

Immigration and Civil Rights:

***Just and Fair Immigration Reform Is
an Urgent Matter for Georgia***

**A Summary Report of the
Georgia Advisory Committee to the
U.S. Commission on Civil Rights**

JULY 2014

State Advisory Committees to the U.S. Commission on Civil Rights

By law, the U.S. Commission on Civil Rights has established an advisory committee in each of the 50 states and the District of Columbia. The committees are composed of state citizens who serve without compensation. The committees advise the Commission of civil rights issues in their states that are within the Commission's jurisdiction. More specifically, they are authorized to advise the Commission in writing of any knowledge or information they have of any alleged deprivation of voting rights and alleged discrimination based on race, color, religion, sex, age, disability, or national origin, or in the administration of justice; advise the Commission on matters of their state's concern in the preparation of Commission reports to the President and the Congress; receive reports, suggestions, and recommendations from individuals, public officials, and representatives of public and private organizations to committee inquiries; forward advice and recommendations to the Commission, as requested; and observe any open hearing or conference conducted by the Commission in their states.

Acknowledgements

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Letter of Transmittal

Georgia Advisory Committee to the U.S. Commission on Civil Rights

The Georgia Advisory Committee to the U.S. Commission on Civil Rights (Committee) submits this report, *Immigration and Civil Rights: Just and fair immigration reform is an urgent matter for Georgia*, as part of its responsibility to study and report on civil rights issues in the state. This report was adopted by a vote of 8 yes, 0 no, and 1 abstention at a meeting of the Committee on Tuesday, May 27, 2014.

Georgia has become entangled in the national debate over immigration. The state ranks sixth in the Nation for the highest number of undocumented immigrants. Reacting to local concerns about immigration, in 2011 the Georgia General Assembly passed the Illegal Immigration Reform and Enforcement Act, commonly referred to as House Bill 87.

In light of these developments, the Committee held a public meeting on the issue on February 19, 2013, in Duluth, GA. This report is a summary of the Committee's findings and recommendations. Member Samuel Burch abstained from voting on the report, as he had not been a member of the Committee at the time of the hearing and had not participated in the deliberations planning the project nor developing the report.

Jerry Gonzalez
Chairman, Georgia Advisory Committee

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Charles Tanksley was Chairman of the Georgia Advisory Committee at the time of the consultation. Herbert Garrett and Edna Jackson were members of the Georgia Advisory Committee at the time of the consultation.

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Foreword

Immigrants in the United States are a large population. Today, one in five persons in the country is a first- or second-generation immigrant. In addition, about one in four children under the age of 18 have an immigrant parent. The unauthorized immigrant population is also very large. Estimates from the Current Population Survey (CPS) indicate that the unauthorized resident alien population rose from 3.2 million in 1986 to 12.4 million in 2007, before leveling off at 11.1 million in 2011.¹

Several terms are commonly employed in discussions of immigration. These include “alien”, “immigrant”, “non-immigrant”, “undocumented migrant”, and “visa”. For purposes of this report:

- *an “alien” is a person living in the United States who is not a citizen of the United States.*
- *an “immigrant” is an alien who has been lawfully admitted to the United States for permanent residence.*
- *a “non-immigrant” is an alien who seeks temporary entry to the United States for a specific purpose, e.g., tourists, temporary workers, business executives, students, and diplomats.*
- *an “undocumented immigrant” is an alien who is not lawfully living in the United States.*
- *a “visa” is a document that allows the bearer to apply for entry to the United States; a visa, however, does not grant the right to enter, only the right to petition for entry.²*

“There is no way not to tell somebody with brown skin not to be afraid. I’m a U.S. citizen. My father is a fifth-generation Texan. My mother is a Mexican national from Mexico. And I still get nervous when I see ICE. I have no reason to be nervous, but because my skin is brown I know that I have to have some fear. And that’s a fear that we all carry....”

Corina Florez, Southeast Georgia Communities Project

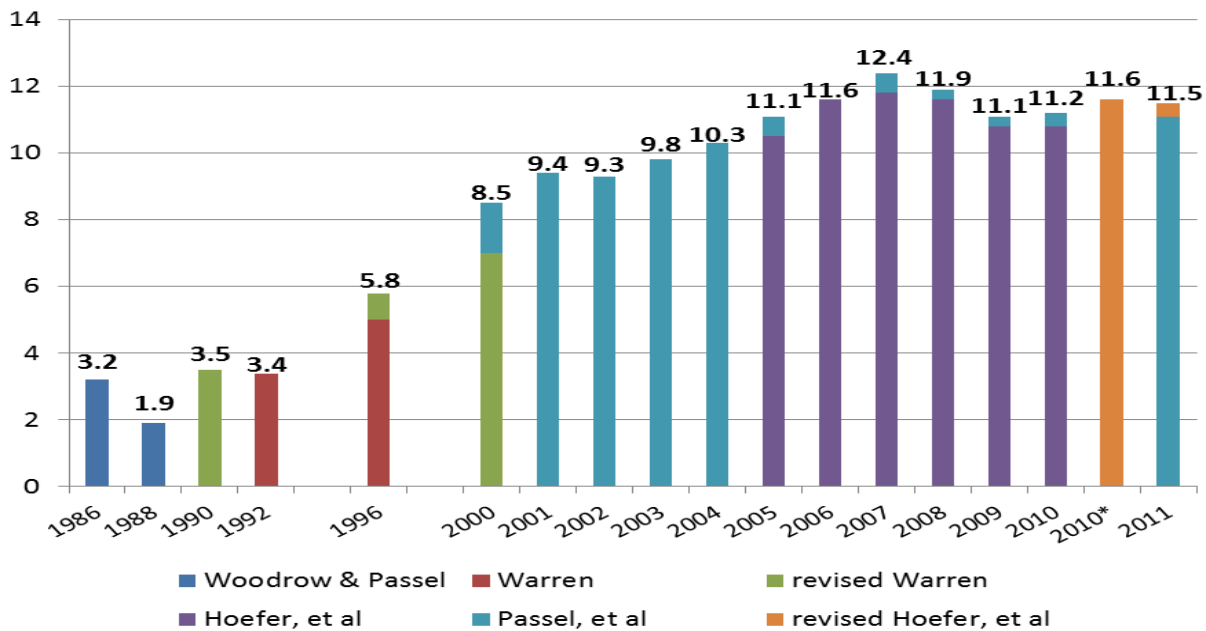
Presently three Cabinet agencies are involved in immigration: (1) the Department of Homeland Security, (2) the Department of Justice, and (3) the Department of State. The lead immigration enforcement and policy agency of the federal government is the Department of Homeland Security, which operates three separate immigration agencies:

- U.S. Citizenship and Immigration Services (USCIS)—USCIS oversees lawful immigration into the United States and performs many of the administrative functions carried out previously by the United States Immigration and Naturalization Service (INS).
- U.S. Immigration and Customs Enforcement (ICE)—ICE has responsibility for interior enforcement functions of immigration, including investigations and the detention and removal of un-authorized persons.
- U.S. Customs and Border Protection (CBP)—CBP carries out border enforcement at and between legal ports of entry.

¹ Wasem, Ruth Ellen, Congressional Research Service, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, Dec. 13, 2012<http://fas.org/sgp/crs/misc/RL33874.pdf>, executive summary.

² Table 3 lists the types of visas issued by the United States.

Figure 1. Estimated number of undocumented immigrants, 1986-2011



Sources: Congressional Research Service from analyses of U.S. Census and CPS data conducted by Karen Woodrow and Jeffrey Passel (1986 and 1990); Robert Warren (1996, 2000, and 2003); Jeffrey Passel, Randy Capps, and Michael Fix (2002); Passel and D'Vera Cohn (2008, 2010, 2011, 2012); Michael Hoefler, Nancy Rytina, and Bryan Baker (2009, 2010, 2011, 2012).³

In the last 10 years the number of undocumented immigration detainees held by ICE has significantly increased. In 2001, approximately 200,000 persons were under detention by immigration authorities. Ten years later in 2011, the number of persons detained by ICE had doubled to nearly 450,000.⁴

Immigrants and non-immigrants come to the United States from all parts of the world. Although the majority of undocumented immigrants are Latino, a large number are not. According to the Department of Homeland Security, 78 percent of undocumented immigrants were from the North America region, including Canada, Mexico, the Caribbean, and Central America. Countries in Asia are the place of origin for nearly 10 percent of undocumented immigrants, and countries in Africa, Europe and South America similarly for about 10 percent of undocumented immigrants.⁵

In recent years, the issue of immigration has risen to prominence as a political issue both at the national and local level. On January 28, 2013, eight Senators announced a bi-partisan proposal to re-write the Nation's immigration laws.⁶ The proposed plan offers a path to citizenship for many individuals presently in the United States illegally, changes the legal immigration system to give certain needed and skilled workers access to visas.

³ Hoefler, Rytina, and Baker revised their 2010 estimate after data from the 2010 Census was released.

⁴ U.S. Immigration and Customs Enforcement, *Report on ERO Facts and Statistics*, Dec. 12, 2011. The number of persons deported during fiscal year 2011 from Georgia, South Carolina, and North Carolina combined was 22,693.

⁵ U.S. Department of Homeland Security, Office of Immigration Statistics, *Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2009, 2010*, p. 4.

⁶ Senators Michael Bennet (D-CO), Dick Durbin (D-IL), Jeff Flake (R-AZ), Lindsey Graham (R-SC), John McCain (R-AZ), Robert Menedez (D-NJ), Marc Rubio (R-FL), and Charles Schumer (D-NY).

Table 1: Country of birth of undocumented immigrants: January 2009 and 2000

	Estimated Population			
	in January		Percent of total	
	2009	2000	2009	2000
All countries	10,750,000	8,460,000	100	100
Mexico	6,650,000	4,680,000	62	55
El Salvador	530,000	430,000	5	5
Guatemala	480,000	290,000	4	3
Honduras	320,000	160,000	3	2
Philippines	270,000	200,000	2	2
India	200,000	120,000	2	1
Korea	200,000	180,000	2	2
Ecuador	170,000	110,000	2	1
Brazil	150,000	100,000	1	1
China	120,000	190,000	1	2
Other countries	1,650,000	2,000,000	15	24

Source: Department of Homeland Security, Office of Immigration Statistics, Estimates of the Unauthorized Immigrant Population Residing in the United States at <https://www.dhs.gov/publication/estimates-unauthorized-immigrant-population-residing-united-states-january-2011>.

Georgia has become entangled in the national debate over immigration. The state ranks sixth in the Nation for the highest number of undocumented immigrants. The number of undocumented immigrants living in Georgia is estimated to be 440,000 persons. As a corollary to this high number, the number of undocumented immigrants living in Georgia who have applied to the government for a 2-year reprieve from deportation remains relatively small at 13,147 persons.⁷ However, as reported by the Atlanta Journal Constitution, a recent federal report indicates that the number of persons living illegally in Georgia and in the nation may be decreasing slightly. The Homeland Security Department estimates that in January 2012, there were 40,000 fewer persons in Georgia without legal status than in 2011.⁸

In 2011, the Georgia General Assembly passed the Illegal Immigration Reform and Enforcement Act, commonly referred to as House Bill 87. Among the requirements this legislation mandated that all employers with ten or more full-time employees will be required to use the federal E-Verify system by July 1st this year, 2013. In addition to the E-Verify requirements, there were several enforcement penalties passed in this legislation. These penalties include a provision that allows law enforcement officers to require proof of citizenship from a person or persons that are a party to a traffic violation or other minor infractions.

A second complicating factor of immigration is the matter of “overstays.” Approximately 4 to 5.5 million un-authorized immigrants in the United States—or nearly half of all undocumented immigrants—entered the country legally on a temporary visa but then overstayed their authorized period of admission. As of October 2010, federal officials had closed only about 34,700 overstay investigations from fiscal years 2004 through 2010 of 4 to 5.5 million.⁹

⁷ Congressional Research Service, *Unauthorized Aliens Residing in the United States: Estimates Since 1986*, by Ruth Ellen Wasem (Washington DC: Government Printing Office 2012), p. 9.

⁸ Jeremy Redmon, *Fewer without legal status: Nation, Georgia have slightly smaller illegal immigrant numbers*, Atlanta Journal Constitution, Apr. 26, 2014, p. B1.

⁹ U.S. Government Accountability Office, *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS’s Efforts but Would Have Costs*, GAO-11-411, 2011, p. 15.

I. Background

The Immigration Reform and Control Act of 1986 (IRCA) at the time of its enactment was the most comprehensive reform of immigration law since 1952, and provided a path to citizenship for persons residing in the country illegally. In the 1990s, additional immigration legislation was enacted, which expanded legal immigration as well as enforcement efforts. In 2007, immigration legislation was introduced that would have provided legal status and a path to citizenship for the approximately 12 million undocumented immigrants, but it failed to garner Congressional approval.

The Immigration Reform and Control Act of 1986

IRCA was passed by Congress and signed into law by President Reagan on November 6, 1986.¹⁰ At the time of its enactment, it was the most comprehensive reform of immigration law since 1952.¹¹ The act sought to accomplish three purposes. First, it made it “unlawful...to hire, or to recruit or refer for a fee, for employment in the United States an alien knowing the alien is an unauthorized alien.”¹² Second, it sought to improve immigration enforcement services. Third, it provided a path to citizenship to aliens residing in the U.S. since 1982 and to alien agricultural workers who could prove they had at least 60 days of agricultural work experience between May of 1985 and May of 1986.

The act also imposed employment verification duties upon employers. Under provisions of the act, an employer must determine the eligibility for employment of all employees. This requires that both the employer and employee undergo the process of filling out an I-9 form. In this process, the employee must attest to his/her employment authorization by providing the employer with acceptable documentation to sufficiently show that the employee is not an unauthorized alien. The law defines an unauthorized alien as someone who is neither “a lawful permanent resident nor an alien authorized for employment by the law or by the Attorney General.”¹³

The employer is required to review the documents of all new employees, and after reasonably determining their authenticity record the information on the I-9 form.¹⁴ The employer must retain this form for a designated period of time and must allow it to be reviewed by government inspectors. “Employers who fail to properly complete, retain, and/or present Forms I-9 for inspection as required by law may be subject to a civil penalty for violations ranging from \$110 - \$1,100 per employee...”¹⁵

IRCA makes it unlawful to *knowingly* hire an unauthorized alien. The term “knowledge” is construed broadly and includes “constructive” knowledge, which may be “inferred through notice of certain facts and circumstances which would lead a person, through the exercise of reasonable care, to know about a certain condition.”¹⁶

¹⁰ Immigration Reform and Control Act of 1986, Pub. L. No. 99-603, 100 Stat. 3359 (1986)(codified as amended in scattered sections of 8 USC § 1101)(also known as the Simpson-Rodino Act).

¹¹ For background information on the impact of IRCA, see New Mexico Advisory Committee to the U.S. Commission on Civil Rights, *Implementation in New Mexico of the Immigration Reform and Control Act: A Preliminary Report*, May 1989.

¹² 8 U.S.C. §1324a(a)(1)(A).

¹³ 8 U.S.C. § 1324a(h)(3).

¹⁴ 8 U.S.C. §1324a(b)(1)(A).

¹⁵ Congressional Research Service, *Unauthorized Employment of Aliens: Basics of Employer Sanctions*, by Alison M. Smith (Washington, DC: Government Printing Office,2005), p. 4.

¹⁶ *Ibid.*, p.3.

Table 2: Major immigration reform since 1986

	Year	Purpose
IRCA	1986	<i>Increased immigration enforcement and offered amnesty to undocumented migrants</i>
IMMACT	1990	<i>Raised ceiling on family and employment-based immigration and created "Green Card" lottery</i>
IIRAIRA	1996	<i>Increased immigration enforcement and border security; denied public welfare benefits to undocumented migrants</i>
CIRA	2006	<i>NOT PASSED; would have reformed border enforcement and visa processing and offer legal status and path to citizenship</i>

Source: Georgia Advisory Committee.

If violations of the law are suspected, the act allows for any person or entity to file a complaint to the Department of Homeland Security. The complaint must contain specific information as to both the complainant and the potential violator and detailed factual allegations including the date, time and place of the alleged violations or conduct alleged to constitute a violation of the act.¹⁷

If a violation is determined to have occurred, the employer is granted an affirmative defense by showing that he/she made a good faith effort to meet the obligations. Such a defense may be raised if, “(1) an examination of the employee’s documents was conducted, in order to establish the individual’s identity and employment eligibility; and (2) that the pertinent I-9 form concerning that individual was properly completed.”¹⁸ The penalty for hiring unauthorized aliens varies by a company’s previous history.

Fines for first time violations ranged from \$275 to \$2,200 for each unauthorized individual. Repeat violators can be fined from \$2,200 to \$5,500 for each employee, and from \$3,300-\$11,000 for each individual if the employer received more than one cease and desist order. Pattern offenders are subject to a fine not to exceed \$3,000 for each unauthorized employee and/or to no more than 6 months in jail.¹⁹ IRCA also imposed civil and criminal sanctions on employers who use forged documents to satisfy the authorization for employment.²⁰

In addition, the law maintains an unfair employment practices provision to prevent discrimination against those authorized to be employed. It allows such individuals to file charges with a presidentially-appointed special counsel within the Justice Department. Upon a review of the charges, if found valid, the special counsel may file a complaint with an administrative law judge for a hearing.²¹

IRCA also sought to deter the illegal entry of aliens into the United States and the violation of the terms of their entry. This was implemented by an increase in examinations and other service activities of the immigration officials and other appropriate federal agencies in order to ensure prompt and efficient adjudication of petitions and applications provided for under the Immigration and Nationality Act.²²

¹⁷ Ibid., pp. 3-4.

¹⁸ Ibid., p. 3 n.11.

¹⁹ Ibid., p. 4-5.

²⁰ 8 U.S.C. § 1324a(e).

²¹ 8 U.S.C. § 1324b(d).

²² Pub. L 99-603 Sec. 111 (a)(2) (1986).

Table 3: Types of visas issued by United States

Purpose of Travel to U.S. and Nonimmigrant Visas	Visa Type
Diplomats and foreign government officials	A
Foreign military personnel stationed in the U.S.	A-2
Athletes, amateur & professional (compete for prize money only)	B-1
Business visitors	B-1
Domestic employees or nanny -must be accompanying a foreign national employer	B-1
Medical treatment, visitors for	B-2
Tourism, vacation, pleasure visitors	B-2
Border Crossing Card: Mexico	BCC
Transiting the United States	C
Crewmembers	D
Treaty traders/treaty investors	E
Australian professional specialty	E-3
Students: academic, vocational	F,M
Employees of a designated international organization, and NATO	G1-G5, NATO
Free Trade Agreement (FTA) Professionals: Chile, Singapore	H-1B
Specialty occupations in fields requiring highly specialized knowledge	H-1B
Temporary agricultural workers	H-2A
Temporary workers performing services or labor of a temporary or seasonal nature.	H-2B
Training in a program not primarily for employment	H-3
Media, journalists	I
Au pairs (exchange visitor)	J
Exchange visitors	J
Professor, scholar, teacher (exchange visitor)	J
Physician	J, H-1B
Intra-company transferees	L
Foreign nationals with extraordinary ability in Sciences, Arts, Business or Athletics	O
Performing athletes, artists, entertainers	P
International cultural exchange visitors	Q
Religious workers	R
Victims of Human Trafficking	T
NAFTA professional workers: Mexico, Canada	TN/TD
Victims of Criminal Activity	U

Source: <http://travel.state.gov/content/visas/english/general/all-visa-categories.html>.

The third aspect of IRCA was an avenue to citizenship for undocumented immigrants. Under the law, persons who had been in the United States continuously since 1982 could apply for temporary residency. Under the Legal Authorized Workers Program (LAW), applicants had to pay a \$185 filing fee for the costs of administering the program and demonstrate that they were of “good moral character” (no criminal record).²³ After 18 months these individuals could apply for citizenship, and during this stage, the immigrant had to show proof of English language competency, knowledge of American civics, and otherwise normal requirements to be met for naturalization.²⁴

That notwithstanding, for agricultural workers, IRCA established the Special Agricultural Worker Program (SAW). Under this program, applicants could apply for permanent residency without meeting the civics and language requirement for applicants to the general legalization program, and the program was funded through appropriated funds, not applicant fees.²⁵ In addition, the act also provided for temporary agricultural workers, establishing a system in which individuals could file for an H-2A work visa. The act also called for a \$4 billion State Legalization Impact Assistance Grant (SLIAG) to be created to help defray anticipated costs that states would incur in terms of health care, public assistance, and English/civics classes for newly authorized immigrants.²⁶

IRCA was implemented in three phases: (1) 6-month education period; (2) 1-year period during which warnings were issued to first-time violators; and (3) full enforcement of sanctions against employers who violate the law.²⁷ Shortly after enactment, the Georgia Poultry Federation wrote a letter to the Immigration and Naturalization Service asking the agency to work with the poultry industry to establish a system for quickly and accurately verifying whether or not a prospective employee is authorized to work in the United States.

Five years later in 1996 the Employment Verification Pilot Program was established with 31 poultry processing companies signing up when it was launched. Other systems evolved over the years including the E-Verify system which is now widely used in the poultry industry. This history illustrates that one of the key issues in immigration policy, a trusted and efficient system to verify employment eligibility, continues to be part of the immigration reform policy debate over 20 years later.²⁸

IRCA was supported with an appropriation of \$422 million for fiscal year 1987 and \$419 million for fiscal year 1988 to the INS. Additionally it authorized \$12 million to the Executive Office for Immigration Review for 1987, and an additional \$15 million for 1988. An additional \$35 million was also authorized to establish an immigration emergency fund. This was to be used for an increase in border patrol and other enforcement activities.²⁹

The act also provided for criminal sanctions for the smuggling of aliens and imposed liability on the owners and operators of international bridges and toll roads.³⁰ This represented a

²³Betsy Cooper and Kevin O’Neil, Migration Policy Institute, *Lessons from the Immigration Reform and Control Act of 1986*, 2005, p.4 (here after cited as *Lessons from Immigration Reform and Control Act of 1985*).

²⁴ Ibid.

²⁵ Ibid.

²⁶ Muzaffar A. Chishti, testimony, *Hearing before the Subcommittee on Immigration, Citizenship, Refugees, Border Security, and International Law of the Committee on the Judiciary House of Representatives*, Washington, D.C., Apr. 19, 2007, p. 15.

²⁷ U.S. Government Accountability Office, *Immigration Reform: Status of Implementing Employer Sanctions After One Year*, GAO/GGD-88-14, 1987, p. 11 (hereafter cited as *GAO 1988 Immigration Reform Report*).

²⁸ Mike Giles, executive director, Georgia Poultry Federation, testimony before the Georgia Advisory Committee, Consultation, Duluth, GA, Feb. 3, 2013, transcript, pp. 12-13 (hereafter cited as *Immigration Transcript*).

²⁹ Pub. L. 99-603 Sec. 111 (b)(1)-(2) (1986), 8 U.S.C. 1101 Sec. 404(b) (1991).

³⁰ 8 U.S.C. §1324(a).

\$123 million increase in the INS budget allocation from 1986 to 1987, \$33.7 million of which was dedicated to employer sanctions.³¹ Between 1987 and 1988, 500 investigators responsible for employer sanction enforcement were added to INS headquarters, and 135 Border Patrol positions were added in fiscal years 1987 and 1988.³² Border enforcement also increased, as Border Patrol funding increased 61 percent between fiscal years 1986 and 1990.³³

Following the enactment of IRCA, over 3 million people applied for temporary residency. Of those, nearly 2.7 million people received permanent residency.³⁴ However, as noted by the GAO, following this legislation there was a high production and use of fraudulent documents. According to the GAO, from October 1996 through May 1998 about 50,000 unauthorized aliens used 78,000 fraudulent documents to obtain employment. The INS also determined that 2,100 employers unknowingly hired unauthorized aliens because of fraudulent documents.³⁵

Immigration Act of 1990 and amnesty programs during the 1990s

The Immigration Act of 1990 (IMMACT) followed IRCA.³⁶ IMMACT increased the overall ceiling on family-based immigration to 480,000 and, for the first time, included the spouses, minor children and parents of citizens under that ceiling. However, because admissions of spouses, minor children and parents of citizens remained unlimited under the 1990 Act, the act required that a minimum of 226,000 visas be reserved for the family-preference categories.

In addition, the act raised the ceiling on employment-based immigration to attract desired workers and professionals. Under the act, there are five employment-based preference categories under which a person may be admitted to the United States: (1) priority workers, (2) professional workers, (3) workers in occupations deemed to be experiencing shortages, (4) religious workers, and (5) persons willing to invest at least \$1 million in businesses located in the United States. Finally, IMMACT created a new, permanent lottery program under which immigrant visas are distributed randomly among applicants from countries with low immigrant-admission rates. The act allows for a lottery system that provides 55,000 permanent resident visas, an increase of 40 percent—also known as the “Green Card” lottery.

Diversity was expanded under the act by the creation of the Diversity Immigrant Visa Program (DIVP). DIVP allowed for additional access to immigration for citizens of countries whose emigration to the United States is low or underrepresented. Visas for the DIVP are sorted among eligible countries, which in turn are sorted into six geographic regions. Visa limits are set for those regions on the basis of immigrant admissions in the past five years and a region’s total population. Applicants must have either a high school diploma or its equivalent or two years of work experience within the past five years.

³¹ *Lessons from the Immigration Reform and Control Act of 1986*, 2005, p. 3.

³² *GAO 1988 Immigration Reform Report*, p. 15.

³³ U.S. Government Accountability Office, *Border Patrol: Southwest Border Enforcement Affected by Mission Expansion and Budget*, GAO/GGD-91-72BR, 1991, p. 3.

³⁴ *Lessons from the Immigration Reform and Control Act of 1986*, p. 3.

³⁵ U.S. Government Accountability Office, *Illegal Aliens: Fraudulent Documents Undermining the Effectiveness of the Employment Verification System*, GAO/T-GGD/HEHS-99-175, 1999, p. 2.

³⁶ Pub. L. 101-649, 104 Stat. 4978 (1990).

Table 4: Immigrant and non-immigrant visas Issued, 2008-2012

	2008	2009	2010	2011	2012
Immigrant Categories					
Immediate Relatives	238,848	227,517	215,947	216,856	235,616
Special Immigrants	2,559	4,325	3,043	1,861	5,219
Vietnam Amerasian Immigrants	77	48	23	35	75
Family Sponsored Preference	169,896	176,273	200,567	192,891	189,128
Employment Sponsored Preference	13,472	13,846	12,701	15,099	19,137
Diversity Immigrants	45,246	46,761	49,771	49,507	33,125
Total	470,098	468,770	482,052	476,249	482,300
Non-Immigrant Categories					
Visas Issued	6,603,076	5,804,182	6,422,751	7,507,939	8,927,090
B1/B2 Border Crossing Cards	(750,483)	(707,255)	(971,886)	(1,143,100)	(1,493,267)
Total	6,603,076	5,804,182	6,422,751	7,507,939	8,927,090

Source: U.S. Department of State, Bureau of Consular Affairs.

Note: Combination B1/B2 visitor visa/border crossing cards are issued to Mexican nationals.

Countries that accounted for more than 50,000 immigrant admissions under the numerically limited categories during the previous five years are excluded from participation in the program.³⁷ Two such current countries are China and Mexico. In addition multiple amnesties were also passed between 1994 and 2000 for immigrants, such as the Nicaraguan Adjustment and Central American Relief Act (NACARA) that gave legal status to approximately one million illegal immigrants mostly from Central America who had lived in the United States since 1995.³⁸

Finally during the 1990s, Operation Gatekeeper went into force in 1996. It was intended as a measure to tighten border security at the San Diego-Mexico border. The first phase implemented in this measure involved establishing new checkpoints on nearby California highways. Another aspect of Operation Gatekeeper targeted professional smugglers of undocumented immigrants over the border.

The second phase of Operation Gatekeeper involved establishing Immigration Courts at the border to facilitate the deportation of those attempting to gain entry through the use of forged documents or false representation.

The final phase introduced a record-keeping program known as IDENT, an automated biometric fingerprint identification system. In Section 326 of the Criminal Alien Identification System, Congress specifically directed the INS to expand the use of IDENT “to apply to illegal or criminal aliens apprehended Nationwide.”³⁹

Immigration Reform and Immigrant Responsibility Act of 1996

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRAIRA)⁴⁰ was passed in 1996. IIRAIRA created mandates that illegal immigrants who stay unlawfully in the country from 180 to 365 days must be deported and remain outside of the United States for a

³⁷ Ibid., p. 9.

³⁸ Title II, Pub.L. 105-100.

³⁹ U.S. Department of Justice, Status of IDENT/IAFIS Integration, Report No. I-2002-003, December 7, 2001 at <http://www.justice.gov/oig/reports/plus/e0203/back.htm> (last accessed May 2, 2014.)

⁴⁰ Pub. L. 104-208; 110 Stat. 3009-546 (1996).

minimum of three years. If they are in the United States for more than 365 days, they must be deported and remain outside of the United States for a minimum of 10 years.

The act also provided for an expansion of Border Patrol by 5,000 agents by 2001. In addition, a 14-mile triple fence along the border at San Diego was constructed, and there was required fingerprinting of any undocumented immigrant apprehended by law enforcement. In addition, the deportation of undocumented immigrants convicted of aggravated felony resulting in a prison sentence of one year or more was facilitated. The act also restricted the use of public welfare benefits by undocumented immigrants and curbed the ability of terrorists to use the immigration process to enter and operate in the United States.⁴¹

IIRAIRA was followed by the Immigration and Naturalization Service Data Management Improvement Act of 2000.⁴² The act was an attempt to implement an integrated entry and exit data system for foreign nationals. This act replaced in its entirety a provision of IIRAIRA that had required an automated system to record and then match the departure of every foreign national from the United States to the individual's arrival record.

The Immigration and Naturalization Service Data Management Improvement Act instead required an electronic system that would provide access to and integrate foreign national arrival and departure data that are authorized or required to be created or collected under law and are in an electronic format in certain databases. The GAO reported that present technology in place does not meet the statutory requirement for a biometric exit capability and does not ensure that visitors who entered the country were those who departed.⁴³

Proposed Immigration Reform

National security is consistently cited as a motive for amending immigration laws. The Border Protection, Anti-terrorism, and Illegal Immigration Control Act of 2005 was passed by the House on December 16, 2005, but failed to meet the approval of the Senate. This Act was an attempt to amend the Immigration and Nationality Act by strengthening the enforcement of the immigration laws, enhance border security, and reform the detention and removal of illegal immigrants along with terrorists and criminal aliens.

Another motivation for immigration reform is the lengthy delay in processing legal entry visas. For example, according to data from the USCIS, processing times for “stand-alone” Forms I-130, Petitions for Alien Relatives, on behalf of immediate relatives peaked at about nine months in November 2013. USCIS has promised concerted efforts to bring down processing times, and as of now USCIS is reporting processing times have been decreased.⁴⁴

The Comprehensive Immigration Reform Act of 2006 (CIRA) was introduced into Congress for the purpose of providing a complete immigration reform. This included border enforcement and enhanced security, interior enforcement, backlog reduction, agricultural job opportunities, and the DREAM Act (Development, Relief, and Education for Alien Minors). CIRA passed the Senate on May 25, 2006 but failed to pass in the House.

The Secure Borders, Economic Opportunity and Immigration Reform Act of 2007⁴⁵ was offered in the 110th Congress. The legislation would have provided legal status and a path to citizenship for the approximately 12 to 20 million illegal immigrants currently residing in the

⁴¹ *Id.*

⁴² Pub. L. 106 – 215; 114 Stat. 337 (2000).

⁴³ U.S. Government Accountability Office, *Overstay Enforcement: Additional Mechanisms for Collecting, Assessing, and Sharing Data Could Strengthen DHS's Efforts but Would Have Costs*, GAO-11-4112011, pp. 10-11.

⁴⁴ USCIS

⁴⁵ S. 1348 (proposed June 18, 2007).

United States. The bill was portrayed as a compromise between providing a path to citizenship for illegal immigrants and increased border enforcement: it included funding for 300 miles (480 km) of vehicle barriers, 105 camera and radar towers, and 20,000 more Border Patrol agents, while simultaneously restructuring visa criteria around high-skilled workers. The bill was introduced in the United States Senate, but was never voted on although a series of votes on amendments and cloture took place.

In recent years, under section 287(g) of the immigration and customs enforcement program, local police officers have been deputized to assist immigration and customs enforcement in arresting and deporting people in this country illegally. John King told the Georgia Committee that while the program could be used in an effective manner to promote community safety, it was also subject to abuse.

I appreciate the [287(g)] program. A lot of people looked at me and said, 'Wait a second, John, what are you talking about?' The reason I appreciated the program is because I use that instrument as a surgical instrument. I used it as a way to remove the cancer in the community. I'll go after a criminal who is affecting the community. I can use 287(g) effectively, because after I get a felony conviction, then we can remove that person and deport him. And if the person ever returns to our country, then he can face federal charges.

So we use 287(g) as a surgical instrument, and I believe strongly that that is how that law was created. I think it can be an important tool in our tool kit to fight crime because this is a way to remove criminal aliens who were convicted of felony crimes in our state courts and remove them out of the community and still maintain the relationship with the community. But [it should not be] used to throw a wide net to go out and pick up people standing on the street looking for work because they look illegal.⁴⁶

The recent downturn in the economy has put additional pressures on the issue of immigration in an environment when many people are either losing their jobs, looking for jobs, having their wages cut, or considered overqualified for the jobs that they have. In 2011, the Georgia General Assembly passed the Illegal Immigration Reform and Enforcement Act commonly referred to as House Bill 87. Among the requirements this legislation mandated that all employers with 10 or more full-time employees will be required to use the federal E-Verify system by July 1st this year, 2013. In addition to the E-Verify requirements there were several enforcement penalties passed in this legislation. These penalties include a provision that allows law enforcement officers to require proof of citizenship from a person or persons that are a party to a traffic violation or other minor infractions. According to Paul Bridges the Georgia measure was intended to drive illegal immigrants out of the state.

I will tell you HB 87 is not an anti-immigrant law. If you really look at what it did, it is an anti-support immigrant law. In other words, anyone who supports the immigrant, anyone who has a driver's license for driving a car is the one who is targeted by this HB 87. Anyone who has a house or a home and an undocumented person is in that home, this law covers that person, not the undocumented, not the, quote, illegal alien as it was projected to be. It was actually issued and passed into law in order to drive the undocumented from our area.⁴⁷

⁴⁶ John King, chief of police, Doraville, GA, testimony, Immigration Transcript, p. 64.

⁴⁷ Paul Bridges, former mayor, City of Uvalda GA, testimony, Immigration Transcript, p. 93.

According to Chief King, the failure of the federal government to come up with an effective method of dealing with immigration has caused states to pass legislation. Because of failure at the federal level to effectively deal with immigration issues, local, municipal, and county governments end up paying the bill for the laws and the policies over the failure to act.

[Georgia] House Bill 87 is still being examined by prosecutors, judges, and police departments. How do we interpret this bill or interpret this law? Because it is law of the land, I am sworn as police chief to enforce the law of the land. It's not an optional event. As police chief I don't get to pick and choose the laws whether I like them or not. I have to enforce them. As a result, local communities get caught in this ping-pong match between the federal government and the state.⁴⁸

Moreover, according to some, the law has had a negative impact on some segments of the Georgia economy. According to testimony from the Georgia Fruit & Vegetable Growers Association, the fruit and vegetable industry in the state employs more than 50,000 people during a single year. As a result of House Bill 87, “many harvest workers left the state to avoid potential harassment or hassle with law enforcement agents.”⁴⁹

Apart from expressed concerns regarding immigration and national security concerns, economic viability, and essential fairness, the evolving ethnic and racial composition of the country is also an underlying concern for some regarding the immigration debate. As John Tanton founder of the Federation for American Immigration Reform (FAIR) is reported to have written: “One of my prime concerns is about the decline of folks who look like you and me. For European-American society and culture to persist requires a European-American majority, and a clear one at that.”⁵⁰

It is not clear that this last concern is held by a significant proportion of the electorate. A recent poll found Americans overwhelmingly favor a bill that would give most undocumented immigrants a pathway towards citizenship. According to the same poll only 17 percent of respondents oppose a path to citizenship for citizens who have been in this country for a number of years, hold a job, speak English and are willing to pay any back taxes they owe.⁵¹

⁴⁸ King testimony, Immigration Transcript, pp. 59-60.

⁴⁹ Charles Hall, executive director, Georgia Fruit & Vegetable Growers Association, testimony, Immigration Transcript, p. 18.

⁵⁰ See, Jason DeParle, “The Anti-Immigration Crusader,” *New York Times*, Apr. 17, 2011, <http://www.nytimes.com/2011/04/17/us/17immig.html?pagewanted=all> (last accessed Aug. 23, 2013).

⁵¹ CNN Poll: Pathway to citizenship trumps border security, Feb. 6, 2014, at <http://politicalticker.blogs.cnn.com/2014/02/06/cnn-poll-pathway-to-citizenship-trumps-border-security> (last accessed May 3, 2014).

II. Immigration and the Administration of Justice

A large percentage of responding Latinos said they are less likely today than in the past to report crimes because local police are increasingly involved in enforcing immigration laws, which in turn is impeding effective crime enforcement. Critics of immigration reform allege that immigration reform is likely to increase social service costs.

Enforcement of Immigration Policy Is Adversely Affecting Community Safety

According to a study by the University of Illinois-Chicago based on a telephone survey of 2,004 Latinos in Los Angeles, Houston, Chicago and Phoenix, a large percentage of responding Latinos said they are less likely today than in the past to report crimes because local police are increasingly involved in enforcing immigration laws. According to the study about 44 percent of Latinos surveyed said they were less likely now to contact police if they were victims of a crime because they fear officers will inquire about their immigration status or the status of people they know.

In addition, 45 percent of respondents indicated they are less likely to voluntarily offer information about crimes they know have been committed because they are afraid the police officers will ask them or someone they know about their immigration status. And 43 percent of respondents said they feel less safe because local law enforcement is more involved in immigration enforcement.⁵²

- **44% of respondents reported they are less likely to contact police officers if they have been a victim of a crime for fear they or someone they know will be asked about their immigration status**
- **45% of respondents indicated they are less likely to voluntarily offer information about crimes they know have been committed because they are afraid the police officers will ask them or someone they know about their immigration status**
- **43% of respondents feel "less safe because local law enforcement is more involved in immigration enforcement"**

Chief King told the Georgia Committee that he has witnessed in his community the negative effect of current immigration policy on community safety.

We now have a segment of our community that has gone underground, so I have now members in this community who carry large amounts of cash because they don't trust the banks because they think they're going to get deported at any moment. And when they become victims of a crime, they won't report. Guess what? The predators are having a field day. The predators, the thugs out there are having a field day with the failure of our government to come up with a sensible pathway. When you don't trust your crime statistics, how do I assign investigative manpower to combat an uptick in crime? We have all the way from assaults, robberies, domestic violence. So as a Chief of Police, how do I assign those resources to go and combat crime.⁵³

⁵²University of Illinois at Chicago, Department of Urban Planning and Policy, *Insecure Communities: Latino Perceptions of Police Involvement in Immigration Enforcement*, 2013.

⁵³ King testimony, Immigration Transcript, pp. 60-62.

Paul Bridges agreed with the assessment of Chief King. The problem with undocumented migrants being subjected to crime and abuse is that they have no recourse when their civil rights have been violated.⁵⁴ Andrea Hinjosa added her experiences with police road blocks that are deliberately placed in areas where there is high concentration of Latinos.⁵⁵

With respect to working conditions, Zurita told the Committee that migrant immigrant workers are significantly underrepresented in EEOC's charge statistics even though the agency receives leads from organizations and social service organizations who serve these populations. He told the Committee that even documented workers encounter illegal employment practices, some of which have been deemed human trafficking. Other cases are not as drastic but involve unequal terms and conditions of employment including pay practices. EEOC typically encounters hurdles during its investigations because victims and witnesses do not cooperate.⁵⁶

Religious faith for many persons obligates them to provide hospitality to strangers. Frank Mulcahy, executive director of the Catholic Conference, reiterated the state of fear in migrant communities in the aftermath of Georgia's anti-immigrant legislation.

I went around two years ago speaking about House Bill 87 to a lot of our parishes. I still remember this young girl, probably about 14 years old, coming up to me afterwards. She spoke good English, but her mother was there and her mother did not speak English. So the daughter was trying to translate her mother's concerns, and she said: 'I was brought to this country when I was about six months old. My brothers were born in this country. My concern is what happens if my mother is deported. What do I do with my brothers and what happens to me?' Now, that is not something a 14-year-old girl needs to be concerned with. But that is the kind of concerns we are putting on some of these young kids, that they come home and mom and dad are gone.⁵⁷

"Vulnerable workers can face life-altering consequences if any should file charges against their employers. In one case a female employee was forced to have sex with her foreman repeatedly for fear that her husband, also an employee, and her son, also an employee, would all lose their jobs if she should file a charge, and they would be deported"

Manuel Zurita, EEOC

Jessica Nunan with *Caminar Latino*, an organization which offers comprehensive domestic violence organization for Latino families in Georgia, talked about the substantial decrease in women clients after passage of Georgia's anti-immigration bill.

We have never had an issue with numbers. We wish that wasn't an issue, but unfortunately we've always seen a large number of women asking for our help with domestic violence. [After] HB 87 was implemented, we started seeing a decrease in the number of women asking for help. We also saw a decrease in the number of men who were being sent by the court for their use of violence. So when we started working with the women and asking them why were we not seeing as many women, what the women would say is that they were afraid.⁵⁸

⁵⁴ Bridges testimony, Immigration Transcript, pp. 91-92.

⁵⁵ Andrea Hinjosa, testimony, Immigration Transcript, pp. 88-89.

⁵⁶ Manuel Zurita, te deputy director, Atlanta District of the Equal Employment Opportunity Commission, testimony, Immigration Transcript, pp. 66-67.

⁵⁷ Frank Mulcahy, executive director, Georgia Catholic Conference, testimony, Immigration Transcript, pp. 122-23

⁵⁸ Jessica Nunan, Caminar Latino, testimony, Immigration Transcript, pp. 152-53.

Problems with police practices, working conditions, and social services have possible redress in a democracy. The ballot provides citizens with the opportunity to change the conditions under which they live, and to compel a more just and fair society—but only if citizens have the right to vote. The Georgia Committee heard, however, that is not always the case for immigrants. As Helen Ho told the Committee:

She immigrated to the United States in 1979. She finally got her citizenship in 2010, so she decided to go vote for the first time. She went to the voting poll and they told her she was not on the registry. So she said that she had signed up properly and showed her passport, her driver's license, everything. It was not enough. She was only allowed to vote provisionally. And about a month after voting she got a letter saying her provisional ballot did not count.⁵⁹

Immigration Reform Debate Raises Concerns over Possible Higher Social Costs

Opponents of any type of immigration reform have been arguing that the current immigration reform bill being debated in Congress would be very costly both at the federal and local level in benefits such as Social Security, Medicare, means-tested welfare, and other programs. Recently, the conservative Heritage Foundation made news with a report predicting that the current immigration reform bill being debated in the Congress would cost the U.S. government \$6.3 trillion dollars in benefits.⁶⁰

The offered reasoning behind such assertions is that undocumented migrants are typically less skilled and less educated than the average American. As less skilled and educated American citizens are likely to receive more in benefits than they contribute in taxes, providing any kind of legal status to undocumented migrants would portend the same result. As Professor Stone told the Georgia Committee, immigration reform would likely be an increased drain on social services.

[The country] can anticipate an increased drain on our social services. For the new legal permanent residents their wages will increase perhaps by as much as 15 percent, and they will begin paying taxes. But [undocumented] migrants are usually ineligible for welfare. Once they are legalized and become citizens, there may well be a dramatic increase in the number of people on TANF, food stamps, and other welfare programs.⁶¹

The analysis fomented significant backlash, not just from expected supporters of immigration reform, but also from conservative groups such as the Cato Institute and the American Enterprise Institute. The two biggest flaws in the report according to critics from these institutes were that it did not take into account any of the economic benefits of immigration and previously undocumented immigrants coming out from the shadows; and that it underplayed the high costs of the status quo. As Alex Nowrasteh of the Cato Institute put it: “Heritage...largely ignores the wage increases experienced by immigrants and their descendants over the course of their working lives, how those wages would alter after legalization, and the huge gains in education amongst the second and third generation of Hispanics.”

In addition, the Heritage report assumes that undocumented immigrants mostly up and leave when they reach the age of 55 — whereas under the reform bill they would remain in the

⁵⁹ Helen Ho, SE Asian American Legal Advocacy Center of Georgia, testimony, Immigration Transcript, pp. 101-2

⁶⁰ Robert Rector and Jason Richwine, *The Fiscal Cost of Unlawful Immigrants and Amnesty to the U.S. Taxpayer*, The Heritage Foundation, at <http://www.heritage.org/research/reports/2013/05/the-fiscal-cost-of-unlawful-immigrants-and-amnesty-to-the-us-taxpayer> (last accessed May 3, 2014).

⁶¹ Brad Stone, professor of Sociology, Oglethorpe University, testimony, Immigration Transcript, pp. 72-3.

U.S. and draw heavily on government programs. But this assumption doesn't make a lot of sense: As Dylan Matthews points out in the *Washington Post*, the reason there currently are not more, older, undocumented migrants in the U.S. is that they were legalized by a 1986 amnesty law.⁶²

Education is critical to a thriving, information-based economy. To this point, the American Psychological Association reports that the successful incorporation of children of immigrants into the educational system is an important and fundamental challenge today, particularly in a knowledge-intensive economy. Professor Perilla dismissed the notion that immigrant children struggle in school and are a drag on the nation's educational system, rather than un-tapped resource of potential. "Sometimes it is thought that immigrants do not acculturate well and do not perform well education-wise, especially people from some cultures including the Latino immigrants. This, however, is not true. Actually, there is a pattern of high achievement in first generation immigrants."⁶³

Notwithstanding, there is resistance in Georgia to allow undocumented children migrants to obtain a higher education. SB 458 was legislation proposed in 2012 that would have banned access to college and universities across the state of Georgia at all public colleges and universities for un-documented children migrants. Although that bill was defeated, the existing current policy of the Boards of Regents at five top universities in the state denies these students access even if they merit through academic achievement.⁶⁴

Justice, Fairness and Immigration Reform

Arguably, the most challenging hurdle to dealing with the current immigration debate revolves around issues of justice and fairness. IMMACT, the 1990 immigration legislation, revised the number of persons allowed to enter the country and amended the rules for immigrants and non-immigrants alike. The overall ceiling on family-based immigration was raised to nearly one-half a million. In addition, the act raised the ceiling on employment-based immigration to attract desired workers and professionals, and in recent years nearly 150,000 have been admitted annually under these provisions. IMMACT also created a new lottery program under which immigrant visas are distributed randomly among applicants from countries with low immigrant-admission rates. The act allows for a lottery system that provides 55,000 permanent resident visas, and is more commonly known as the "Green Card" lottery.⁶⁵

As Professor Stone told the Georgia Committee, given established immigration legislation, how does the nation justify allowing persons to remain in the country who have circumvented the rules.

I have grave moral concerns over the proposal that we award Green Cards to those who were here because they broke American laws while millions of people who wish to live here and are following the law are kept out. In 2008, 13 million people applied for the 50,000 diversity visas allocated by six worldwide lotteries administered by the United States. There are many more than 13 million people who wish to come here, And billions of people do not qualify because people from China, India, Mexico, and dozens of other countries do not qualify.⁶⁶

⁶² Dylan Matthews, *Immigration reform still faces hurdles*, *Washington Post*, Feb. 19, 2013.

⁶³ Julia Perilla, professor of Psychology, Georgia State University, testimony, Immigration Transcript, p. 55.

⁶⁴ The five universities are: University of Georgia, Georgia Institute of Technology, Georgia State University, Georgia College and State University, and the Medical College of Georgia.

⁶⁵ Pub. L. 101-649, 104 Stat. 4978 (1990).

⁶⁶ Stone testimony, Immigration Transcript, pp. 74-5.

Some countered to the Georgia Committee that fundamentally immigration is rooted in civil and human rights. Every human being has dignity regardless of who they are and wherever they are from, and essential justice demands that persons be free of cruelty and exploitation. Undocumented migrant workers are hard workers. They are and have contributed to society. It is likely that every citizen in the country on a daily basis benefits measurably from their labors.

Others argue that while emigration may be a human right, immigration is not. No one, they contend, can be governed without his or her consent. That is the foundation of the right to emigrate, to withdraw one's consent from one's current country. But by the same token, each just community—consisting of those who have given their consent—has the right to determine the terms on which new members are to be admitted. That is the foundation of the right to have a policy governing immigration.

Acknowledging that undocumented workers have come to this country through other than established protocols, these individuals nevertheless came because of an implicit offer of work in typically brutal conditions producing goods and services earnestly sought by the nation. There was an implied contract offered to these persons that they could work and in return enjoy a limited taste of this country's bounty. For example, some suggest that Georgia welcomed undocumented workers in the 1990s to build the infrastructure for the 1996 Olympics and the resultant housing boom, but when the recession hit in 2008 these persons became un-wanted.

And the 25-year record of the federal government's reluctance to penalize employers for violations of the law under IRCA is testament to the implicit contract offered. Now when their services are less in demand, the response from some in the nation is to simply discard them as un-wanted refuse. Justice and fairness demand a different response—including a regularization of some sort of citizenship or some sort of a process where people can be recognized for the work that they have done.

In addition to legal increases in the numbers of legal immigrants, there has been a substantial increase in the number of visas issued to non-immigrants. These visas allow persons to come to the United States on a temporary basis, to include employment. According to Professor Stone, estimates are that perhaps as many as half of all undocumented migrants are in the country because they overstayed their legal temporary visas.⁶⁷

It was argued to the Georgia Advisory Committee that no matter what the nation does to reform the immigration system, as long as the country does not monitor and enforce the exit of temporary visa holders there will continue to be an increase in the number of undocumented migrants living in the United States.⁶⁸ The Georgia Committee was also reminded that much of the immigration to the United States has roots in the conditions of other countries. Ten years ago Catholic bishops in the United States joined with the Catholic bishops of Mexico to work together to improve economic conditions in Mexico and in other countries around the world. An improvement in social and economic conditions in other countries would offer many an alternative to migration from their homeland.⁶⁹

⁶⁷ Ibid., p. 73.

⁶⁸ Ibid.

⁶⁹ Mulcahy testimony, Immigration Transcript, pp. 128-29.

III. Immigration and the economy

Market economies can be structured into three broad-based categories: (1) information-based, (2) manufacturing-based, and (3) agricultural-based. Throughout the 19th century, the economy of the United States was an agricultural-based economy. In the 20th century, manufacturing provided the underpinnings for the nation's growing economy. Moving into the 21st century, while agriculture and manufacturing remain critical components for a diverse and vibrant economy, it is expected that economic growth and prosperity will largely be fueled through an expansion of an information-based economy.

IRCA was approved by Congress in October of 1986 as a compromise, balancing a generous pathway to citizenship with harsh sanctions against those who employed illegal immigrants and greater border security. Employer sanctions were called the keystone of the bill by its sponsors. Although sanctions were limited to fines, the bill's provisions were the first federal laws to make it illegal to hire undocumented workers.⁷⁰

Despite the sanctions under IRCA, in the 25 years since its passage there has been minimal enforcement of the law regarding the hiring of undocumented workers. In the early 1980s immigration authorities initiated 7,000 investigations each year, but by 2003 this had dropped to 2,200 investigations. In 1991 almost 1,000 fines were imposed upon individuals and companies for hiring illegal workers, but by 2003 this had dropped to 124 fines. In 1999 the total fines collected were just over \$1 million, and in no year has the amount exceeded \$3 million. In short, few fines have been imposed and the amount of these fines has not been sufficient to discourage employers from hiring illegal workers.⁷¹

Essential, Low-Skill Work Underlies a Prosperous Information-Based Economy

A modern, knowledge-based economy is dependent upon the support of an “essential economy” that provides low-wage and low-skill work that is often done in the background and cannot be out-sourced or replaced by technology. Examples of such work are trash collectors, couriers, food preparers, material movers, and janitors. Enterprises in this category have low barriers to entry and a high potential for upward mobility.⁷² In an insular economy, essential low-skill work is performed by internal members of the community.⁷³ Parallels to an isolated economy have existed within the overall economy of the United States at various points in time. For example, since the end of World War II large numbers of workers in the fast food industry have been upwardly mobile students.

The “essential economy” is a major, long-term structural component of Georgia's economy. According to a recent study, businesses in the essential economy contributed 12 percent or \$49 billion to Georgia's GDP in 2010. Its employees contribute \$114 million in sales tax each year, for the year 2011, and the essential economy's financial contribution has been consistent for the past nine years.⁷⁴

⁷⁰ Brad Stone, testimony, Immigration Transcript, pp. 69-70.

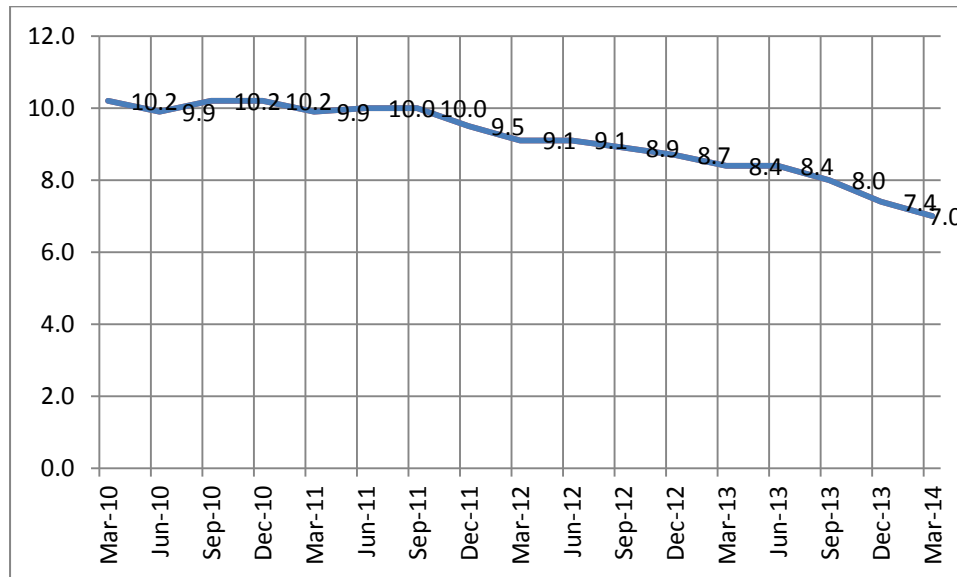
⁷¹ Ibid.

⁷² The Essential Economy Council, *The Essential Economy* (2012), pp.2 and 5, at <http://essentialeconomy.org/wp-content/uploads/2013/04/2012-Annual-Report.pdf> (last accessed Aug. 23, 2013).

⁷³ In economic theory, an insular economy is a theoretical concept in which a society is self-sufficient and does not engage in trade outside its borders.

⁷⁴ Karen Bremer, executive director, Georgia Restaurant Association, testimony, Immigration Transcript, pp. 9-10.

Figure 2: Georgia unemployment rate: March 2010 – March 2014



Source: U.S. Department of Labor, Bureau of Labor Statistics

In order to provide for a prosperous information-based economy, a country needs to create legal channels for workers who come to the country to fill the jobs necessary to keep our economy growing. To paraphrase what the essential economy does for us, “(Georgia) cannot have white-collar jobs, cannot have office managers, payroll clerks, unless it has entry-level employees. And because the state’s labor force is diminishing, we need people to do jobs in our country that are not traditional and not the jobs that most people necessarily want their children to have.”⁷⁵

Economic times have been difficult for many citizens in Georgia, and there are expressed concerns that despite the need for entry-level employees an extensive amnesty program might harm the economic prospects of legal residents. In 2010, the state’s unemployment rate hovered around 10 percent. Since 2010 the state’s unemployment has continued to fall, and by March 2014 the unemployment rate was 7 percent. But the current level of unemployment is still high by historical standards, and at a level substantially higher than a level consistent with full employment.⁷⁶

Currently most illegal immigrants are limited to jobs whose sponsors pay in cash; if they receive legal status under an amnesty program these individuals will compete for a much larger number of jobs. Native-born citizens with whom they will be competing for these jobs are those of low levels of education, people who have been faring very badly in the U.S. for over the last 40 years.⁷⁷

⁷⁵ Ibid., p. 11.

⁷⁶ Economists generally consider an unemployment rate of 5 percent to be consistent with an economy operating at “full employment”.

⁷⁷ Brad Stone, testimony, Immigration Transcript, p. 73.

Agricultural and the Nation's Food Supply Are Heavily Dependent Upon Hand Labor

As the country examines its immigration laws, it is critical to understand that without harvesters in a nation's fields a country cannot produce the food it needs to feed itself. Some equate the importance of agriculture and a nation's ability to feed itself with national defense. In Georgia, after passage of HB 87, many harvest workers misunderstood how the legislation would be enforced. As a result both documented and undocumented workers left Georgia to avoid potential harassment or hassle with law enforcement agents. With these workers vacating the state, there was a severe worker shortage to handle the 2011 spring harvest.

In 2011 the Georgia Fruit & Vegetable Growers Association conducted a study on the labor supply for fruit and vegetable harvests across seven crops: blackberries, blueberries, Vidalia onions, squash, cucumbers, bell peppers, and watermelons. "For the 2011 harvest it is estimated that the growers of just these seven crops lost more than \$140,000 in crop that was not able to be harvested because of lack of harvester availability.... Farm workers who were legal U.S. citizens left Georgia because of their concern about being harassed because they were of Hispanic descent."⁷⁸

Presently, there is a guest worker program for agricultural workers, called H-2A and administered by the U.S. Department of Labor and allows agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant foreign workers to the country to perform agricultural labor or services of a temporary or seasonal nature. Employment is of a seasonal nature where it is tied to a certain time of year by an event or pattern, such as a short annual growing cycle, and requires labor levels above what is necessary for ongoing operations. Employment is of a temporary nature to last no longer than one year.

According to testimony received by the Committee, the H-2A program has been very inefficient and very expensive for employers to implement. Presently, there are about 8,000 to 9,000 workers in Georgia under the H-2A program. It is essentially the only program that growers have at their disposal that allows them access to legal workers for their farms. But the bureaucracy and the paperwork requirements of the program have made it very difficult for employers to implement the program in a legal and cost-effective manner.⁷⁹

In addition to immigration and agriculture, the food delivery service is an integral part of the "essential economy" that supports an information economy. "Georgia restaurants are the state's second largest private sector employer. Georgia is home to over 16,000 eating and drinking establishments which are projected to generate \$16 billion in sales this year. The restaurant industry provides jobs for 378,000 Georgians. Moreover, the state's restaurant industry is expected to add 53,100 jobs over the next decade."⁸⁰

But opponents of immigration reform argue that any type of general amnesty for undocumented migrants would adversely affect citizen workers. At the Commission's briefing on immigration reform, Chuck Ellis spoke to the positive employment benefits of strict anti-immigration legislation such as Alabama's House Bill 56, which prohibits illegal immigrants from receiving any public benefits and allowed police as part of any legal stop to determine that person's legal status. Ellis said that in his home town of Albertville, AL, unemployment decreased after the law was enacted, industry has come, and jobs have followed to the benefit of Alabama's citizens.⁸¹

⁷⁸ Charles Hall, testimony, Immigration Transcript, pp. 19-20.

⁷⁹ Ibid., pp. 19 & 23

⁸⁰ Ibid., pp. 6 & 8.

⁸¹ Chuck Ellis, Councilman, City of Albertville, AL, testimony, U.S. Commission on Civil Rights, Immigration Briefing, Birmingham, AL, Aug. 17, 2012, transcript, pp. 132-34.

Legal status, however, does not change employee civil rights under federal law. The Equal Employment Opportunity Commission (EEOC) enforces the Civil Rights Act of 1964, the Age Discrimination in Employment Act, the Equal Pay Act, the Americans with Disabilities Act, and most recently the Genetic Information Nondiscrimination Act. All these laws collectively prohibit discrimination based on race, color, sex, national origin, age, religion, disability, and on wages and pay. The EEOC enforces these laws regardless of whether the employee is documented or undocumented.⁸²

Recently, Hamilton Growers, doing business as Southern Valley Fruit and Vegetable, Inc., an agricultural farm in Norman Park, Ga., agreed to pay \$500,000 to a class of American seasonal workers—many of them African-American—who, the EEOC alleged, were subjected to discrimination based on their national origin and/or race. The agreement resolves a lawsuit filed by the EEOC in September 2011.⁸³

The EEOC's suit had charged that the company unlawfully engaged in a pattern or practice of discrimination against American workers by firing virtually all American workers while retaining workers from Mexico during the 2009, 2010 and 2011 growing seasons. The agency also alleged that Hamilton Growers fired at least 16 African-American workers in 2009 based on race and/or national origin as their termination was coupled with race-based comments by a management official. Additionally, the lawsuit charged that Hamilton Growers provided lesser job opportunities to American workers by assigning them to pick vegetables in fields which had already been picked by foreign workers, which resulted in Americans earning less pay than their Mexican counterparts.⁸⁴

The EEOC also alleged that American workers were regularly subjected to different terms and conditions of employment, including delayed starting times and early stop times, or denied the opportunity to work at all, while Mexican workers were allowed to continue working. The settlement provides monetary relief to 19 persons who filed charges with the agency and other American workers harmed by the practices. Such alleged conduct violates Title VII of the Civil Rights Act of 1964.⁸⁵

IV. Presented Suggestions for Immigration Reform

In the consultation on immigration reform, presenters spoke to suggestions and proposals on immigration reform. The suggestions ranged from issues of fairness regarding the nation's laws, to family unity, to an improved employee verification system.

David Araya, *Hispanic Organization Promoting Education*

We have to stop taking educational opportunities from Georgia and as a state we need to support and encourage these talented youth to study in our universities, in the Georgia universities, and become professionals and assets to our state and our country.⁸⁶

⁸² Manuel Zurita, testimony, Immigration Transcript, p. 25.

⁸³ U.S. Equal Employment Opportunity Commission, Press Release, "Hamilton Growers to Pay \$500,000 to Settle EEOC Race / National Origin Discrimination Lawsuit," Dec. 13, 2012, at <http://www.eeoc.gov/eeoc/newsroom/release/12-13-12.cfm> (last accessed Aug.23, 2013).

⁸⁴ Ibid.

⁸⁵ Ibid.

⁸⁶ Araya testimony, Immigration Transcript, p. 123.

Karen Bremer, *Georgia Restaurant Association*

There needs to be a safe harbor system to verify and ensure that employees have the legal right to work in the United States. With that in place, I think we need a flexible workers program to deal with seasonal working issues that will facilitate getting the workers needed to staff businesses.⁸⁷

Paul Bridges, *former Mayor, Uvalda, GA*

Any reform that would provide legal documentation for persons in the country so they are no longer un-documentable. Whatever is put together, let it not be the bread crumb that we have had for many years but rather something that is worth having. Everybody is working very hard, and we do not need to throw a piece of round steak at the problem instead of filet mignon.⁸⁸

Maria Florez, *Southeast Georgia Communities Project*

We have a lot of children that were brought here without their knowledge. They had no choice but to come with their families. These are the group that we call the Dreamers. And I hope that through this project we see a path to legalization for those young people who are striving to become good citizens of the United States and be productive citizens.⁸⁹

Mike Giles, *Georgia Poultry Federation*

In order for there to be a comprehensive compromise, the issue of border security and how to accommodate people who are undocumented and already here has to be resolved. Without there being a political compromise on those two competing interests, I think the entire thing becomes then a piecemeal bill that doesn't really address in a comprehensive way what the country needs.⁹⁰

Charles Hall, *Georgia Fruit & Vegetable Growers Association*

What we have to be careful about as we start dealing with comprehensive immigration reform is the same thing doesn't happen now that happened in 1986 when there were some two million or so undocumented workers in the U.S. that were given U.S. citizenship. What was not fixed at that time was our border security and our guest worker program. Now we are 20 years hence and we have the same problem we had in 1986.⁹¹

Helen Kim Ho, *Southeast Asian American Legal Advocacy Center of Georgia*

Out of the five countries with the longest backlog for visas, four are in Asia. The family visa backlog is a huge problem for a very diverse community. One point eight million Asians are being stuck in that visa backlog and wait up to 20 years to be reunited with their families.⁹²

John King, *Chief of Police, City of Doraville*

I like the idea of somebody that wants to come to this country serving our nation, paying for the way, paying the rent, serving our nation in the military or serving our nation in one of the many programs there are to build our infrastructure.⁹³

⁸⁷ Bremer testimony, Immigration Transcript, p. 29.

⁸⁸ Bridges testimony, Immigration Transcript, p. 95.

⁸⁹ Florez testimony, Immigration Transcript, p. 89.

⁹⁰ Giles testimony, Immigration Transcript, p. 14.

⁹¹ Hall testimony, Immigration Transcript, p. 31.

⁹² Ho testimony, Immigration Transcript, p. 102.

⁹³ King testimony, Immigration Transcript, p. 75.

Frank Mulcahy, *Georgia Catholic Conference*

I think that the number one issue for immigration reform would be finding a way to unify families. Find a way to clear the backlogs which we currently have in family-based immigration, to reclassify spouses and children in such a way that their immediate relatives, keep spouses and children outside the caps. We have had various security measures, but if we are not going to go to the fundamental changes that need to be done in the immigration system, I think we are just delaying the issue.⁹⁴

Julia Perilla, *Caminar Latino*

I think the law should look at people who have come to this country and look at what they are doing and how they are doing as part of the ways in which people can access citizenship. Are they following the law? Are they upstanding citizens? Are they getting an education? Are they in some way giving something to the country?⁹⁵

Brad Stone, *Professor, Oglethorpe University*

I have grave moral concerns over any proposal that we award Green Cards to those who were here because they broke American laws while millions of people who wish to live here and are following the law are kept out. Estimates are that perhaps as many as half of all undocumented migrants are in the country because they overstayed their legal temporary visas. And no matter what we do to reform the system, as long as the country does not monitor and enforce the exit of temporary visa holders, we will see an increase in the number of undocumented migrants living in the United States.⁹⁶

Manual Zurita, *Equal Employment Opportunity Commission*

The immigration laws in their current state have created an under-class of employees who are being subjected to unfair and sometimes inhuman employment practices—practices that were outlawed in this country more than 50 years ago. Their continued exploitation is having a ripple effect in the American labor economy. If we cannot protect these employees because they fear retaliation, they are destined to become the preferred employees to the exclusion of American citizens and documented immigrants. Our failures in this regard are setting back the American workplace to that of the third world countries these employees are attempting to flee.⁹⁷

⁹⁴ Mulcahy testimony, Immigration Transcript, p. 149.

⁹⁵ Perilla testimony, Immigration Transcript, p. 74.

⁹⁶ Stone testimony, Immigration Transcript, p. 73.

⁹⁷ Zurita revised testimony, Southern Regional Office, USCCR files.

V. Findings

As such, immigration reform is an important issue, not only for Georgia but for the United States. The U.S. Commission on Civil Rights Commission is currently engaged in the emerging debate over immigration policy. In August 2012, the Commission held a briefing on the issue in Birmingham, Alabama, focusing on state enforcement of immigration laws.

Immigration reform is urgently needed. Delay at the federal level to address this issue is compromising essential civil rights, while also weakening the essential social, economic, and moral fabric of the overall society.

Public safety is being undermined.

Effective policing requires cooperation between law enforcement officials and the public. Current immigration laws and their enforcement have served to undermine the essential trust between law enforcement officials and the public. The result is less safe and secure environments. This in turn has placed both law-abiding persons in greater individual peril, and the community at large at greater risk for harm given the lack of cooperation between the community and the police.

Immigration law should not alienate the police from the communities they serve.

Employer as well as employee rights are being subverted.

A level playing field for all competitors is essential for markets to provide an efficient supply of goods and services for consumers. Current immigration laws and their enforcement have served to subvert market efficiency. Employers who attempt to act in accordance with the nation's immigration laws and abide by worker laws are at a competitive disadvantage with those who use the current situation as a shield to gain an un-fair competitive advantage. In turn, employees invited to come or remain in the country in an authorized manner by such employers are left defenseless to illegal workplace abuse.

Immigration law enforcement should not provide unfair competitive advantages.

Family unity is being disrupted and equal educational opportunity is being denied.

Families are strengthened and communities enhanced when families are intact; and education is an essential element for an expanding and prosperous information-based economy. Current immigration law enforcement has unnecessarily divided parents from children and caused many families—children and adults alike—to live lives of constant fear. Parents are being deported and their children placed in foster care. Children brought into this country at an early age and knowing no other country are being denied an equal access to higher education.

Immigration policy should not disrupt families and keep children from higher education.

Free expression of religion is being challenged.

Religious faith for many persons obligates them to provide hospitality to strangers. Current immigration laws and the incumbent mandates to report undocumented immigrants to civil authorities places many persons—from a faith perspective—in a difficult moral position. Their essential morality compels compassion to the downtrodden. Their respect for just civil authority compels an adherence to a nation's laws.

The immigration laws of a nation should not force persons to live outside their moral convictions.

VI. Recommendation

The following recommendations made through the U.S. Commission on Civil Rights to state and local officials are submitted in accordance with the provisions of Section 703.2(e) of the Commission's regulations calling upon Advisory Committees to "initiate and forward advice and recommendations to the Commission upon matters which the State Committee has studied."⁹⁸

The Congress and the President need to act without further delay to permanently reform the nation's broken immigration system. The Georgia Advisory Committee to the U. S. Commission on Civil Rights recommends that the Commission address this issue as a priority, and urges the members of the Georgia Congressional to join with the Commission in reforming the country's immigration laws in a manner that will improve public safety, provide fairness and equal opportunity in the market place, maintain family unity, allow for the children of undocumented immigrants to aspire to higher education, and permit the free expression of religion.

⁹⁸ The findings and recommendation were adopted at a meeting of the Georgia Advisory Committee on May 27, 2014.

Georgia Advisory Committee to the U. S. Commission on Civil Rights



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