization, consisting of individuals that make policy-related appeals to government (*Theodore Lowi et al 2012, 555*), through the application of pressure.

The major strategies which Hispanic pressure groups have employed to influence immigration policymaking have been *mass protests* and *voting*. These strategies have been influential to the extent that the *2010 bipartisan immigration proposal* in the Senate, sponsored by Republican Senator *Lindsey Graham* and Democratic Senator *Charles Schumer*, had included an amnesty provision (*Brad Watson 2010, 1*). In addition, even the current 2013 Senate proposals, advocated by the *Gang of Eight* Senators, also contain a provision for *a path to citizenship* (*Richard Cowan and Rachelle Younblai 2013, 1-2*). These outcomes are related to Hispanic influences.

### **The Political Power Base of Hispanics**

The combination of the right to petition representatives and a powerful Hispanic political base has enabled Hispanic pressure groups and their supporters to project their amnesty demands quite effectively. Theoretical analyses of these factors follow.

First, by virtue of their fairly large numbers, estimated at approximately 46 million (*Darrell West 2010, 1*), Hispanic voters have become a decisive factor in American electoral outcomes. As a result, the success or failure of candidates for state and national elections will be influenced by the Hispanic electorate; especially, in states where Hispanics command a large percentage of the population. This is most likely to be the case in *New Mexico* - 44 percent, *California* - 36 percent, *Texas* - 30 percent, *Arizona* - 30 percent, and *Nevada* - 25 percent (*Darrell M. West 2010, 1*).

Second, since each of the 50 states has 2 Senators that are elected statewide regardless of the size of the population; and the number of Congressional House members from each state would be dependent on that state's population size, Hispanic voters can certainly

make a difference in determining both the number of representatives (House members) from such states and exactly who among the candidates (House and Senate) will be elected to Congress. This political reality would explain why national legislators from Hispanic-influenced constituencies might be more inclined to support some form of amnesty for illegal immigrants.

Third, since the *Electoral College*, rather than the plebiscitary vote, determines the winners of presidential elections (*Kenneth Dautrich and David Yalof 2012, 461-462*), voters in the states with a large Hispanic presence will play a significant role in determining the outcome of such elections, assuming a large Hispanic turnout.

For example, because of his support for immigration reform with an amnesty provision; and because the Hispanic turnout was large, President *Barrack Obama* won 67% and 71% of the total Hispanic vote in the elections of 2008 and 2012 respectively - assuring his election and reelection into the presidency (*Pew Research Hispanic Center 2012, 1-2*). Further, according to some observers, the immigration issue was actually a determining factor in helping *Obama* amass a larger percentage of Hispanic votes in the 2012 presidential elections compared to those in 2008 (*latinodecisions.com 2012, 2*).

### **Hispanic Grass Roots Mobilization Strategies**

Realizing the principle of strength in numbers along with active political participation, the Hispanic population embarked on a grass-roots mobilization campaign of their political base in an effort to influence immigration legislation. Itemized below are the strategies, including outcomes, adopted by Hispanic groups to achieve this goal in recent years.

First, Hispanic groups made good use of their national civic organizations, the largest of which are the *National Council of La Raza* (NCLR) and the *League of United Latin-American Citizens* (LULAC) (*Deirdre Martinez 2009, 1*). These two groups, which support amnesty for illegal immigrants (*Lulac.org 2013, 1*); are also said to be courted

regularly by political candidates, since they are regarded as an integral part of the national policymaking process (*Deirdre Martinez 2009, 1*). In addition to these groups, a number of state and local Hispanic groups have also played major roles in mobilizing the Hispanic base in order to bring about immigration reform with an amnesty provision.

Second, Hispanic organizations have also made extensive use of the mass media to promote the goal of immigration reform by mobilizing the grass roots population, raising finances, organizing for protests, and communicating with political figures. In addition, various groups have also made very extensive use of the internet, especially, in an attempt to recruit members and maintain group solidarity. Both the NCLR and LULAC have popular internet websites to fulfill these purposes.

Third, Hispanic groups have also demonstrated their numerical power through sustained protest marches. For example, in 2006, a number of Hispanic protests reached their highest climax after having been prompted by a Congressional illegal immigration proposal referred to as *H.R. 4437* (*Wikipedia.org 2006, 1*). Had it been enacted into law, this bill would have classified illegal immigrants and all those who assisted them to enter and/or remain in the US as felons (*Wikipedia 2006, 1*). Therefore, realizing the adverse nature of this pending law, the organizers decided to engage in mass protests all over the country in an attempt to prevent its enactment. Below is a summary of the enormity of these 2006 protests (*Gustavo Cano 2009, 10-16*).

Between March 11th to April 7th, rallies were held in 76 cities with an estimated participation of 500,000 to 900,000 marchers.

- During the weekend of April 8th to April 10th, an estimated number of 1.4 to 1.7 million people demonstrated in 108 local jurisdictions.
- On May 1st (*Mayday Worker's Day*), between 1.2 and 2 million people participated in organized rallies that were premised on the slogan of an *economic boycott*, in 63 localities across the US.

- On *Mayday*, in Chicago (*Illinois*), there were two marches with an estimated participation of 500,000 to 1,050,000 individuals.
- On *Mayday*, in Houston (*Texas*), there were four marches with an estimated participation of 67,000 to 72,000 people.

These marches were proven to have been tremendously effective on two grounds: one, millions of people were mobilized within a relatively short period of time, given the astronomical numbers that participated in all the marches; and two, the piece of legislation that prompted the marches was never enacted into law.

In addition to the protests above, other demonstrations took place following the enactment of the *Arizona immigration law* in 2010. The law, which allowed the police to question individuals suspected of being illegal immigrants, had been enacted apparently in response to the failure of the national government to prevent the entry of illegal immigrants into the state of Arizona through its border with Mexico. However, despite the fact that this legislation became law, following the signature of Governor *Janice K. Brewer*, Hispanic groups demonstrated their disapproval through mass protests (*Sophia Tereen 2010, 1-3*). These protests can also be said to have been somewhat influential because the federal government later challenged the Arizona law in federal court (*Jerry Markon and Michael Shear 2010, 1*).

Fourth, in an attempt to safeguard themselves from becoming politically marginalized, Hispanic groups insisted that their numbers be counted accurately in all *censuses*, especially in the census of 2010. (A census involves the counting of people in all the fifty states within a ten-year span (*Edward Sidlow and Beth Henschen 2009, 239*)). The reason for this expressed concern is that if Hispanics were to be counted accurately, given their growing numerical advantage in certain states, they may emerge as an influential political force for a number of reasons. One, Hispanic *block-voting* (voting in the majority for a candidate) may decide who might be elected to Congress and to the respective state and local governments. Two, *reapportionment* or the redistribution of House seats in

Congress, which follows each census in the respective states (*Edward Sidlow and Beth Henschen 2009, 239*), would allow for an increase in Hispanic representation in Congress (House) and in state and local assemblies. Third, Congressional delegations from those states might increase as well, thereby giving Hispanics considerable political power in Congress. In this regard, "... one study suggests that Congressional delegations in eight states with large Hispanic populations could grow if all Latinos – the nation's largest minority of some 47 million – are counted" (*Julia Preston 2009, 1*).

### **Employer Sanctions**

In this category, it will be demonstrated that for economic, political, and structural reasons, US governments will be ineffective in their efforts to deter the employment of illegal immigrants. The *economic* arguments will be premised on the value of illegal immigrants to the US economy; the *political* arguments will be based on employer interest-group strategies, along with civil rights groups, in influencing government immigration policymaking; and, the *structural* arguments will be established on the ineffectiveness of the employer sanctions regime. Given the above, therefore, this category will be structured specifically to reflect these sub-components: one, the economic dimension; two, the political dimension; and three, the structural dimension of the employer sanctions regime.

### **Economic Dimension: Value of Illegal Immigrants to the US Economy**

This subcategory consists of two integral components. The first component will show evidence of the value of illegal immigrant labor to the US economy as a whole. The second component will demonstrate, employing *Arizona* as a specific case study, evidence of a decline in economic growth if there was to be a sudden expulsion of a large number of undocumented workers.

#### ***Evidence of the Value of Hispanic Immigrant Labor to the US Economy***

- First, the *National Research Council* made these observations: one, the contribution of immigrants to the domestic economy could be as much as \$10

billion per year; two, overall immigration has been a net gain for the economy due to an increase in pay for higher-skilled workers, lower prices for goods and services that are produced by immigrant labor, and more efficiency and lower wages for some owners of capital; three, because some immigrants specialize in activities that would otherwise not have existed in a particular sector of the economy, the performance of such services are therefore beneficial to all domestic residents; and four, low-skill and low-wage immigration does not, in the aggregate, lower the wages of most domestic workers (*James P. Smith and Barry Edmondston 1997, 135-296*).

- Second, the *US Commerce Department's Minority Business Development Agency (MBDA)* reported these statistics: one, between 2002 and 2007, the number of Hispanic-owned businesses increased by nearly 44% to 2.3 million; two, employment in these facilities increased by 26% to 1.9 million workers; and three, revenue generated by these businesses increased by 56% to approximately \$345 billion (*MBDA Web Portal 2013, 1*).
- Third, the *Center for American Progress* reported that legalizing undocumented workers could: one, increase US gross domestic product (GDP) by an additional \$1.4 trillion in ten years; two, add 203,000 jobs per annum to the economy; and three, enable legalized workers to earn 25% more, in five years, than they do currently (*Gary Feuerberg 2013, 4*).
- Fourth, a 2009 study by the *Cato Institute* concluded that the legalization of low-skilled illegal workers could: one, increase GDP by \$180 billion in ten years; and two, create more higher-skilled occupations for Americans (*Peter B. Dixon and Maureen T. Rimmer 2009, 1*).

***Evidence of the Impact of a Sudden Expulsion of Illegal Immigrants: the Case of Arizona***

- First, according to some studies, the deportation of a large number of illegal immigrants could produce these effects: one, sales taxes, income taxes, and other forms of government revenue could be lost; two, commercial entities such as apartment complexes and local stores could lose revenue from undocumented

- worker patronage; three, since Hispanics account for 16% of all purchases in the state or \$31 billion in spending, the loss of government and commercial revenue will have a negative economic impact on the state; and four, replacing illegal workers with legal ones may increase government costs since legal workers are entitled to social services for which illegal immigrants are not qualified (*Daniel Gonzalez 2010, 1*).
- Second, if Arizona was to expel all of its illegal immigrant population, the cumulative impact will be: one, a 17.2% decrease in the employment rate; two, a loss of approximately 581,000 jobs; three, a \$48.8 billion decline in the size of the state's economy; and four, a 10.1% reduction in the state's tax revenue intake (*Hugh Holub 2011, 1*).
  - Third, if the population of the illegal immigrant labor force was to be reduced substantially, thereby affecting various economic activities in which such labor has been pivotal, one study estimates that Arizona will suffer devastating short and long-term economic consequences (*Judith Gans 2008, 1*). These estimates are summarized below.

One, a 15% labor reduction in the *agriculture industry* will result in the loss of 3,300 full-time equivalent jobs, the loss of about \$600 million in output, \$200 million in lost labor income, \$110 million in lost other income, and \$25 million loss of state tax revenue.

Two, a 15% labor reduction in the *construction industry* will result in the loss of about 56,000 full-time equivalent jobs, the loss of about \$6.6 billion in output, lost labor income of about \$2.6 billion, lost other income of about \$450 million, and the loss of \$270 million in state tax revenue.

Three, a 10% labor reduction in the *manufacturing industry* will result in the loss of about 12,000 full-time equivalent jobs, the loss of \$3.8 billion in output, lost labor income of about \$740 million, lost other income of about \$290 million, and the loss of \$100 million in state tax revenue.

Four, a 16% labor reduction in the *service industry* will result in the loss of 54,000 full-time equivalent jobs, the loss of about \$2.5 billion in output, the loss of \$900 million in labor income, lost other income of about \$270 million, and the loss of \$160 million in state tax revenue.

### **Political Dimension: Employer and Civil Rights Pressure Groups**

This subcategory will address the political strategies adopted by organized *employer* and *civil rights* groups which represent the *economic* interests of the business community; and, the *human rights* of illegal immigrants respectively. The analyses will highlight the activities of these groups in their efforts to foil the implementation of employer sanctions and the deportation of illegal immigrants. Employer pressure activities are based on the rationale that, given the value of illegal immigrants to businesses, sanctions are considered to be disruptive of business operations because of the costly fines imposed, in addition to the sudden termination of illegal employees who *might* not be readily replaceable in the short term. A sample of these pressure strategies is itemized below.

- First, the *Chamber of Commerce* is a business federation which represents the commercial interests of companies, business associations, state and local chambers, and American Chambers of Commerce abroad. In 2010, the *Chamber of Commerce* and the *American Civil Liberties Union* (a civil libertarian group) challenged *Arizona's 2007 employer sanctions law* in federal court. At the crux of the issue was whether Arizona had the authority to compel employers to use the *E-verify system*, an internet-based system that is designed to assist potential employers determine the legality of prospective employees (*Laura E. Ploeg 2013, 29-31*).
- Second, the *American Farm Bureau Federation* is an organization that lobbies for the interests of American farmers, ranchers, and agribusinesses that are members of the organization. This group is also a strong advocate for the employment of illegal immigrants in agriculture. The basis for the group's advocacy is premised on the fact that farmers rely on seasonal labor to harvest labor-intensive crops

- such as strawberries, onions, peaches, and tobacco; in addition to the fact that, Americans neither seek nor do they accept employment in such tedious and low-paying jobs (*Ray Henry 2011, 1*). As a result, the federation has lobbied state governments fervently to be flexible on the issue of sanctions, along with the idea that states should cede immigration decision-making to the federal government (*Ray Henry 2011, 1*). Further, this group has also complained that the federal *guest worker program* has been difficult to administer because it is not only too costly; but also, it is administratively inflexible (*Ray Henry 2011, 1*).
- Third, when the *Georgia immigration bill*, similar to the Arizona law which allowed the police to question immigrants, was enacted in May 2011, it was almost immediately challenged in court by these civil rights groups: the *American Civil Liberties Union of Georgia*, the *Southern Poverty Law Center*; the *Georgia Latino Alliance for Human Rights*; the *Service Employees International Union*; the *Task Force for the Homeless*; *DreamActivist.Org*; the *Coalition for the Peoples' Agenda*; the *Asian-American Legal Advocacy Center*; and the *Republican Mayor of Uvalda*, a small Georgia town in which many Hispanic immigrants harvest Vidalia onions (*Jeremy Redmon 2011, 2*).

### **Structural Dimension: Cases Depicting Structural Problems of Employer Sanctions**

In this subcategory, the writer will address obstacles on the path of an effective implementation of employer sanctions on the part of the government. Two components will be undertaken: one, the *loophole effects* of employer sanctions; and two, an applied case study involving the state of *Arizona*.

#### *The Loophole Effects of Employer Sanctions*

In this domain, two major sources will be adopted as references: one, aspects of a 2007 article written by *Marielena Hincapie*, Executive Director for the *National Immigration Law Center in Los Angeles, California*; and two, a 2005 study conducted by *Peter Brownell* of the *Policy Migration Institute of the University of California at Berkeley*.

The positions indicated by Hincapie, regarding the dysfunctional nature of employer sanctions system, are itemized below (*Marielena Hincapie 2007, 1*).

- First, "... by all accounts, the employer sanctions system has failed to deter employers who recruit and hire undocumented workers. On the other hand, this new system has resulted in unscrupulous employers using IRCA's verification requirements selectively when workers come forward to exercise their civil and labor rights".
- Second, "... when ICE [Immigration and Customs Enforcement] conducts a raid at a worksite, the workers are always placed into deportation proceedings, but the employers are not necessarily held liable for knowingly hiring [these] undocumented workers. Indeed, sanctions are infrequently enforced against employers, who consider any fines they receive as a cost of doing business".
- Third, "... workers who are deported often return to the United States unlawfully back to the same employer or quickly find some other job".
- Fourth, "... an immigration raid often serves as a revolving door for the employer to hire another batch of undocumented workers at even lower wages than those who were detained and deported. This is more common when there has been a union organizing campaign or when workers have otherwise worked collectively to improve their working conditions".
- Fifth, "... workers and employers alike will continue to find ways around these programs. So long as migrants do not have sufficient economic opportunities in their home country to provide for their families, and so long as employers see migrants as an attractive pool of low-wage workers who they can easily exploit with relatively few consequences under labor or immigration law, these policies will not deter either immigration or an undocumented work force".

In sum, Hincapie appears to be indicating that, based on her observations of the implementation outcomes of employer sanctions; the system *may* perhaps not have been designed to deter the employment of undocumented workers. Instead, it *may* have been

designed to enhance the profit-making margins of commercial enterprises, by making a large pool of cheap labor available to them which, under supply and demand, would reduce the *labor costs* of such employers. If this writer's assessment is accurate, then it would follow that the pressure strategies applied by the employer interests, referred to earlier, have paid enormous dividends indeed.

The positions indicated by *Peter Brownell*, who takes another critical dimension of the employer sanctions regime, are itemized below (*Peter Brownell 2005, 1*).

- First, between 1990 and 2003, the number of employer sanctions audits conducted by ICE declined from 10,000 to about 2,200.
- Second, between 1990 and 2003, the number of *ICE warnings* issued to employers who were not in legal compliance of the sanctions provision declined from 1,300 to about 500.
- Third, the following loopholes weakened penalties imposed on employers: one, some employers would negotiate with the government to pay less than the fines that had been imposed; two, rather than pay fines, some businesses would dissolve or relocate altogether; three, in some cases, the government never issued any fines to violators.
- Fourth, between 1990 and 2003, the number of *fines* imposed by the government declined from 1,000 to 124.
- Fifth, individual members of Congress interceded on behalf of their constituents in order to prevent worksite enforcements from disrupting their businesses.
- Sixth, "... [ICE] has never set performance targets for numbers of employers to be audited or numbers of fines to be issued".
- Seventh, "... the data show [that] employer sanctions enforcement activities have dropped to levels that cannot reasonably be expected to create an effective deterrent to the employment of unauthorized immigrants".

- Eighth, the existing system appears to encourage the large-scale employment of illegal immigrants, in addition to discriminatory and retaliatory measures conducted by employers.
- Ninth, “[ICE] may have shifted resources away from [employer] sanctions enforcement to migrant smuggling and terrorism because, under the current law, it is exceedingly difficult to prove [that] an employer knowingly employed unauthorized immigrants”.

By these revelations, Brownell appears to be stating that the employer sanctions system has been unenforceable because of limitations imposed by its structure; in addition to the fact that agency personnel have, themselves, been impeded politically from carrying out such enforcement. Both analyses are significant in the sense that they provide impressive reasons which explain the political and structural circumstances underlying the inability of the US to deter business organizations from employing illegal immigrants.

### ***Arizona: a Case Study***

This sub-section will address dysfunctional aspects of Arizona’s employer sanctions regime. This is an interesting phenomenon because, since Arizona is widely known to have been on the forefront of the anti-illegal immigration campaign, one would expect a very strict adherence to the effective enforcement of employer sanctions in the state. Below is an itemization of Arizona’s employer sanctions structural deficiencies and loopholes as stated by certain observers (*Daniel C. Vock 2010, 1*).

- First, “... the [company] owners were not targets, even though Arizona has the country’s toughest law against employers who hire illegal immigrants. The sheriff said his officers did not have enough evidence to go after the owners”.
- Second, “... in fact, despite the dozens of raids, only two companies have ever been forced to close their doors under Arizona’s three-year-old employee verification law. The punishments in those cases were trivial: a subway sandwich

- shop agreed to close on Easter and Thanksgiving [Days], and a water park agreed to a 10-day suspension, but only after it already had gone out of business”.
- Third, the state’s E-Verify system is fraught with functional difficulties. For example, the federal government, not the states, determines the rules of participation in E-Verify. As a result, a number of discrepancies exist. “First, employers can screen only new workers; they cannot go back and check out existing employees. Second, the companies can use E-Verify only for people that they actually have hired. That is, the employers cannot run checks [on] candidates [in order] to ‘prescreen’ them before hiring them. And companies cannot use the tool to discriminate on the basis of race or ethnicity”.
  - Fourth, the database of the E-Verify system has been able to check the identity of only half of the total number of employees, while the other half escaped the scrutiny of the system through the use of false identifications.
  - Fifth, “... for the most part, the system shows whether a person’s name, Social Security number and other vital information match federal records. It does not confirm whether an applicant is who he says he is”.
  - Sixth, “... the *Social Security Administration* [SSA], whose records are used for E-Verify, now allows combinations of different components of a name to be used as a match, so ‘*John James Smith*’ would match with ‘*James John Smith*’ as long as the Social Security numbers are identical”. As a result of this discrepancy, identity thieves in Arizona have started issuing identifications with multiple names that would enable individuals [to] pass through E-Verify” undetected.
  - Seventh, “... one of the sponsors of the law, Republican state Representative John Kavanagh, says the law has been a ‘toothless tiger’ in that it does not give law enforcement enough tools. Specifically, Kavanagh, a former police officer, says prosecutors need subpoena power to investigate employers. The law does not give it to them. [This is because]...business [interest] groups fought fiercely against that idea [which] could have derailed the whole bill had it remained, Kavanagh says”.

- Eighth, "... Lydia Guzman, president of *Somos America (We are America)*, an immigrant rights coalition in Arizona, says the employee verification law has trapped undocumented workers in their current jobs. Companies cannot check the status of their current workers using E-Verify, but if the employee quits and tries to get another job, he or she will have to have their records checked. Some unscrupulous bosses know this, and use it against their employees, Guzman says". This unscrupulous employer behavior may, apparently, take several forms of exploitation and abuse that may go unreported by employees fearful of losing their jobs and being deported.

The situations depicted above, some of which support the observations of *Hincampie* and *Brownell*, show that even in conservative Arizona, there is a breakdown of the employer sanctions regime. This breakdown might partially be explained by the fact that Arizona, as other states, is constricted by these factors: one, constitutional preemption or the federal government's exercise of powers over state powers; two, internal interest group pressure politics; and three, concerns regarding the state's economic well-being.

### **Border Protection**

In this category, the writer asserts that because of the uninhibited nature of global migration; in addition to the emergence of a number of controversial issues regarding the border protection regime, the US government will be ineffective in its quest to deter border crossings from Mexico. The *standard global migration* arguments will dwell on the primary reasons people engage in uninhibited global migration regardless of physical obstacles; and, the *number of controversial factors* will dwell on the negative reactions that emanate from the international community, the excessive costs of the fence which appear unsustainable, and the US violation of international agreements with Mexico. Given this approach, the analyses will be conducted on a three-fold basis: one, a propounded theory on the root causes of illegal immigration; two, a demonstration of the ineffectiveness of stronger border enforcement measures to deter border crossings; and

three, the international and domestic controversies associated with the border protection regime.

### **Theory on the Root Causes of Illegal Immigration**

The issue of illegal immigration is a continuing world-wide phenomenon. This brief general theory proposes to reveal that global economic integration, under globalization, has fermented the internationalization of the production, distribution, and consumption of goods; in addition to the *global supply of labor* which is in high demand in countries experiencing high rates of economic growth. Globalization is defined as “the process by which economic, social, and political institutions become worldwide in terms of activity, influence, and application” (*W. Raymond Duncan et al 2009, 3*). In the case of Mexico, illegal immigration to the United States may have primarily been spurred by the country’s low to moderate economic growth rates, despite the enactment of the *North American Free Trade Agreement* (NAFTA), which was supposed to have improved economic conditions in that country (*Lee Hudson Teslik 2009, 4-5*).

Further, international migration is said to be driven by three factors: one, higher wages in the states or countries targeted by immigrants; two, the family socio-economic conditions of potential émigrés; and three, the politics within the states targeted by immigrants (*Wayne Cornelius and Idean Salehyan 2007, 140-141; and Judith Gans 2006, 1-4*). These three factors, which cannot be nullified by the mere construction of a fence, will be analyzed very briefly below.

First, higher wages in the United States, with the capacity to improve the living standards of potential migrants, obviously become the economic incentive or magnet which drives both legal and illegal immigration. In other words immigrants flock to the US in order to pursue opportunities for a *better life* for themselves and their families.

Second, the fact that those family members who migrate would send *remittances* to sustain their families who stayed in their homelands, constitutes another economic

incentive that spurs the migration effort. Remittances are defined as “...the money earned by immigrants working in rich countries (which almost always exceeds the income they could earn working in their home country) that they send to their families in their country” (*Charles W. Kegley and Shannon L. Blanton 2012, 624*).

For example, it has been estimated that in 2007 alone, remittances sent to Mexico by Mexican immigrants living in the US totaled approximately \$23 billion (*Baker Institute Policy Report 2009, 9-10*). The magnitude of this sum of money also constituted a stimulus toward the growth in the Mexican economy.

Third, considering their effectiveness, state immigration policies determine the levels of access which potential migrants would be accorded in that state. Thus, applying this principle to the US, one can indicate that the demonstrated ineffectiveness of immigration laws has made it possible for illegal immigrants to enter, remain, and work in the country.

### **A Demonstration of the Ineffectiveness of Stronger Border Enforcement Measures**

Given the above, therefore, the application of just *stronger border enforcement* measures to deter illegal immigration, without *adequately* taking into account the global *supply of excess labor* from a poor country (Mexico), relative to the *demand* for that labor in a wealthy country experiencing a short supply of labor (US), has contributed to rendering the US border enforcement policy a failure. This statement takes into consideration the US adoption of the *guest worker* program which, it seems, had been designed to address this global reality. Unfortunately the program has not been developed enough to be consequential in this respect. Therefore, according to some studies, which strongly support *Hincapie's* conclusions indicated earlier, a number of factors are identified as proof of the failure of the adoption of just stronger border enforcement measures relative to illegal immigration from Mexico (*Wayne Cornelius 2006, 2-6*). These findings are summarized below.

- First, illegal immigrants would evade border guards by altering their entry routes to those in which there would be no border guards, thereby increasing their chances of entering the US successfully.

- Second, although the environmental dangers encountered in some of those *alternative routes* caused the deaths of many migrants, this did not deter others from using the same routes in order to reach the US.
- Third, because troops were deployed at the border, migrants then sought the professional services of smugglers who, in turn, increased their fees by about \$1,000 per immigrant. For example, in January of 2006, smugglers charged illegal immigrants between \$2,000 and \$3,000 per head for the dangerous journey to the US.
- Fourth, because of tightened border security measures, about 9 out of 10 illegal immigrants sought assistance from smugglers.
- Fifth, migrants attempted border crossings multiple times until they eventually succeeded. The success rate has been placed at about 92%-97%, demonstrating that despite increased border enforcement, most illegal immigrants succeeded in entering either in their first or second attempt.
- Sixth, the fact that during the period of tighter border enforcement, the population of illegal immigrants in the United States more than doubled was further proof of the determination of the migrants to enter the US; and the failure of stricter border enforcement.
- Seventh, after 2002, government spending on border enforcement measures surpassed the number of illegal immigrants expected to have been apprehended at such levels of expenditure.
- Eighth, partly because of the stricter border enforcements, those who succeeded in entering the country made little or no effort to return to Mexico.

The following are concluding remarks regarding the effectiveness of border enforcement measures that are based on the stipulations above. One, even though the US recession, beginning in 2008, may have slowed border crossings temporarily, increased border enforcement measures have not resulted in significantly reduced illegal immigration. As a matter of fact, apparently in anticipation of the enactment of a new immigration law, border crossings are said to have increased dramatically in 2013 (*Stephen Dinan 2013, 1*

and *Katie Pavlich 2013, 1*). Two, the stringent border measures appeared to have encouraged some illegal immigrants who would otherwise have been traveling *back and forth*, to simply remain in the country for fear of being caught if they attempted this *circular* journey. In effect, this strategy appeared to have contributed immensely to the increase in the number of illegal immigrants residing in the US. Three, because of the extent of the border, at approximately 2,000 miles, it is said that it would nearly be impossible to police its entire length (*Esther Pan 2006, 2*). Four, the border protection confrontation that eventually ensued between Arizona and the federal government, in which Arizona chastised the federal government for not having done enough to contain illegal immigration into Arizona, is also proof that border protection measures may not have been as effective as had originally been anticipated (*Tim Gaynor 2011, 2*).

#### **International and Domestic Controversies Associated with the Border Protection Regime**

Upon deciding that a border fence was necessary as an emergency ploy to deter illegal immigration, the federal government had employed the *Fence Act* of 2006 directing the *Department of Homeland Security* (DHS) to erect 700 miles of fencing on the southern border (*Christian Science Monitor 2008, 1*). The idea of the construction of this border fence has been both internationally and domestically controversial from its inception. These controversies are addressed below from three perspectives: one, negative reactions from the international community; two, the excessive and apparently unsustainable costs of constructing and operating the fence; and three, the US violation of human rights, environmental laws, and obligations to bilateral agreements with Mexico.

#### ***Negative Reactions from the International Community***

Negative reactions, to both the unilateral enforcement measures taken by certain US states and the federal government's fence program, have emanated primarily from the countries in the region that, apparently, will be most adversely affected by the border protection measures. Including Mexico, these countries are primarily located in Central and Latin-America. Some observers have argued that other than remittances, which have contributed to their economic growth, these countries also have other interests in

encouraging the United States to open its doors to immigration. For example, *Julia E. Sweig* has indicated that “... allowing [their] citizens to emigrate to the United States gives Latin-American societies a release valve for their social ills – high unemployment, barely functioning governments, and massive income inequalities (*Esther Pan 2006, 3*).

Therefore, in order to address the border fence, these countries reacted in this manner: one, in 2006, eleven *Latin-American* foreign ministers met in *Columbia* to discuss how to discourage the US from erecting the fence; two, the group also decided to argue for a guest-worker program for their citizens; and three, rather than expelling them, the ministers argued that the US should legalize the Latin-Americans who have already been resident in the US for a considerable period of time (*Sergio De Leon 2006, 1*). In addition, Mexico threatened to challenge the fence issue at the *United Nations* (UN), after having conferred with the *Organization of American States* (OAS) both of which the US is a member (*BBC News 2006, 1*). Moreover, in a television interview, President *Felipe Calderon* of Mexico spoke vigorously against the totality of the immigration measures that are directed at Mexico (*Charlie Rose Show, 2011*). Therefore, since the US is a major member of the UN and the OAS; in addition to the fact that it maintains diplomatic relations with these Latin-American states, it will be reasonable to expect that policymakers might take the interests of these countries into consideration in any forthcoming immigration reform law.

Further, in addition to the pressure they have applied at the federal level of government, Latin-American countries have also been equally vociferous regarding state-sanctioned immigration enforcement policies. The itemizations below constitute a sample of diplomatic actions taken by these countries in an attempt to demonstrate their chagrin against the immigration enforcement policies of certain states in the US.

- First, in June 2010, Mexico challenged *Arizona’s immigration law* in federal court under the grounds that it will lead to racial profiling, obstruct trade and tourism, place obstacles on combating drug trafficking and related violence, and make

- Mexican citizens be fearful of visiting Arizona because of concerns regarding police harassment (*Paul Davenport 2010, 1*).
- Second, in July 2010, in a protest gesture against *Arizona's immigration law*, the Mexican governors whose jurisdictions are located in the border area with the United States, refused to attend the 28th annual conference with their American counterparts, since Arizona was to have hosted it (*Randal C. Archibald 2010, 1*). Even though the conference was later relocated to another state, the incident certainly posed a threat to future regional cooperation which these Border States had cultivated among themselves for several years. The conferences have been traditionally employed as mechanisms to discuss and resolve regional problems.
  - Third, in June 2011, Mexico, Argentina, Brazil, Chile, Columbia, Costa Rica, Ecuador, El Salvador, Guatemala, Honduras, Nicaragua, Paraguay, Peru, and Uruguay filed a brief in federal court challenging *Utah's immigration law* on the basis that it would impede diplomatic relations, hinder trade and tourism, and harass Mexican citizens (*Dennis Romboy 2011, 1*).
  - Fourth, in June 2011, Mexico, Argentina, Brazil, Colombia, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua, and Peru filed a brief in federal court challenging *Georgia's immigration law* on the basis that it would substantially and inappropriately impose a burden on the consistent country-to-country relationship between Mexico and the United States (*Jeremy Redmon 2011, 1*).

Based on the examples delineated above, it is clear that US immigration reform does have global, but especially, regional repercussions which will be difficult to ignore by the governments of the US. There is much at stake; and as the political maneuverings intensify, expressed concerns in the international arena are bound to influence the final details of a pending national comprehensive immigration law. This line of reasoning is based on the projection that the US cannot afford to put its historical relationships with these countries in jeopardy without risking its own domestic, regional, and global interests that are based on economics, politics, and national security.

***The Excessive Costs of Constructing and Operating the Fence***

The feasibility versus the enormity of the fence's construction and operating costs will be addressed from three perspectives: one, the positing of a theory of government expenditures on public projects; two, the application of this theory to the US border fence; and three, an itemization of the projected costs of the construction and maintenance of the border fence.

*Theory* - Governments usually undertake public projects because they are deemed in the interest of the public. Moreover, partly because such projects are expected to pay for themselves and raise revenue in the long run, they are often regarded as investments. Further, since taxpayers bear the costs of such projects, governments are expected to ensure that scarce financial resources are used effectively and efficiently. Effectiveness would ensure that the goal of the project is achieved, while efficiency would ensure that the goal is achieved but at least costs.

*Theory Application* – Given the astronomical costs of the fence, the future costs of which are projected to be even much higher than estimated; and given the fact that the fence has not achieved its goal of deterring illegal immigration, it will therefore follow that the fence program has been both inefficient and ineffective. On the basis of this conclusion, therefore, the fence program cannot be regarded as an investment. It is simply a tactical political ploy designed to calm the anxiety of the population that the government is *doing something* to deter illegal immigration. Evidence to shed more light on these assertions, within the time frame of the fence's existence, is shown in the itemizations that follow.

- First, the costly technology adopted in the form of the *virtual fence* (Randal C. Archibald 2007, 1 and Stewart Powell 2011, 1 ), which was designed to reinforce security at the entire border area with cameras and other artifacts, was *ineffective* in the sense that it had failed to deter illegal immigration.
- Second, the virtual fence was also *inefficient* because of extensive cost-overruns (Stewart Powell 2011, 1). Therefore, even though the idea had been abandoned by

the Obama administration (*Julia Preston 201, 1 and Susan Gamboa 2010, 1*) because of its ineffectiveness and inefficiency, the fact remains that the money spent in the program (about \$1 billion) was wasted.

Third, since the border fence will not pay for itself in the future; and also, since it will not generate any revenue of its own in the future, this would in essence imply that all current and future expenditures will be wasted permanently on a project that might also continue to be ineffective.

*Projected Construction and Maintenance Costs* - Specifications regarding the project's future costs are stated in the itemizations that follow. The enormity of these costs, given the fence project's ineffectiveness, will call into question the wisdom of its continuation given the country's estimated \$17 trillion debt in 2013.

- First, according to the *Government Accountability Office (GAO)*, administrations in the future are projected to spend about \$6.5 billion on obsolescence or fence maintenance within a 20-year year period (*Robin Emmot 2010, 1*).
- Second, the *Army Corps of Engineers (ACE)* predicted that: one, the cost of constructing a *double-layer fence* would range from \$1.2 million to \$1.3 million a mile, not even including the costs of land acquisitions; and two, the 25-year cycle cost of the fence would range from \$16.4 million to \$70 million (*Chad C. Haddal et al 2009, 27*).
- Third, the *Congressional Budget Office (CBO)* estimated that: one, the border fence will cost \$3 million a mile to construct; and two, that the maintenance of the fence would be roughly 15% of the cost of the fence per year (*Chad C. Haddal et al 2009, 27*).
- Fourth, the DHS made these assessments regarding the *San Diego fence*: one, that it would cost \$127 million to cover 14 miles or approximately \$9 million per mile; two, that the construction of the first 9.5 miles would cost \$31 million or approximately \$3 million per mile; and three, that the construction of the last 4.5

- miles would cost \$96 million or approximately \$21 million per mile (*Chad C. Haddal et al 2009, 27*).
- Fifth, the GAO also stated that the border fence constructed in 2007, using the Corps of Engineers and the National Guard, cost about \$2.8 million per mile; but, the fencing constructed in 2008, using private contractors, cost more - about \$5.1 million per mile (*Chad C. Haddal et al 2009, 27*).
  - Sixth, the 2011 costs for 650 miles of the physical fence constructed are assessed at \$2.6 billion (*Border Security 2011, 1*), which is \$1.6 billion more than the abandoned virtual fence.

*The Violation of Human Rights, Environmental Laws, and US Obligations to Bilateral Agreements with Mexico*

The legal issues that are to be considered regarding the erection of the border fence will address the apparent US violations of certain laws from three standpoints: one, the violation of *human rights* protections as specified in the *International Covenant on Civil and Political Rights*; two, the violation of *environmental laws*; and three, the violation of *international treaties* with Mexico. The writer's purpose for addressing this segment is not to delve into the legal consequences of these violations but simply to show that the construction of the fence, being an abrogation of laws to which the US is signatory, might pave the way for a future strain in relations between the US government and those entities that are to be adversely affected by such violations. This potential outcome might, in time, trigger a reassessment of the border policy.

*The Violation of Human Rights Laws* – This sub component will address the argument that the *Secure Fence Act* of 2006, is said to be in violation of the right to life, the rights of indigenous peoples, and the right to a healthy environment (*Marta Tavares 2007, p 1 and Denise Gilman 2008, 1*). These violations are summarized below.

- First, the principle of the right to life is violated because of increases in the deaths of migrants who are *forced* to use inhospitable and dangerous routes to enter the United States. For example, according to the *Arizona Human Rights Coalition*, approximately 2,104 illegal immigrants have died attempting to cross the Arizona Desert between 2000 and 2010 (*Dominican Today 2010, 1*).
- Second, the rights of indigenous peoples are violated because the *Kumeyaay* tribes of California; the *Cocopah* and *Tohono O’odham* tribes of Arizona; and, the *Kickapoo* tribes of Texas are divided by the border fence. In other words, these communities of indigenous people, and their ancestral lands, have essentially been separated by the border fence. In addition to complaining of harassment by border guards; these tribes have also complained that their sovereignty has been violated because they were never consulted prior to the erection of the fence.
- Third, the right to a healthy environment is violated because of the fence’s negative impact on the eco-system in the sense that the interruption of the migration of species; and, the bright lights on the fence “... attract insects that are responsible for pollinating cactus, and thus may interfere with the reproduction cycle of the cacti”. These assertions are corroborated by a group of biologists who conducted scientific studies on the negative environmental impact of the construction of the border fence on wildlife (*Aaron D. Flesch et al 2009, 171-181*).

*The Violation of Environmental Laws* - In addition to the model above *Scott Nicol*, who is the chair of the *Sierra Club’s Borderlands Team*, produced a litany of the damage to the environment which construction of the border fence has caused in the communities within the border area (*Border Security 2011, 1*).

- First, the construction of the fence “severely affected rivers, streams, and wetlands”.

- Second, at the *Otay Mountain Wilderness* area of south *San Diego*, “DHS dynamited 530,000 cubic yards of rock from mountainsides and dumped the waste into the *Tijuana River*”, thereby affecting the flow of the river.
- Third, “In Arizona, border walls have acted as dams across washes and streams in the *Organ Pipe Cactus National Monument*, leading to severe erosion”.
- Fourth, in addition to the factors listed above, *Nicol* also made these assertions: one, that over thirty US environmental laws, including the *Endangered Species Act*, the *Clean Water Act*, the *Farmland Policy Protection Act*, and the *Native-American Graves Protection and Repatriation Act*, were waived in order to proceed with the fence construction; two, the property of hundreds of landowners were condemned; and three, endangered species such as the *Ocelots* and the *Sonoran Pronghorn* have almost become extinct because of the loss of about half their original habitat (*Scott Nicol 2013, 1*).

*The Violation of International Treaties with Mexico* - This sub-section will address international agreements that are affected by the border fence, to which the US has obligations with Mexico. These treaties are the *1970 Boundary Treaty*, the *1944 Water Treaty*, the *1936 Migratory Bird Convention*, and the *1940 Western Hemisphere Convention* (*Stephen P. Mumme and Oscar Ibanez 2010, 803*). As stated below, these conventions will show that numerous aspects of the environmental damage described in the models above, have in fact constituted clear violations of US agreements with Mexico.

- The *1970 Boundary Treaty* – The terms of this treaty are: one, it “restricts the parties from unilaterally developing, without consent, any works that would impede the drainage of water to the rivers or otherwise alter the location of the boundary that follows the center of the rivers”; two, it determines “that each contracting state shall prohibit the construction of works in its territory which, in the judgment of the commission [*International Boundary and Water Commission*], may cause deflection or obstruction of the normal flow of the river

- or of its flood flows; and three, it stipulates that “If the commission shall determine that any of the works constructed by one of the two contracting states in the channel of the river or within its territory causes such adverse effects on the territory of the other contracting state, the government of the contracting state that constructed the works shall remove them or modify them and, by agreement of the commission, shall repair or compensate for the damages sustained by the other contracting state” (*Mumme and Ibanez 2010, 808- 809*).
- *The 1944 Water Treaty* – The terms of this treaty are: one, it stipulates the order of priorities involving the use of the *Colorado River*, the *Tijuana River*, and the *Rio Grande River*; two, it determines that, since the treaty recognizes and prioritizes the use of water for conservation purposes, it would therefore follow that “barriers impeding the migration of wildlife species that require access to this water adversely affect an intended purpose of the water unless otherwise agreed by the two countries”; and three under *Article 17*, which is directed at flood control, it stipulates that “barriers erected along the river by any country may not impair the flood containment functions of the river channel in a manner that would damage or harm the neighboring country” (*Mumme and Ibanez 2010 811- 813*).
  - *The 1936 Migratory Bird Convention* - This convention, established to protect birds that cross the border incorporates these terms: one, it “applies to boundary security infrastructure [fence] principally through the potentially adverse effect of said infrastructure on wetlands and water bodies in the international reach of the boundary rivers”; and two, both countries are also obligated by the convention ...“to protect and preserve [the] *riparian habitat* that sustains the movement of migratory *avian species* across the border” (*Mumme and Ibanez 2010, 814*) .
  - *The 1940 Western Hemisphere Convention* - This convention was established: one, “to protect and preserve in their natural habitat, representatives of all species

and genera of their native flora and fauna, including migratory birds, in sufficient numbers and over areas extensive enough to assure them from becoming extinct through any agency within man's control"; and two, to protect the wildlife, refuges, and parks on both sides of the border, including those on the US side to include the *Buenos Aires and Cabeza Prieta National Wildlife Refuges*, the *Organ Pipe National Monument*, the *Chiricahua National Monument*, and the *Big Bend National Park* (Mumme and Ibanez 2010, 815-816).

### **Conclusion**

This study has laid emphasis on the fact that the US largely adopted amnesty, employer sanctions, and border protection as traditional benchmarks for achieving the goal of immigration reform. In addition, the study also revealed that, because of insurmountable political, economic, and structural obstacles, these benchmarks have failed to fulfill their respective set of objectives. As a result, since the 2013 Congressional immigration reform benchmarks appear to be identical in content to those of ICRA of 1986, it would therefore follow that a new law enacted on that basis will equally be ineffective in deterring illegal immigration. Concluding critical remarks concerning the ineffectiveness of these benchmarks in US immigration reform are addressed below.

First, *amnesty* has absolutely nothing to do with immigration reform. This is because, by definition or explanation, the objective of amnesty does not conform to the goal of immigration reform. The goal of immigration reform is to restructure immigration policy to the extent that illegal immigration into the US will be effectively deterred in the future. But the objective of amnesty is to forgive illegal immigrants who have stayed in the country for a considerable period of time, while conforming to domestic laws, paying taxes, and contributing to the nation's economic prosperity. Therefore, since forgiveness is not a deterrent to illegal immigration, it follows that these two principles are contradictory or at least non-complementary. This analysis, in essence, explains why amnesty has been the most stalemated, most contentious, and most polarizing of the three benchmarks of immigration reform as stated earlier.

Given this fact, therefore, why has the US government continued to regard amnesty as a benchmark of immigration reform? This writer's response is that amnesty, which had never been intended to complement immigration reform, has simply been a political and tactical device designed to achieve a series of objectives that are unrelated to immigration reform proper. These objectives are: one, a humanitarian gesture; two, a practical political necessity which is strictly based on domestic interest group pressure along with regional state pressure politics; three, a practical economic necessity based on US economic growth considerations; and four, probably the only strategy through which a large number of individuals, bereft of the means to enter the US by conventional methods perhaps due to racial and socio-economic factors, can be allowed entry.

Second, since the potential for gainful employment is the magnet that attracts the bulk of illegal immigrants, it would then follow that punitive measures to prevent their employment, through *employer sanctions*, are directly related to immigration reform. In other words, if domestic employers can be deterred from employing illegal immigrants, then it will follow logically that the majority of illegal immigrants might not attempt to take risks in crossing the treacherous border in order to enter a country in which there are very little or no prospects for their gainful employment. Articulated in this manner, this reasoning does show that employer sanctions are indeed congruent to immigration reform.

At the same time, however, employer sanctions are contradicted by the quest of the US to achieve higher levels of economic growth. As stated earlier, higher economic growth margins may not be achieved if there is insufficient labor to fill certain pivotal areas of the American economy in which most Americans are unwilling to be engaged. Moreover, employers profiteer immensely from the exploitation of cheap non-unionized illegal labor, as compared to legal labor which would increase their costs of production and reduce profits. Because of the high costs of labor, it would therefore follow that US employers will continue to be *attracted* to illegal labor without regard to limitations that

may be imposed by any new immigration law. This is in addition to the fact that employers will continue to command the political leverage designed to sway the implementation of immigration policies in favor of their vested interests. As a result, this continued attraction between illegal labor and domestic employers will; in addition to the ability of employers to influence immigration policies, continue to render employer sanctions ineffective.

Third, *border protection* is directly related to immigration reform because the US-Mexico border constitutes the avenue through which most illegal immigrants are said to enter the country. In other words, if the border can be protected adequately, illegal immigration from Mexico might be effectively controlled and deterred. However, because the construction of a mere 700-mile fence will be inadequate to protect an approximately 2,000-mile border, no amount of vigorous border protection strategies will be effective enough to deter a determined cadre of illegal immigrants from attempting to cross into the US. This will especially be the case for as long as economic opportunities, which illegal immigrants lack in Latin-America, continue to await them in the US.

Further, estimates regarding the outcome of a new immigration law have been negative regarding its potential to deter illegal immigration. For example, a CBO analysis conducted in June of 2013 show that if the Senate's immigration reform proposal (S.744) is enacted into law, it will bring about the following: one, a mere 25% reduction in illegal immigration; two, an increase in the number of *guest workers* who would overstay their visas and become illegal as a result; and three, that by 2033, the illegal immigrant population in the US will amount to about 7.5 million (*US Senator John Cornyn 2013, 1*). This report signifies that, despite more stringent actions being contemplated in *border security* measures, which are estimated to cost about \$30 billion in additional spending (*Sandra Hernandez 2013, 1*); in addition to the stricter enforcement of a supposedly more improved *employer sanctions* regime (*immigration Policy Center 2013, 7*), illegal immigrants might still be able to enter, remain, and work in the US. To make matters worse the *guest worker program*, which has increasingly emerged as another potential

benchmark of immigration reform, is expected to exacerbate, not alleviate, illegal immigration. This is because, if the program can accommodate larger numbers of immigrants, most of such immigrants might prefer entering the US through that program and then proceed to overstay their visas; rather than having to endure the vagaries of crossing the border with the possibility of never reaching their destination.

Therefore, given the totality of the analyses contained in this paper, it will not be unreasonable to assert that immigration reform in the US is, and will continue to be, a cat-and-mouse political chess game. In this game, the US appears to have put its economic interests above any other. For example, if the Senate bill should become law, the CBO report also estimates that: one, the federal budget will be boosted to the tune of \$197 billion in a decade; two, amnesty will net about \$459 billion in [new] taxes to be paid by the newly-legalized immigrants (this will more than offset the estimated \$262 billion of government-incurred costs for legalization and bringing guest workers); and three, between 2023 and 2033, the federal government will save about \$700 billion more toward a 20-year savings of nearly \$900 billion (*Stephen Dinan 2013, 1*).

Finally, since all of the benchmarks of reform are fraught with difficulties that appear to be beyond rectification; and since no other known benchmarks are under serious consideration, the immigration reform model of *amnesty*, *employer sanctions*, and *border protection* will therefore constitute the *modus operandi* of future immigration reform efforts. As a result, this writer speculates that in another twenty years or so the US government will again be preparing for the promulgation and implementation of another immigration reform effort which will be based on these traditional benchmarks. Given this posture, therefore, it would then follow that illegal immigration into the US will continue into the unforeseeable future.

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