

## **Arizona's S.B. 1070 as a National Lightning Rod**

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The passage of Arizona's Senate Bill 1070 in 2010, called the Support Our Law Enforcement and Safe Neighborhoods Act, has unleashed a political debate on illegal immigration in our country. This contentious State Bill, SB 1070, authorized law enforcers to identify, prosecute and deport illegal immigrants. Anti-immigration advocates hailed the bill for its tough stance on illegal immigration whereas proponents of immigration reform derided the law for its potential to discriminate Hispanic communities. Additionally, the bill created a rift between state and federal government on immigration reform, primarily raised questions about states right to write its own immigration laws preempting federal power. This has resulted in legal cases challenging the constitutionality of the law in the Federal Courts.

The legal question raised by Arizona's immigration law, SB 1070, was if states, Arizona in this case, had the purview to pass immigration legislation believed to be preempted by the authority granted by the Constitution to the federal government. In a split decision, the United States Supreme Court, in *Arizona v United States*, struck down three of the four challenged provisions of the bill for interfering with federal policy and remanded one-the provision authorizing police to check alien registration papers-to the lower courts. The Supreme Court ruling garnered national headlines particularly the provision in S.B. 1070's Section 3 that created a state misdemeanor for the "willful failure to complete or carry an alien registration document" (S. B 1070, pg. 2). Colloquially referred to as "show me your papers," the provision has been viewed as racial profiling (S. B 1070, pg. 2). Indeed, since 2009, Latinos have been perceived as the group most subjected to discrimination. One in ten Latinos have reported being asked by police officers about their immigration status (Becerra etal, 2012). The question of state rights also remained an eminent focus of this debate.

Absent from the legal and public discourse, following SB 1070 and the Court ruling, at least the one presented in national media, is the economic impact undocumented workers have on the economy in general, and on Arizona in particular. Arizona's SB 1070 and the USSC ruling raise questions about the implications of Immigration policies on our economy and society. The economic impact, both positive and negative, must be the primary focus of any discussion about proposals to reform the immigration system. Only when legislators and the general public understand the positive impact undocumented workers have on the economy can rational immigration reform be developed, one that puts the country's economic viability at the forefront.

Although popular perceptions show that illegal immigration drains our economy, historical and economic analysis of immigration demonstrates that illegal immigrants have had minimal impact on the economy, rather, they are integral to our economic success. Since the US - Mexico agreement of 1942, leading to the Bracero Program

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(1942-1964), Mexicans have come to the United States on short-term labor contracts, primarily for agricultural labor. Immigration reforms ended the Bracero program in 1964, however as Roger Daniels notes, seasonal influx of migrant workers continued as it filled in a shortage in farm labor (Daniels, 2004). Immigration laws silently acknowledged and permitted illegal immigration. For instance, the Immigration Reform and Control Act, enacted in 1986, provided a loophole to allow wealthy business owners to claim no knowledge of the legal or illegal status of their workers (Daniels, 2004). This has provided employers sufficient leeway to hire illegal immigrants.

The entry of Mexican laborers, through the Bracero program and later, has resulted in a dual labor market. One category of labor market comprises of United States citizens and immigrants who have entered the country legally, presumably enjoying the full protection of the law (Johnson, 2009). The other category is represented by undocumented workers, many of whom are Latino/a, who are often paid less than minimum wage and who do not have the guarantee of on-the-job health and safety protections. The dual economic structure has added a racial quality to labor as undocumented workers only have a subliminal presence; Chomsky compares the dual structure to the new Jim Crow (Chomsky, 2014). Further, present day legal immigration is targeted at high-skilled workers, those with post-graduate college degrees. Illegal immigrants provide a ready source of workers in agriculture, construction, food processing, building maintenance and other low-end, low-paying jobs at a time when native-born, low-skilled workers in the country's labor force have dwindled due to higher high school graduation rates and better wages (Hanson, 2009). As Graham Jr. claims illegal immigration is a labor supply issue, thus making it of utmost importance to the economic system and functioning of the United States (Graham Jr., 2004).

Using Arizona's S.B. 1070 as a backdrop, and Arizona's unique socio-economic status as a gateway state for the entry of 400,000 illegal immigrants from Mexico as of 2010, this paper will explore what leading economists, including Gordon H. Hanson, author of "The Economic Logic of Illegal Immigration," believe is the positive effect illegal immigrants have on the economy. Proponents of S.B. 1070 hailed the legislation as a legal means to curtail the negative impact illegal immigrants have on the economy. On the contrary, economists and legal scholars have written extensively to show that illegal immigrants add to the economy by paying federal income and payroll taxes. Illegal immigrants provide benefits to United States employers that the legal system of immigration does not. In this context, this paper will examine the challenges of illegal immigration, as highlighted by the debates following Arizona's law and USSC ruling, to demonstrate the positive contributions that undocumented workers have had on the economy and the integral role they play in the labor force. The paper argues that any immigration reform must be rooted in economic benefits to the United States.

### **Federal versus State Power to Enact/Reform Immigration Laws**

The foremost question that has caught the attention of judiciary, federal government and political activists in the case of SB 1070, is if state government can supersede federal government in enacting immigration laws. The Support Our Law Enforcement and Safe Neighborhoods Act, S.B. 1070, enacted in 2010, contains ten provisions that are amendments to legislation already enacted in Arizona. The amendments relate specifically to unauthorized aliens, also referred to as undocumented workers and illegal immigrants. Six sections of S.B. 1070 were accepted

as law, while four provisions, which supposedly preempted federal laws were challenged and the federal government enjoined its enforcement (S.B 1070, 2010). S.B. 1070 garnered national headline for its strong stance on illegal immigration, positioned the legislation as a lightning rod for immigration reform.

The federal government claimed that Arizona overstepped its authority by creating criminal misdemeanor statutes for offences the federal government holds as civil violations. Specifically, the challenge involves Section 2, which requires state officers to make a “reasonable attempt...to determine the immigration status” of any person they stop, detain or arrest if “reasonable suspicion exists that the person is an alien and is unlawfully present in the United States”; Section 3, which creates a new state misdemeanor for the “willful failure to complete or carry an alien registration document”; Section 5, which makes it a state misdemeanor for “an unauthorized alien to knowingly apply for work, solicit work in a public place or perform work as an employee or independent contractor”; and Section 6, which allows a state officer to arrest a person without a warrant if there is probable cause to believe the person has committed a public offense that makes him removable from the country (S.B 1070, 2010).

In a mixed verdict, the Supreme Court ruled 5-3 in *Arizona v United States* (2012) to uphold the lower courts’ ruling on Sections 3, 5 and 6; Section 2 was remanded. The United States argued that the federal government preempted Arizona’s statute. Recognizing the power of federal government and the need for a uniform immigration policy, Justice Anthony Kennedy used the Supremacy clause to rule that State laws are preempted when they conflict with federal law. Justice Antonin Scalia, in his dissent, recognized state’s interest. Justice Scalia said his colleagues’ decision deprives States of the defining characteristic of sovereignty; in essence it undermines their power to exclude from the sovereign’s territory people who have no right to be there. He argued that the Constitution does not strip states of the authority to protect them from being burdened by an influx of persons. Justice Scalia noted that the Rule of Naturalization was not intended to abrogate states’ power to exclude, but to vindicate it (*Arizona v United States*, 2012).

Justice Scalia, brings a noteworthy claim to state’s rights to make policies, which is a critical element of our federal structure. Traditionally, states have regulated non-citizen populations through statutes that regulate employment and benefits. In *Hines, Secretary of Labor and Industry of Pennsylvania, Et. Al. v. Davidowitz Et Al.* (1941) the court ruled that “The national government has exclusive control over the admission of aliens into the United States, but after entry, an alien resident within a state, like a citizen, is subject to the police powers of the state and, in the exercise of that power, state legislatures may pass laws applicable exclusively to aliens so long as the distinction taken between aliens and citizens is not shown to be without rational basis” (*Hines, Secretary of Labor and Industry of Pennsylvania, Et. Al. v. Davidowitz Et Al.* 1941, p.76). More so, the decision rendered in *De Canas Et Al v. Bica Et Al.* (1976) gives credence to Arizona’s contention that it is within its rights to enact S.B. 1070. Federal regulation is not preemptive of state regulatory power in the absence of Congress’s clear intent to do so, or if the field, immigration and naturalization, permitted no other conclusion.

Hence, here, Arizona is well within its purview to enact S.B. 1070 and, in legislating S.B. 1070, it has complimented federal law, not hindered it. What is missing however, in this legal debate over federal and state government’s power to address

immigration policy, is the attention to Arizona's specific problems and our economic interests. Does Arizona's immigration problem, call for a state policy, and can the state policy circumvent economic interest of the country. The following section provides an overview of Arizona's Immigration problem.

### **Illegal Immigration in Arizona: How Real Is the Problem?**

Illegal immigration is an acute problem in Arizona and our current immigration laws have been ineffective in controlling entry of illegal immigrants. The problem is typical to most border states. For instance in Laredo, Texas, Border Patrol apprehends between 100 and 200 people per day. The daily figure for the entire US Mexico border is about 2,500, totaling some 932,000 in 2003 according to the Department of Homeland Security (Ho, 2010). U. S Census bureau's 2005 population statistics shows 30% of the nations 35 million immigrants were illegal. It is estimated that 59% of these are immigrants from Mexico (Hanson, 2009). Schmall estimates that the undocumented immigrant population grew by 3.3 million from 2000-2007; between 1999 and 2009, 500,000 illegal immigrants have entered the country each year (Schmall, 2011). Even so, the number of homeland security agents along the southwest border has been tripled; there has been no appreciable decrease in the number of illegal migrant workers entering the country. Arizona's illegal immigrant population in 2012, was estimated at 360,000 to 400,000. Between 1996 and 2010, the federal government estimated that the illegal immigrant population in Arizona increased 213% (Federation for Immigration Reform, 2012).

The Immigration and Naturalization Service (INS) has reported close to a million or more apprehensions of illegal immigrants each year since 1977, with about 94.2% of those apprehended being Mexican (Daniel, 2004). From 2001 to 2010, an average of 1,374 illegal immigrants were apprehended per day in Arizona. This shows that Arizona's illegal immigrant population is disproportionate to the other states and hence, the challenges are insurmountable; any positive impact they may have on the economy is overshadowed by the crime rate, illegal weapons trade, human trafficking etc. (Jacoby, 2004). In Maricopa County, AZ, ground zero for illegal immigration in the state and the focus of much of S.B. 1070's provisions, 22% of felons are illegal aliens. The offenses committed relate to immigration enforcement, attacks on border patrol agents, drug-related crimes and human trafficking. A Pew Hispanic Center study found that non-citizen Hispanics comprised 74% of immigration offenses, 25% of drug offenses, 8% of white-collar offenses and 6% of firearms offenses of those who were sentenced for federal crimes in 2007. Yet, non-citizen Hispanics are 5.1% of the country's adult population (Litwin, 2011).

Due to public safety concerns, Arizona authorities were compelled to focus on illegal immigration in their state. Local law enforcement personnel worked with federal immigration authorities, through the passage in 1996 of the § 287(g) program of the Immigration and Nationality Act (INA) for example, to rid the community of felons. This INA provision is part of a larger government policy of the Illegal Immigration Reform and Immigrant Responsibility Act; it allows the Attorney General of the United States to enter into a written agreement with a state to perform immigration law enforcement functions. The intent of § 287(g) is to give state and local law-enforcement agencies the ability to enforce criminal immigration laws, not civil ones (Litwin, 2011).

A larger challenge for some of the states with high illegal immigrant population is enforcing stricter laws to control illegal immigration, as they may have a direct impact

on crime in their states, and lack of support from Congress. In Arizona, California and New York illegal aliens comprise a larger share of the state prison population than they do of the total population. Crime data about illegal immigrants generates fear among native citizens, lawmakers and those charged with keeping the community safe (Camarota, 2009). Arizona's response in SB 1070 can be ascribed to high crime rate, fear among natives and Congress's inability to provide the legal resources needed to solve the problem.

### **Analysis of Illegal Immigration in the United States Post Bracero Program**

Economists cite employment needs as the driving force behind illegal immigration. Irish and Mexican immigration pattern from the 1960's to 1980's is illustrative of this trend (Camarota, 2009). The Bracero program admitted many Mexicans to the United States until 1964; of the 5 million foreign agricultural workers in the country in 1964, a staggering 4.6 million of them were Mexicans. Labor Secretary terminated the Bracero program in 1964; while this marked the legislative death of the temporary worker program, it did not have any impact on the appeal of migrant workers from across the border. They provided low-wage workers to American growers and by Mexican standards, high wage jobs to the migrants and hence, an ad hoc approval program for imported agricultural workers continued in practice.

The death of Bracero opened the floodgate of illegal immigration, especially for agricultural purposes (Daniels, 2004). The INS (Immigration and Naturalization Service) noted in a 1970 report that for the six-year period after the end of the Bracero Program, 71% of the 1,251,406 deportable aliens rounded up were Mexican. That percentage rose from 50% in 1965 to 80% in 1970 (Daniels, 2004).

During the 1980s border security and illegal immigration were at the forefront of immigration issues in the United States. In response to the rise in illegal immigration, the federal government created a number of immigration oversight agencies in the 1980s. Taken together, they represent an alphabet soup of acronyms: INS, INA (Immigration and Nationality Act), ICE (Immigration and Customs Enforcement) and IRCA (Immigration Reform and Control Act), with one reporting in to another. Further, in 1986, President Ronald Reagan through the Immigration Reform and Control Act overhauled the immigration policy. The act granted amnesty to over three million undocumented aliens, making it legal for them to bring their children and parents into the country.

IRCA expanded immigration rather than restrict; it granted legal status to those who had established ties in the country dating to 1982. The Act also created a new classification of seasonal agricultural workers and allocated 5,000 preference visas in 1987 and 1988 to aliens born in countries from which immigration was adversely affected by the immigration reform of 1965. This was referred to as The Lottery (Daniels, 2004). In a Conservative Review article, G. Russell Evans estimated the amnesty program raised the number of immigrants in the country to nine million, an amount that put stress on the national budget and job market (Evans, 1998). The economic cost of IRCA was troubling. Demographer David Simcox estimated that federal assistance, welfare benefits and education costs for children of amnestied workers added up to \$78.7 billion, or a subsidy of nearly \$30,000 for each immigrant granted legal status (Simcox, 1997). IRCA is considered an extremely generous immigration law. Quota allotments were expanded and allowed the influx of illegal

immigrants to continue at levels estimated by the INS at 500,000 a year by the mid-1990s (Graham, Jr., 2004).

Since the early 1990s the focus of immigration policies has been almost exclusively on illegal immigration from Mexico. In 1996 the Immigration and Nationality Act was passed. In 2003, again under the auspices of the Department of Homeland Security, ICE was formed, and in 2006, the Department of Homeland Security enacted stricter enforcement policies (Graham Jr., 2004). The number of arrests for working without documentation increased, although this still reflected less than 2% of all undocumented workers and less than 1% of all employers. Given the approximately 12 million illegal immigrants and the estimated 7.6 million United States employers during this time span, the trumped up enforcement resulted in actions against less than one-twentieth of one percent of all potential violators (Schmall, 2011).

Post Bracero period, not only changed the pattern of immigration in the US, but also accentuated the problem by government apathy and poor enforcement. Mexicans account for the bulk of farm workers in our country, since they were first recruited under the Bracero for this purpose during World War II. The only thing that has changed, since Bracero, is whether they come legally, illegally or as temporary guest workers. Migration has become a way of life for many regions of Mexico. Villages function as bedroom communities for dependent families and sustain themselves by exporting their able-bodied workers (Jacoby, 2004). Daniels has said that agriculturalists, especially in California, were addicted to Mexican labor. As such, when the Bracero Program ended, migrant workers entered the country illegally multiple times with the result of exacerbating the illegal alien crisis that still exists (Daniels, 2004).

Government response to the problem of Mexican immigration can at best be described as turning a blind eye. Through 2006, undocumented immigrants crossing the border from Mexico were unofficially tolerated, providing they successfully got past Border Patrol (Hanson, 2009). IRCA was amended to include a section restricting warrantless entries into outdoor agricultural operations. The owner of a farm could refuse entry to an INS agent who did not have a warrant to question workers, even if there was reason to believe the farm was staffed with undocumented workers. Sweatshop workers were more prone to enforcement of the IRCA provisions, as were small businesses whose owners had no political clout. It became apparent that once agricultural workers got away from the border, their risk of arrest was minimal (Hanson, 2009). However, the climate of tolerance or tacit approval characteristic from the 1990's to 2005 changed by 2006. In 2006, stricter enforcement by Department of Homeland Security led to a number of arrests of those not authorized to be in the country. The actions and the inactions by the government call for rethinking immigration policy, based on our economic needs and patterns of labor movement, especially in the low/unskilled sector.

### **Undocumented Worker and our Economy**

A persuasive argument to convince Americans that a pathway to the legalization of immigrants who are here illegally must delineate the positive impact undocumented workers have on the economy. Especially with regard to the mortgage crisis, the downturn in the economy of recent years and the national unemployment rate, citizens need to be assured that illegal immigrants are not filling jobs Americans should hold or

unduly draining state and federal governments of resources. There are studies and statistics to support the pros and cons of undocumented workers' impact on the economy. A concise way to summarize the economic benefit of undocumented workers is that they provide employers with the types of workers they want, when and where they want them (Hanson, 2007).

Hanson particularly notes that immigration policies have favored labor supply in scarce sectors of the economy. He identifies this as those whose skills are in short supply and whose contributions to the tax rolls, minus the cost of the public services they receive, are as large as possible. This includes both the high skilled worker as well as the low/unskilled worker in agriculture, construction, food preparation, cleaning services and low-end factory jobs (Hanson, 2009). The presence of low/unskilled immigrant labor, as Hanson argues, is critical to the economy, as increase in high school graduation rate, has led to low supply of low/unskilled labor in the economy (Hanson, 2009). However, immigration law does not support the import of the low/unskilled labor; few illegal immigrants, particularly those from Mexico, qualify for temporary work visas or employment-based green cards. The only option for employers and those seeking work is illegal immigration, whereby large numbers of low-skilled workers are relocated from a low-productivity to a high-productivity environment (Hanson, 2009).

Not only, do illegal immigrants fill in a vital need in our economic system, but they also support our tax structure. The Arizona Republic, in its evaluation of SB 1070's impact on the economy concludes that legal status to all undocumented immigrants in Arizona itself would yield an increase in tax revenue by \$1.68 billion. This increase is based on the belief that the immigrants would likely move up to higher paying jobs. In turn, they would spend more and pay more in taxes (Gonzalez, 2014). Undocumented immigrants pay an average of \$1,800 per household, per year more to Social Security and Medicare than they use in services. Overall estimates of how much they contribute range from \$7 to \$15 billion. It is also estimated that undocumented workers contribute more than \$1.5 billion to Medicare. Some economists believe this influx will help keep Social Security and Medicare afloat (Becerra et al, 2013).

Additionally, Spending by employed undocumented immigrants sustains other jobs. Legalization would add 261,000 jobs, increasing total employment in Arizona by 7.7%. Labor income would rise by \$5.6 billion. Hanson noted that immigration creates extra income for the United States economy even when it pushes down earnings for some workers, estimated between 9.4 to 7.4% for natives without a high school diploma. The Partnership for a New American Economy, in its Regional Economic Model for Arizona, estimated that undocumented immigrants who enroll in a legal path to citizenship would add more than 14,000 jobs and more than \$1.18 billion to the economy by 2020 (2012). Those opposed to legal rights to undocumented workers believe the municipal services they use drain state budgets. Judith Gans, of the Udall Center for Studies in Public Policy, found that in 2004, Arizona collected \$2.4 billion in revenues from immigrant workers, \$1.5 billion from those without documentation to be in the country, whereas Naturalized citizens contributed \$860 million to state coffers (Gans, 2007). Gans determined that the cost of education, health care and law enforcement was \$1.4 billion. A cost benefit analysis of the amount spent on services versus revenue earned shows that illegal immigrants were a net gain to the economy of Arizona; as the fiscal impact to Arizona's state budget was a positive \$940 million (Gans, 2007). The Arizona Republic notes that the state's economy would shrink by \$49

billion if mass deportation removed all of the undocumented workers and their families (Gonzalez, 2014). This is equivalent to about a fifth of the state's economy. Also, 581,000 jobs held by immigrants and native-born workers would be lost. This would result in a 17.2% decrease in employment and the state tax revenue would drop by 10.1% (Gonzalez, 2014). Other estimates peg the loss to Arizona's economy at \$11.7 billion in gross state product and more than 140,000 jobs (Becerra et al, 2012).

At the federal level, the Congressional Budget Office (CBO) indicated in their 2007 report that undocumented immigrants contributed more in taxes than they took in services. The CBO conceded there are costs to state and local governments for providing law enforcement, education and health care services to this group. Costs are also incurred in border security, programs to prevent, detain and deport undocumented workers, and the costs associated with crimes such as human smuggling and trafficking. The Heritage Foundation reported that the cost of incarcerating undocumented aliens was a huge drain on taxpayers. The report cited California, Texas, Arizona, Florida, New York and Illinois absorbing the greatest financial burden (Becerra et al, 2012). However, these costs, as per CBO, represent a small percentage of state and local budgets, as little as 5% (Becerra et al, 2012).

Stephen Goss, chief actuary for the Social Security Administration claims that undocumented workers contribute about \$15 billion a year to Social Security through payroll taxes. They take out \$1 billion; very few are eligible to receive benefits. Goss estimated that undocumented workers have contributed up to \$300 billion, nearly 10%, of the \$2.7 trillion Social Security Trust Fund (Davidson, 2013). Hanson, in a report issued by the Council on Foreign Relations, concluded that illegal immigration responds to market forces in ways that legal immigration does not (Hanson, 2007). Illegal migrant agricultural workers tend to cross the border in larger numbers when the U.S.'s economy is booming, relative to their native Mexico and Central American countries. They congregate in regions where jobs are plentiful. Conversely, allowing them to enter legally under arbitrary selection processes and bureaucratic red tape may not keep pace with labor and market conditions (Hanson, 2007). One thread of thought posited is that as baby boomers age and retire, the post-boom generation's onus to finance retirement will be alleviated by undocumented immigrants.

While cost benefit analysis demonstrates that illegal immigrants positively contribute to our economy, there are many challenges as well. It has been observed that the presence of illegal immigrant workers reduces the commitment of employers to traditional United States labor market institutions (Hanson, 2007). It creates a population of workers with limited upward mobility and an uncertain place in society (Hanson, 2007). George Borjas, in his June 2003 essay in the *Quarterly Journal of Economics*, estimated that from 1980 to 2000, immigration contributed to a 3% decrease in average U.S. wages (Borjas, 2003). He attributed the drop to the impact of both legal and illegal immigrant workers. During the same time period, the wages of native workers without a high school diploma fell by 9% due to immigration. Borjas notes that 20 million American low-skilled workers saw their average hourly wage drop 30% from 1979 to 1995, partly due to decrease in immigration. (Borjas, 2003)

Additionally, the share of immigrants, legal and not, with less than 12 years of education has steadily increased since the 1970s. In the 70's, 15% of immigrants had less than a high school diploma. This number increased to 40% in California and 50% in Texas in the 1990's (Graham Jr., 2004). In 2011, an estimated 278,460 illegal



immigrants made up about 9.3% of Arizona's total workforce. In January 2012, unemployment in that state was 8.7%, with 262,587 able workers unemployed. Opponents of legalizing undocumented workers argue that, natives would be gainfully employed were it not for the 9.3 % of illegal immigrants taking "their" jobs (Federation for American Immigration Reform, 2004).

A race to the bottom pits low-skilled native workers against illegal immigrant labor. Without a sound immigration policy that would allow for legalizing those who are undocumented with protections for native workers, the problem cannot be addressed. Immigration reform therefore requires a consensus-based approach that addresses the complexity of the problem, than a piecemeal approach that caters to interest of one group over the other.

### **The Economic Cost of SB 1070 to Arizona**

In the context of the immigration debate stirred by SB 1070, it is pertinent that the impact of this law be assessed not from the perspective of state versus federal rights but from an economic perspective as well. Would it be effective for Arizona to implement this bill and if so, would the state be spending more or reduce expenses.

The Federation for American Immigration Reform noted in a 2012 fact sheet that the total cost in Arizona for education, medical care and incarceration provided to illegal immigrants was \$2.6 billion (Federation for American Immigration Reform, 2004). However, the Immigration Policy Center does not believe S.B. 1070 would withstand a cost-benefit analysis. The Center's position is that full implementation of the bill would bankrupt Arizona by using state funds to apprehend minor immigration offenders while leaving native-born violent felons unpunished. Regardless of whether this is a fact or scare tactic, charging 400,000 undocumented immigrants in Arizona with crimes, the costs associated with incarceration and the resulting lawsuits would deplete the coffers (Stock, 2010).

Has S.B. 1070 and other anti immigration legislations wreaked havoc on Arizona's economy? Policy analysis by the Cato Institute, specifically through the study of E-verify, the federal government's electronic employment eligibility verification system, deems this to be an expensive measure (Miller and Moore, 1998). The policy report holds that these legislations discourage investment and increases unemployment. The average cost to run a check on a potential employee is \$147. Financial burdens on hiring companies increased when they complied with the system due to additional human resource personnel and legal services (Miller and Moore, 1998).

It is believed that Arizona's use of E-verify resulted in a 14.3% decline in new business in the third quarter of 2007. In contrast, business in two other states more heavily populated by illegal immigrants, California and New Mexico, increased during the same time period. Those two states did not have to comply with a legislative mandate to verify the legal status of potential employees (Nowrasteh, 2012). The rationale for using E-verify is to weed out undocumented workers, and make more jobs available to native workers. However, in Arizona crop production employment dropped 15.6% in the first four years after E-verify became the law. Native workers did not fill the employment gap. Conversely, in California and New Mexico, crop production employment increased during the same period (Nowrasteh, 2012).

In Arizona, to bypass E-verify, business owners hired workers off the books without paying income or payroll taxes (Becerra et al, 2012). In addition to the economic

impact of E-verify, of concern is that its purpose is thwarted by counterfeit documents illegal workers submit. Cato's policy analysis report suggests that after E-verify was enacted, the number of illegal immigrants apprehended at the Mexican border rose steadily from 1989 through 1993. Ten years after the employer sanctions were established, 1 million illegal immigrants were apprehended (Miller and Moore, 1998). This shows that E-verify simply does not work. Its use has led to the arrests and detentions of a disproportionate number of employees, rather than the employers who continue to attract illegal immigrants to the country (Schmall, 2011).

In the draft of SB 1070 Arizona's Senate may have bristled at the boost to Mexico's economy when undocumented workers are employed in the United States. Immigrants send money home, which seems to occur more often shortly after arrival in this country. Money flowing from the United States to Mexico heftily increased from \$3.5 billion in 1996 to \$23 billion in 2006. The outflow of US dollar to Mexico, also boosted profitability of US banks, especially those that solicit business from Mexico (Schmall, 2011).

Research has concluded that the higher-than-Mexico wages that attract undocumented workers may weaken as minimum wages increase in the United States. The bump up may make some of the menial jobs more palatable to native workers and increase the supply of low-skilled U.S. residents ( Del Olmo, 1998). This may decrease the flow of illegal immigrants to the US. While this flies in the face of increased high school graduation rates, resulting in fewer workers for low-waged jobs, it is an interesting aside at a time that several states, including New Jersey, have increased their minimum wage. Further, in his 2014 State of the Union address, President Barack Obama called for a federal \$10.10 minimum wage, a proposal that has already received opposition (2014)

Another unintended consequence is that the number of middle-income households in the country decreased by more than 13.6 million. This change is attributed to the rapid rise in both the legal and illegal immigrant population evidenced by data from the 1990 Census. The 2000 Census data shows that while the number of middle-income households dropped, the number of high-income households increased, as did the number of low-income households, by 14% (Federation for American Immigration Reform, 2004). Between 1990 and 2000, the share of low-income households rose in states with the largest immigrant populations, by an estimated 5.3 million. More than half of this increase occurred in seven states, Arizona being one among them. The seven states also accounted for more than 60% of the 11.3 million increase in immigrant residents over the course of the decade. This social change is aligned with the rise of both legal and illegal immigration (Federation for American Immigration Reform, 2004).

An increase in Arizona's crime rate is the result of a host of offenses that include smuggling illegal immigrants across the border and felonies such as murder, extortion and kidnapping (Jacoby, 2004). The Public Policy Institute of California estimated that nine of ten illegal migrants use a coyote, a paid smuggler, to get across the border. They pay as much as \$2,000 per person to the smuggler. As a business, human smuggling has become lucrative, which has resulted in the practice being more organized and entailing increased criminal gang involvement. As a result, crime has soared in Phoenix. Added to document fraud, which had been a staple criminal activity, are murder, money laundering (to the tune of \$160 million in a six-month period in 2003), kidnapping and

extortion. Smuggling cases have increased by 50% since 1998. In addition, the Department of Homeland Security has apprehended a large cache of assault rifles and automatic handguns, the tools of the smuggling trade (Jacoby, 2004). About 17% of Arizona's prison population in 2012 was comprised of illegal aliens. In Maricopa County alone, 22% of felons are illegally in the United States. Further, criminal gangs engaged in drug trafficking have dug smuggling tunnels, 51 one of which were discovered between Arizona and Mexico during the years 2006 to 2010 (Federation for American Immigration Reform, 2004).

Illegal immigrants do not drive up health care costs through traditional means such as employer-provided health insurance plans or government programs for which they are not eligible. However, they do impact the bottom line of hospitals. Undocumented immigrants underutilize health care compared to the general population, but often use emergency rooms because they are mandated to provide care regardless of immigration status or ability to pay. An estimated cost to provide undocumented immigrants with healthcare is between \$6 and \$10 billion a year, based on statistics compiled in 2004 and 2006. Though a large amount, the total represents about 1.5% of U.S. healthcare cost (Becerra et al, 2012). Educating the children of undocumented immigrants is estimated at \$17 billion, with California, Texas, New York, Florida, Illinois and New Jersey bearing the brunt of the burden. Softening the blow is that this amount represents about 3.3% of the total spent on K-12 education in this country each year (Becerra et al, 2012).

### **Immigration Reform and a Path to Legalization**

The history of immigration policies and reform in the United States represent knee jerk reactions and band-aid to momentary labor needs. Immigration policies, particularly as they relate to undocumented workers, are not economically viable for federal, state or local governments. As the current administration revisits immigration reform, it is paramount that it does so with an eye toward introducing a comprehensive immigration reform bill that is substantial enough to not have to be revised in the near future.

There are parameters that can be put into place to make immigration laws work from a labor market perspective. One of the main reasons there is a sizeable undocumented immigrant population in the United States is that the immigration laws are out of sync with the nation's demand for labor (Johnson, 2009). As a start, policymakers must recognize that jobs and the labor market drive the migratory movement of undocumented workers across borders. The refusal to provide a legal means for the migration of workers creates an incentive for undocumented migration that enforcement policies have failed to deter.

In *Unguarded Gates: A History of America's Immigration Crisis*, author Otis L. Graham Jr. cited economists who opined, "Illegal immigration from Mexico and elsewhere was a natural and unstoppable part of the inevitable economic integration of the western hemisphere. The United States was schizophrenic in attempting to promote that integration through the North American Free Trade Agreement while preventing it in terms of labor markets" (Graham Jr., 2004, p. 106). This opinion, expressed in 2004, underscores two points: a sound immigration reform policy must be based on the economic needs of the United States and attempts at deportation are futile.

The concept of immigration reform is not a new one. From 1943 through 1960 the country's immigration policy has not changed much. In the 1960 presidential

election the Democratic platform jabbed at the system in place as “a policy of deliberate discrimination.” Republications, for their part, deemed that immigration had been a factor in American growth and that it “had been reduced to the point that it does not provide the stimulus to growth”(Daniels, 2004, p. 139). These views, of course, applied to legal immigration. Yet, the policies that emerged from that period included amnesty for undocumented aliens residing in the country, an idea that is currently bandied about (Daniels, 2004).

In recent history, Presidents Barack Obama and George W. Bush have both called for an overhaul of the immigration system. Bush, in his second term, focused on enforcement and a temporary worker program. Obama, however, seems intent on providing a path to legal status for undocumented workers (Hanson, 2009). As proposed immigration reform policies unfold, there is sure to be a delicate dance, or perhaps stomping, between Democrats and Republicans to decide the fate of the 12 million illegal immigrants in the country. Reform’s imperativeness is as fluid as the daily ebb and flow of illegal immigrants crossing the border. It doesn’t matter whether one is for or against, pro-legalization or pro-deportation. Illegal immigrants have been integrated into society and are here to stay.

From an economic viewpoint, immigration reform must focus on the question of whether the cost of halting illegal immigration altogether would have a significant impact in comparison to the benefits. Sending illegal immigrants back to their native countries is not a viable option. From simply an economic perspective, doing that would reduce the country’s labor force by 5% and the low-skilled workers, those who haven’t completed high school, by 10% or more (Hanson, 2009). Another reason deportation is not viable is because formal proceedings are rare. It is a slow, expensive process. In the 1980s, for example, incarceration in a federal jail for those awaiting deportation ran about \$35,000 per person, per year. Rather than take on this huge expense, undocumented workers who are apprehended further inland from the border are asked to sign a voluntary departure form. INS usually transports them to the border at government expense. Those who voluntarily depart are eligible to reenter the country legally (Daniels, 2004).

Many of these “volunteers” are migrant agricultural workers returning home after working in this country to harvest crops. During the next harvest season, the cycle begins again. This pattern has proven beneficial for business. The crops were picked, cheap labor kept prices lower for consumers, the workers earned money and the INS published statistics to show how many illegal workers were apprehended (Daniels, 2004). Hanson, noted that in 2005 illegal immigrants accounted for 24% of agricultural workers, 17% in cleaning and maintenance, 14% in construction and 12% in food preparation. Based on the percentage of undocumented workers that fill these jobs, he concluded, “losing this labor would likely increase prices for many types of non-traded goods and services, increase wages for low-skilled resident labor, decrease incomes of employers that hire these workers and increase the incomes of taxpayers that pay for the public services these individuals use (Hanson, 2007).

Legislators on both sides of the aisle agree that securing the border with Mexico is of paramount importance. Yet Hanson noted that the expenditure undertaken to beef up border enforcement would greatly exceed the income gained from eliminating the money drained from the system in the form of government services to undocumented workers. (Hanson, 2007). Employers do not generally support immigration reform

because they have received sufficient benefits from the current system of illegal immigration. Hanson has written that by “tacitly permitting illegal employment (at least through 2006, when the Department of Homeland Security tightened interior enforcement) the United States government left its regulation to the market, which means that inflows of unauthorized labor responded to the demands of United States businesses, helping to raise productivity in the process” (Hanson, 2009, p. 4).

A report for the Council on Foreign Relations concluded that stemming illegal immigration would more than likely result in a drain on the United States’ economy. Discussions about immigration reform that revolve around guest worker programs do not account for the economic incentives that fuel illegal immigration as a benefit to both the undocumented workers and employers who desire low-cost labor. Again citing Hanson, “unless policymakers design a system of legal immigration that reflects the economic advantages of illegal labor, such programs will not significantly reduce illegal immigration” (Hanson, 2007. p. 24 ). Granting amnesty or citizenship to all undocumented immigrants may not be in the best economic interests of the country. Guest worker programs need to allow for flexibility for the workers, especially those who are migrant, agricultural laborers or who are in construction. One consideration in stemming illegal immigration is to increase the quotas of those allowed to enter. It is interesting to note that as a share of the population, immigrants, legal and illegal, are far below historical levels for the United States (Hanson, 2007).

Increasing the number of guest, temporary workers through a visa program provides needed labor in an upturned market, with the agreement that these workers return home when their work stint is completed. These workers, however, require flexibility to pursue other opportunities while in this country, rather than be temporarily available to one employer. Essentially, a sanctioned visa program would have to mirror the benefits to employers that undocumented workers provide (Hanson, 2007).

Another reform option is to increase the number of H-2A visas available for seasonal agricultural workers that permit work for a United States employer for up to one year. There isn’t a cap on the number of these visas that can be issued, unlike the 66,000 H-2B visas for seasonal, nonagricultural workers. However, the H-2A has strict rules that limit their use. Even though there are 8.3 million unauthorized immigrants working in the country, it is doubtful that the roughly 150,000 temporary low-skilled visa holders who are in the country at any given time are of consequence for the needs of domestic, low-skilled employment (Hanson, 2009).

Immigration reform based on economic ramifications is essential. While low-skilled native and foreign workers are likely to see a drop in their wages, the overall effect on the economy is a positive one. Reform activists are bound to be dismayed at a system in which employers enjoy higher incomes because their labor costs are lower and their businesses are more productive. The use of illegal and legal immigrants and low-skilled native workers redistributes income and creates a net gain in national income because employers are able to use their land, capital and technology more productively. Undocumented workers also boost Mexico’s economy by sending money home; in the process banks in both countries benefit from illegal immigrants.

Any modified policy needs to allow low-skilled immigration to happen in a way that generates the maximum productivity gains to the economy. A system can be envisioned in which there is a limit on the fiscal cost of immigration and enforcement spending is contained. Existing inflows of unauthorized immigrants would be converted

into inflows of legal immigrants. This author stops short of granting citizenship to illegal immigrants, but supports a path to a legalized status. Citizenship and pride in country, although a somewhat antiquated concept, are the foundations on which this country was built. Granting citizenship to those who are here illegally would be a disservice to the legions of Americans who took a legalized path to become citizens.

The current selection process, and one addressed by the president in his 2014 State of the Union message, is weighted toward highly skilled immigrants, particularly engineers. Following the thought process of Miller and Moore, authors of the Cato Policy Analysis, increasing visa quotas for the lower-skilled illegal workers could be advantageous to the United States because the selection can be based on motivation and work ethic. The workers tend to cross the border when they are in their prime working years, and because of their youth, they generally make a substantial net contribution to federal programs, particularly Social Security (Miller and Moore, 1998).

Current immigration law offers few opportunities for low- and moderately-skilled workers to come to the United States, temporarily or permanently. As long as the demand for cheap labor continues, so will the influx of undocumented workers. The problem with the quota system in place, based on the number of visas issued, is that the system is not realistically calibrated for the need for lower-skilled workers (Johnson, 2009).

Formulated in a similar way, another option would be a return to the Bracero Program or another type of guest worker program. It has been found that many migrant workers are "repeat customers" who do not wish to remain in the United States due to family ties in their native country. They work, earn and return home. In the 1950s, when the Bracero Program was in effect, illegal immigration ebbed. A legalized guest worker program as part of immigration reform would bring this group of workers more in line with the labor needs of American employers. At risk though, is that despite labor protection laws, workers may be exploited in violation of the law, as was the case during the Bracero Program. Another potential risk of a legalized guest worker program is that there is a possibility that the workers will not return home. As they form families, secure jobs and establish community ties, returning to their home countries will become less attractive and less practical. However, establishing a guest worker program under the auspices of both countries' governments can reduce these risks. This will provide accountability on both sides of the border for low, but fair wages and a safe work environment. It would also allow for a border patrol system to weed out coyotes

Reform of immigration laws is essential both to the management of flow of immigrants but also our economic productivity. What is important is to shift from the polemics of the divisive debate in favor of or against immigration reform, to situate reform measures from the perspective of long-term economic interests. Further, the president and the legislature must also recognize that a reform of immigration policy, practices and law cannot be undertaken without regard to family unification, protection of refugees, national security and public safety.

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