

## IV. Enforcement

This section on enforcement and related issues is important because tremendous amounts of money and the appropriate treatment of human beings and the environment are involved. Marilyn Sandstrom worked with me on this part and I can give you a list of our sources if you wish. We'll talk first about enforcement in the workplace, including guest worker programs, then about enforcement at the borders.

Enforcement normally happens in two places: the workplace and at the borders, which include both northern and southern borders, seaports, airports and coastlines.

**The workplace** first: It is generally agreed that enforcement in the workplace is ineffective and disruptive. According to LWV white papers, 'half of all unauthorized workers are hired by employers who fully comply with I-9 requirements' (I-9 forms are the forms on file that show an employer has seen proper documentation). Most documents shown to an employer are legitimate; the problem is false documents are used to obtain them.

The Basic Pilot program, which can verify the legitimacy of a social security number, is used by only 1/20 th of 1% of all U.S. employers. And there are errors in the database as well as an inability to pick up duplicate uses of the same social security number. Sean McHugh, Swift Meatpacking spokesman, who talked at the LWVCO convention in Greeley, said that even if an employer determines that a potential employee is undocumented, there are insufficient investigations and not much follow-through to fines. Additionally, if an employer is suspicious of a worker's documents, he must be very careful in asking for backup documents for fear of a discrimination charge, which Swift received in 2001.

'Some argue that the cost savings from employing illegal labor often outweighs any fine imposed on employers for non-compliance.'

And then there are the raids: You are all aware of the raids on six Swift plants last December. Raids were also conducted in Center, in San Luis Valley last spring. Ann Allott suggests that with the infusion of \$144 million Immigration Control and Enforcement (ICE) has recently received, there will be many more enforcement actions right up until the election next year.

You may not have been aware, as I wasn't, that immigration laws are part of the civil code, not the criminal code, so protections applicable to criminals do not apply to immigrants, whether legal or undocumented. This distinction is based on the generally held notion that immigrants are not full members of American society until they are citizens, even if they are long-term residents. For example, immigration officials do not need a warrant and have broad authority to question, search persons and homes. Miranda rights do not exist, non-citizens have a right to an attorney but not a free one. Agents have discretion as to where to send detainees, who can be sent far away from family and counsel. Non-citizens have more limited bail rights. The problem is: every setting that is

raided, whether home or workplace, contains a mixture of citizens, legal non-citizens, and undocumented persons so that it is unclear what protocol ICE agents must follow.

The status of minor children of undocumented parents is complicated. Such families may include children who were not born here and therefore are not U.S. citizens, as well as children born here who are U.S. citizens. If parents are detained, children are often left stranded. If parents are deported, minor children go with them or, if citizens, can be left with relatives. Detained parents who are awaiting court decisions, cannot work and have great difficulty sustaining family life.

The equal protection provision of the 14<sup>th</sup> Amendment of the Constitution has been successfully used to protect non-citizens, both legal and illegal, and several other amendments also apply. The Universal Declaration of Human Rights, spear-headed by Eleanor Roosevelt, and signed by most other countries, not including the U.S., could serve as an example of more or less universally accepted guidelines for the treatment of non-citizens, should we elect to use it.

The children of undocumented immigrants, who were either born here or brought here by their parents, represent a large investment on the part of our country. They have been educated here, and could potentially develop into a valuable asset for this country. The varying resolutions of the in-state/out-of-state college tuition issue are evidence that some states are recognizing their potential. The DREAM Act, which hasn't yet been passed, was designed to address the ambiguous status of those children who were not born here but know no other country.

Attempts have been made to change the 14<sup>th</sup> Amendment to remove the right of anyone born in this country to be a citizen unless at least one parent is a citizen or permanent resident; however, thus far such proposals have not been supported by a general vote of either house of Congress.

The bottom line on workplace enforcement is this: the enforcement of immigration law is complicated by the mixture of statuses of individuals in the workplace and in the homes. Current software available to employers, on whom the burden to check legality has been placed, is not adequate and follow-up for suspicious cases has not been happening. ICE raids are disruptive and costly to businesses and to families. The overall result has been ineffective workplace enforcement.

### **Guest worker programs**

Expanding guest worker programs has been suggested as one way to provide the needed temporary workers our economy needs. In 2005, the U.S. had 121,000 H-2 (agricultural and other low-skilled) guest workers. The Department of Labor has regulations regarding these workers; however, enforcement is almost non-existent, according to the Southern Poverty Law Center. H2A workers (temporary agricultural workers) rights are:

A guaranteed rate of pay based on a formula

A certain minimum amount of work during the period of contract called the “three-quarters guarantee”

Free housing in good condition (and this is usually the limiting factor, according to Ann Allott)

Workers’ comp for medical costs, payment for lost time from work and for any permanent injury

Reimbursement for travel from home to job as soon as 50% contract fulfilled including airline or bus ticket and food (if contract fulfilled, travel home)

Same health and safety regs as other workers

Eligible for federally funded legal services for matters related to H-2A work

**However, these regulations are rarely enforced and here’s what actually happens:**

Workers end up bound to a single employer without (convenient) access to legal resources

Routinely cheated out of wages

Forced to mortgage their future (to recruiters) to obtain low-wage, temporary jobs

Held captive by employers or labor brokers who retain their papers

Forced to live in squalid conditions

Denied medical benefits for on-the-job injuries, including pesticide poisoning

Fear of retaliation/deportation

Discrimination occurs based upon national origin, race, age, disability and gender.

So, the bottom line is: if we increase the number workers in guest worker programs, we must be prepared to pay the costs of enforcement of existing regulations.

**Now, border enforcement:**

Border enforcement too has generally been ineffective and counterproductive.

A 500% increase in the border patrol budget in 20 years has led only to sporadic improvements.

Entry systems have been improved; they are catching criminals and immigration violators and preventing their entrance.

Exit checking: no way to check that temp immig leave at expiration of visa (DHS officials concede they do not have funding and technology to meet the December 2007 deadline to have exit monitoring systems in place at the 50 busiest crossings.)

‘Fencing and increased Border Patrol activity may be keeping more unauthorized immigrants in the country than keeping them out.’

The GAO has concluded that the effect on overall illegal entry on sw border ‘remains unclear’ (lack of metrics to measure deterrent effect)

‘Border control programs that deal simultaneously with protection against terrorists, apprehension of criminals and illegal entry of people and goods using single approach may not be effective or efficient.’ And the emphasis on controls at the border has ignored

the fact that 30-40% of undocumented immigrants here now entered legally and overstayed their visas.

## **Identification**

ID issues are important because people's identity can't be verified unless they have a card with secure biometric data which can be matched against an accurate database somewhere and such systems have not only very large financial costs but costs in terms of privacy, which must be weighed against the benefits.

There is general agreement on need for secure documents for immigrants and U.S. workers, but no agreement on need for or definition of national identity card.

Types of id currently used: passports, SS cards, permanent resident cards, employment authorization cards, and state driver's licenses.

Most of these docs, as they are renewed, include added security features (fraud-resistance, tamper-resistance, wear-resistance and biometric identifiers)

SS card least secure:

It has been the victim of eature creep.

Legislation (pending as of June) would make it more secure:

fraud-, tamper- and wear-resistant as well as  
counterfeit-proof and  
machine-readable

For example, permanent resident cards ('green cards') now: biometric identifiers, magnetic strips and holograms.

By end of 2008 immigrant travel doc = machine readable, tamper-resistant and biometric id.

By end of 2009 all drivers licenses, which are issued by the states, are supposed to be standardized and have digital photos and e-signatures

My passports

## **Four Leading Biometric Technologies:**

***Fingerprint recognition***, most widely used biometric technology, based on the pattern of ridges on the fingertips. **Accuracy:** one-fingerprint 98.6%, two-fingerprints 99.6% (but accuracy drops off with age, >50)

***Hand geometry***, based on the dimensions of the fingers, joints, and knuckles, has been

used for about 30 years to control access to secure facilities such as nuclear power plants.

**Facial recognition** analyzes features such as the eye sockets, cheekbones, and sides of the mouth. It has the advantage that cameras can capture facial images remotely.

**Iris scanning** technology analyzes the visible patterns in the colored iris of the eye. These patterns reportedly remain stable throughout one's lifetime, and can be scanned without physical contact.

A **national identification system** was proposed in 2002, still there still is no consensus on what such a system is: vital elements, optional add-ons)

### Issues:

#### Would it:

**Prevent terrorism?**

**Stem the tide of undocumented immigrants?**

**Lead to invasion of privacy?**

**Allow gov't to collect details on individuals' lives?**

**One more card to lose, number to remember?**

**Forgery make it easier for undoc to appear legit?**

### Privacy and civil rights issues

**Storage.** How is the data stored, centrally or dispersed? How should scanned data be retained?

**Vulnerability.** How vulnerable is the data to theft or abuse?

**Confidence.** How much of an error factor in the technology's authentication process is acceptable? What are the implications of false positives and false negatives created by a machine?

**Authenticity.** What constitutes authentic information? Can that information be tampered with?

**Linking.** What limits should be placed on the private use (as contrasted to government use) of such technology? Will the data be linked with other information about spending habits, etc.?

**Ubiquity.** What are the implications of having a electronic trail of our every movement if cameras and other devices become commonplace, used on every street corner and every means of transportation?

### Technical Issues

Standards for consistent data entry

Performance, e.g., response time

Security

Cost

And the main issue: User acceptance

### **Several national ID schemes have been proposed:**

Social security cards(1935), national worker registration database (2005), health security card (1993), Real ID (2005) network of linked state drivers license databases with standardized drivers license card. None has been accepted, mainly due to fears of becoming an invasive government tracking system.

**Kathy Goodson and Jonathan Collette of the** Electrical Engineering and Computer Science Department at Harvard University have written a recent paper outlining the basic requirements of a national id system.

### **The card would be:**

Tamper-resistant id: difficult to copy, difficult to forge, difficult to use fraudulently, difficult to obtain  
Standardized, machine-readable data  
Unique identifier (number or string assigned to one person only) which would be linked to a database with additional data available only to authorized users. The private sector would use the system for identification and authentication only

### **Experience in other countries with national id cards**

Both the UK and France have launched systems, with more success in France than in the UK, where it has been very controversial.

China has had a system since 1985. The cards have nationality, birth date, an 18-digit number and a recently added RFID (radio-frequency identification) chip with personal information. The government hopes to use the cards to deter crime and prevent identity theft but opponents are suspicious that the new cards will be used to track dissidents.

**Conclusion:** It would appear that while we may not be ready for a national identification system, we can provide secure id systems for workers and for immigrants. Such a system or systems combined with revisions and expansions to the federal immigration policy, entry and exit tracking system and strict enforcement of the labor laws already on the books, would go a long way toward reconciling our economic need for labor with our need and right to control our borders. Ann Allott, Denver immigration lawyer, has concluded that it is impossible for an enforcement system to defeat dynamic market forces, if they are out of sync, no matter how much money is thrown at it.

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