

## The Case Against So-Called Comprehensive Immigration Reform and for, instead, Enforcing the Numerical Limits on Immigration Adopted by Congress

Jan C. Ting

Follow this and additional works at: <https://scholarship.law.stjohns.edu/jicl>



Part of the [Immigration Law Commons](#)

---

This Article is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in Journal of International and Comparative Law by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact [selbyc@stjohns.edu](mailto:selbyc@stjohns.edu).

THE CASE AGAINST SO-CALLED COMPREHENSIVE  
IMMIGRATION REFORM AND FOR, INSTEAD,  
ENFORCING THE NUMERICAL LIMITS ON  
IMMIGRATION ADOPTED BY CONGRESS

*Jan C. Ting*\*

COMMENTS DELIVERED AT ST. JOHN'S UNIVERSITY SCHOOL OF LAW,  
MARCH 19, 2010

We all know this is a census year, and we await the results of the 2010 census with great interest. Many of us also know that, in the five years that separate these decennial censuses, the bureau of the census makes an official estimate of America's population. In 2005, the official estimate of the United States population was 296 million, of which 36 million were foreign born.<sup>1</sup>

To use the estimate that the panelists were making, about one-third of those, or 12 million, were illegally in the United States or, if you prefer, undocumented.<sup>2</sup> That was the official estimate, not of the illegal aliens, but the population estimate.

Last year, the Pew Research Center released a population study, which is available online, which estimated what the American population was going to be in the year 2050 if we do nothing, if nothing changes.<sup>3</sup> The estimate was that in 2050, the U.S. population is going to be 438 million if we do nothing.

If you want to then do the subtraction, you can see that that represents an increase of 142 million people in the United States. And particularly for

---

\* Professor of Law, Temple University School of Law; J.D., Harvard University, 1975. Former Assistant Commissioner, 1990–1993, Immigration and Naturalization Service, U.S. Department of Justice.

<sup>1</sup> Jeffrey S. Passel, *U.S. Population Projections: 2005–2050*, Pew Research Center, at 1, 9 (Feb. 11, 2008), <http://pewhispanic.org/files/reports/85.pdf> [hereinafter Pew Report].

<sup>2</sup> *Id.* at 36.

<sup>3</sup> *Id.*

those of you who are young people, you need to think about, if we do nothing, what it is going to be like to have 142 million additional people in the United States.

Where are they all going to live? Where are they all going to park their cars? Where are they all going to drive their cars? How many new highways are we going to have to build? How much more land are we going to have to pave over? How many more million barrels of oil will the U.S. have to import? How many more deep water wells will have to be dug in the ocean? How many more tons of coal will have to be burned to keep electricity on in homes for 142 million more people? Where are they going to educate their children? Where are they all going to get healthcare?

What is the implication of having 142 million more people here on the environment,<sup>4</sup> and global warming, and climate change,<sup>5</sup> and all the issues that we are talking about these days? Think about waste disposal for 142 million. That is if we do nothing.

Here is the punch line of the Pew research study: Of that 142 million increase, 82% is attributable to immigration. Only 18% of the increase is attributable to the natural growth of the 2005 baseline population.

If we are to project and assume that nothing changes, about one-third of that 82% is going to be illegal immigration.<sup>6</sup> That is what is coming if we do nothing.

Obviously, we have it within our means to make that number go up even higher. I think some of the legislation that has been talked about on the panel will do that. You think 142 million is not enough to add to our population by 2050? We can make that number bigger. And there are bills introduced in Congress to make that number much bigger by loosening our immigration laws.

So what should we feel about that? That is the question I want to put before you. Let us start by noting that all Americans are either immigrants

---

<sup>4</sup> See David Pimentel et al., *Impact of Population Growth on Food Supplies and Environment*, <http://dieoff.org/page57.htm>.

<sup>5</sup> See Victoria D. Markham, *U.S. Population, Energy & Climate Change*, Center for Environment & Population (2008), <http://www.cepnet.org/documents/USPopulationEnergyandClimateChangeReportCEP.pdf>.

<sup>6</sup> Pew Report, *supra* note 1, at 1.

themselves or the descendants of ancestors that came here from somewhere else, and that includes Native Americans.

I grew up in an immigrant household. Both of my parents were immigrants. Most of their friends were immigrants. Many of the children I played with were children of immigrants.

So I, like all of you, have tremendous respect for our immigrant ancestors, have an appreciation of the immigrant experience, which is always difficult, and is never an easy experience. And we ought to appreciate the struggles that our ancestors went through to establish themselves here. But that is not the question before us, whether we should respect immigrants or not. Of course, we should respect immigrants.

The question before us is this: “Is our respect for immigrants so great that we will accept into the United States every single person who wants to come here in search of a better life for themselves and their families as our ancestors did?”

Or alternatively, “do we want instead numerically enforced limitations on immigration to the United States?” That is a binary, yes or no choice. And we have to decide between an unlimited immigration policy of letting in all the people who want to come here in search of a better life, or a policy advocating numerical limit.

I want to discuss with you the pros and cons, because I always tell people, “I am a lawyer. I can argue both sides.” So let me talk about those two different alternatives.

### 1. OPEN BORDERS

There is a lot to be said for open borders, and I respect the proponents of the open border argument. First of all, it is easy to administer, and avoids having to make a lot of hard decisions about who to admit and who not to admit. Just let everyone in.

It will save the American taxpayers billions of dollars on immigration law enforcement if we just adopt a policy of open immigration.<sup>7</sup> And there are all kinds of philosophical arguments we can make for open

---

<sup>7</sup> See *DHS Announces \$12.14 Billion for Border Security & Immigration Enforcement Efforts* (Jan. 31, 2008), [http://www.dhs.gov/xnews/releases/pr\\_1201803940204.shtm](http://www.dhs.gov/xnews/releases/pr_1201803940204.shtm).

immigration. It serves our utilitarian values. What benefits the most people? Oh, open borders benefits the most people, particularly the immigrants themselves.

What serves egalitarian values, demonstrating that we are all equal? Again, open immigration serves those values. What policy advances social justice? What serves our economic values, driving down both wage costs and prices?<sup>8</sup> The discount stores tell us lower prices mean a better life. Everyone benefits from unlimited immigration.

Of course, along the way, we solve the problem of illegal immigration once we adopt open borders. And so there are many components of open borders, many articulate components. Many in the business community think this would be a great thing for America. One of their leading spokespersons, the editorial board of the *Wall Street Journal*, has famously come out in favor of a constitutional amendment that simply says, "There shall be open borders."<sup>9</sup> That will end the debate once and for all. There are many arguments to be made, and I respect the proponents of those arguments.

## 2. NUMERICAL LIMITS

Enforcing numerical limits, on the other hand, I think is a harder choice to make, because it requires making further decisions on how many we are willing to take of the hard-working, ambitious people. How many are we willing to take? Are a million immigrants every year enough? Are they too many?

What types of people are we willing to take? Do we, like Bill Gates, want more educated immigrants with advanced degrees?<sup>10</sup> Or do we want instead the uneducated, unskilled laborers to do tough, dirty jobs at low

---

<sup>8</sup> See *Immigration: Shaping and Reshaping America*, Population Bulletin (Population Reference Bureau, D.C. June 2003), at 27–28; see also Douglas Rice, *3 Ways Immigration Helps and Hurts the Economy* (Aug. 26, 2009), <http://financialedge.investopedia.com/financial-edge/0809/3-Ways-Immigration-Helps-And-Hurts-The-Economy.aspx>.

<sup>9</sup> See generally Stuart H. Hurlbert, *Wall Street Journal Needs to Open Its Eyes, Not Border* (July 4, 2001), <http://www.sci.sdsu.edu/salton/OpenBorderBartleyWSJ.html>.

<sup>10</sup> See *Bill Gates: U.S. Senate Committee hearing on Strengthening American Competitiveness* (Mar. 7, 2007), <http://www.microsoft.com/Presspass/exec/billg/speeches/2007/03-07Senate.msp>.

wages that Americans reject? These are difficult questions with well-funded lobbyists arguing for each side.

There are harsh consequences of enforcing numeric limits on immigration to the United States. You end up having to keep out honest, hardworking people that just want a better life for their families.

When those people who do not have permission to come to the U.S. come anyway, we will end up removing them from the United States with all kinds of harsh consequences for themselves and their families. But that is a consequence of having numeric limitations.

We are not talking about criminals or sexual predators. We are always going to try and keep those people out regardless of whether we have numeric limits on immigration or not. We are talking about the hardworking majority of would-be immigrants who just want a better life for themselves and their families.

If you elect to have a numeric limitation, then most of those people are not going to be authorized to immigrate to the U.S. And if they come in anyway, they are going to be subject to removal from the United States. So make your choice. Make up your mind. Which policy do you want?

Politicians hate having to make that choice. Does that surprise you? Politicians do not want to have to make any choice which will lose them any votes. They say, “We want a third choice. We want a third choice that makes us look both tough and compassionate at the same time,” because that is how they all think of themselves, tough and compassionate. “So do not make me make that choice. I need a third way.” And they also know that open borders will never sell with the American people. If you ask that question directly, “Do you want an open borders policy that admits everyone in the world who wants to come in as a hardworking soul in search of a better life like our ancestors?” “Heck no.” That is a political non-starter.

### 3. THE THIRD WAY

So we have got to retain some sort of numeric limits in building this new third policy. Of course, we are going to constantly be tinkering with these numeric limits—how many, what kind. That is an ongoing process.

Keep spending. You know those billions of dollars we are spending on

enforcement now? We can show our toughness by spending even more. That will show them how tough we are. So we are going to spend even more on immigration enforcement than we do now.

We are going to spend more on technology. We love technology in America, so we are going to build this high-tech fence around the border, not a real fence, of course, which might offend our neighbors, but a high tech one, which costs much more but does much less.<sup>11</sup> Even if all we get is color pictures of people coming into the United States illegally, at least we have not offended anyone by putting up a real fence.

We are going to hire more people and put them to work enforcing immigration laws, like a jobs program. We are going to give them salaries, benefits and healthcare. We are creating a lot of jobs for Americans. They can work the border patrol and ICE and Customs.<sup>12</sup>

We can bury the stuff that we want into all this high profile third way legislation. We do not really want to do much enforcement. We do not really want to have to deport illegal aliens, because deportations result in bad press and sympathy for the poor people who are searching for a better life. So in every case, we want the government to look for an exception that will let these people stay in the United States despite their violation of our immigration law.

If we cannot find an exception for them, we can just give them legalization, or maybe we can call it a pathway to citizenship. We do not want to call it amnesty, because that term has been used already.<sup>13</sup> But that is basically the third course: Numeric limits on immigration on the books, but *de facto* open borders.

*De facto* or open borders is our right, because, are people outside who are thinking about coming illegally to the United States going to know that

---

<sup>11</sup> See *Virtual Border System Ineffective, Out of Cash*, Homeland Security Newswire (July 16, 2009), <http://homelandsecuritynewswire.com/virtual-border-system-ineffective-out-cash?page=1,0> [hereinafter *Virtual Borders*].

<sup>12</sup> Charles Babington, *House Approves More Agents, Drones on Border*, WASH. TIMES, Aug. 10, 2010, available at <http://www.washingtontimes.com/news/2010/aug/10/house-approves-more-agents-drones-border/> [hereinafter Babington].

<sup>13</sup> See Steven A. Camarota, *New INS Report: 1986 Amnesty Increased Illegal Immigration*, Center for Immigration Studies (Oct. 12, 2000), <http://www.cis.org/articles/2000/ins1986-amnesty.html> [hereinafter *New INS Report*].

we are doing this? Do you think they are going to find out that we have passed this legalization program for people that are undocumented in the United States? Do you think that attracts them to come to the United States?

One of my favorite economists, Walter Williams, used to teach at Temple when I started teaching there. Walter Williams always used to say, “You know, the poor people of the world may be poor, but they are not stupid.” They are as capable of multi-functional cost benefit analysis as anyone of us. They can look at all the factors and all the risks that are entailed in making an illegal trip into the United States, and they can make up their minds what is in their best interest, just like you or I would. They are not stupid.

So the choice is basically what I said originally, open borders or numerically enforced limit. The search for a middle ground is simply a pathway that will lead us to open borders.

If you are going to keep numeric limits, and I think we should—I do not think the whole system is broke, there is just not enough enforcement. What do we do about the 12 million “illegals,” as people are constantly telling us, “Oh, you cannot deport 12 million people. It would take forever,” right? That is an impossibility.

That may be right, but I also think that is a straw man. The reality is that the number of the illegal population in the United States actually goes down every year for a variety of reasons.<sup>14</sup> There are volunteer returns. Some people do get removed or deported.

Some of them die in the United States. And some of them find a way to be legalized, either through military service, marriage to American citizens, and there are other ways that people get legalized. It varies from year to year. The numbers are down most recently, but in a typical year, the illegal alien population goes down by about 400,000 every year.<sup>15</sup>

The problem is, every single year, a large number of illegal aliens

---

<sup>14</sup> See Steven A. Camarota & Karen Jansenius, *A Shifting Tide Recent Trends in the Illegal Immigrant Population*, Center for Immigration Studies (July 2009), <http://www.cis.org/articles/2009/shiftingtide.pdf>.

<sup>15</sup> *Id.*



comes into the United States, something like 500,000.<sup>16</sup> So our problem is that, if we are going to maintain the numeric system, we have to get the number of “illegals” up a little bit. We need to get the number down a little bit so that the net number actually goes down every year.

If we can do that, we will send a clear message to the world that we are enforcing our laws. We would not have people making that cost benefit analysis to decide whether to come to the United States. You know, I have listened to President Obama support the comprehensive bill that is being proposed here.

I voted for President Obama. I support President Obama. The one reason I supported President Obama was because I know that, if you support legalization, John McCain was the one who had the most likelihood of actually getting that through and actually having a bipartisan bill.

I knew that, although President Obama says he is for comprehensive immigration reform,<sup>17</sup> he does not really have the strength. I think he is surrounded by smart people. I think his smart political advisors are telling him that this is not the time for a comprehensive immigration.

I have a lot to say about national security, but I do not want to abuse my time. I will simply say that I think the connection between the immigration and national security is self-evident. In the last six months, we have seen the failed bombing over Detroit on a Delta flight.<sup>18</sup> We have seen a raging drug war on the southern border.<sup>19</sup>

---

<sup>16</sup> See, e.g., Barlett et al *Who Left the Door Open?*, TIME, Sept. 12, 2004. See, e.g., *How Many Illegal Immigrants? Illegal Immigrant Problems & Statistics*, Federation for American Immigration Reform, [http://www.fairus.org/site/News2?page=NewsArticle&id=16859&security=1601&news\\_iv\\_ctrl=1007](http://www.fairus.org/site/News2?page=NewsArticle&id=16859&security=1601&news_iv_ctrl=1007).

<sup>17</sup> David Jackson, *Obama Still Committed to 'Comprehensive Immigration Reform'*, USA TODAY, Sept. 17, 2010, available at <http://content.usatoday.com/communities/theoval/post/2010/09/obama-still-committed-to-comprehensive-immigration-reform/1>.

<sup>18</sup> *Detroit Airliner Incident 'Was Failed Bomb Attack'*, BBC News (Dec. 26, 2009), <http://news.bbc.co.uk/2/hi/8430612.stm>.

<sup>19</sup> See, e.g., Stephanie Hanson, *Mexico's Drug War*, Council on Foreign Relations (Nov. 20, 2008), [http://www.cfr.org/publication/13689/mexicos\\_drug\\_war.html](http://www.cfr.org/publication/13689/mexicos_drug_war.html). See, e.g., Ted Galen Carpenter, *Monterrey: The Latest Casualty in Mexico's Drug War* (Sept. 20, 2010), <http://nationalinterest.org/blog/the-skeptics/monterrey-the-latest-casualty-mexicos-drug-war-4106>.

We have seen the U.S. government abandon the virtual fence effort, because they know it does not work.<sup>20</sup> We have seen the border patrol reports more Chinese illegal immigrants through the Tuscan sector.<sup>21</sup> If the Chinese can get across the border, who cannot?

One of the best arguments for putting some numerical limit on immigration, I think, is national security. Fewer immigrants allows more time for screening. Ted Alden talks about the big haystack, looking for a needle in a haystack. If you are looking for a needle in a haystack, make the haystack smaller, that will make it easier.

If we can stop one of these nice terrorists from coming in, we have done a good thing. And we need to build a real fence on the southern border. Now that we have abandoned the virtual fence, because we know it does not work, let us build a real fence.

The best thing we can do for national security is to limit the numbers of immigrants into the United States.

#### POSTSCRIPT TO REMARKS

It is a feature of the Immigration and Nationality Act<sup>22</sup> that people can be admitted by means outside the immigration selection system. The Haitian Immigration and Refugee Act<sup>23</sup> and the Nicaragua Adjustment and Central American Relief Act<sup>24</sup> are examples of this. Furthermore, the Cuban Refugee Act of 1966<sup>25</sup> is still on the books. All of these admissions are not charged off against numerical limitation.

In all these legislative actions, the public interest outweighs conforming to this immigration selection system. This affects the undocumented aliens

---

<sup>20</sup> See *Virtual Borders*, *supra* note 11.

<sup>21</sup> Stephen Ceasar, *In Arizona, a Stream of Illegal Immigrants From China*, N.Y. TIMES, Jan. 22, 2010, available at <http://www.nytimes.com/2010/01/23/us/23smuggle.html> [hereinafter Ceasar].

<sup>22</sup> Immigration and Nationality Act, Pub. L. No. 89-236, 79 Stat. 911 (1965).

<sup>23</sup> Haitian Refugee Immigration Fairness Act, Pub. L. No. 105-277, §902, 112 Stat. 2681 (1998).

<sup>24</sup> Nicaraguan Adjustment and Central American Relief Act, Pub. L. No. 105-100, §202, 111 Stat. 2160 (1997).

<sup>25</sup> Cuban Refugee Adjustment Act, Pub. L. No. 89-732, 80 Stat. 1161 (1966).

we have in the United States today. This is an ongoing process, and it is going on all the time. It is also true that, every time we make a decision to let more people into the United States, that triggers even more people coming into the United States.

One of the reasons we have 12 million “illegals” in the U.S. is because we did a big amnesty in 1986. We did a big amnesty in 1986 because we said, “Gosh, there are a million ‘illegals’ in the United States. Think of that. We must do something. This is an intolerable situation.” So we announce the amnesty program, and 3 million people applied.<sup>26</sup> The amnesty does legalize all undocumented aliens, but that will solve the problem, right, once and for all?

No, it sets off a cascade of people who say, “Look what these Americans are doing. They are giving out amnesty for people who are there illegally. Get yourself in there however you can. And by the way, now you got an associate that you know who lives in the United States who has a couch you can sleep on for your first week.”

Suddenly the pathway into the United States is much clearer, much faster, and much more direct. And every time the U.S. does that, whether it is Haitians or Nicaraguans or whoever, it stimulates that process. If the U.S. wants open borders, that is the path to go. That is the path to go without declaring that you are for open borders.

I respect the people who make the argument for open borders. You can engage those people in the discussion but to sneak in open borders through this incremental pathway, which has predictable consequences, is not something I can intellectually justify.

Of the number of people coming across the southern border is low border patrol still apprehends roughly 1,000 people a night.<sup>27</sup> How many people are getting through that we are not apprehending? What multiple of those whom we catch every night succeed in evading capture?<sup>28</sup>

---

<sup>26</sup> See *New INS Report*, *supra* note 13.

<sup>27</sup> See Tanis J. Salant et al., *Illegal Immigrants in U.S.-Mexico Border Counties: Costs of Law Enforcement, Criminal Justice and Emergency Medical Services* (Sept. 26, 2003), <http://www.ncjrs.gov/pdffiles1/nij/grants/201491.pdf> at 12.

<sup>28</sup> See generally Laura Karmatz & Joan Levinstein, *Who Left the Door Open?*, TIME, Sept. 20, 2004. See generally Fred Elbel, *How Many Illegal Aliens Are in the U.S.?*, The Social

We have no idea who these people are. We have no idea what their nationality is. We are doing a sample based on the apprehensions that the reality is thousands of people are coming into the United States every single night across the southern border, and we do not know who they are.

We know some of them are Chinese, because we are apprehending the Chinese, and that is in the newspapers. It is in the New York Times.<sup>29</sup> People are reading about it. You think Al-Qaeda does not read the New York Times? “Oh, Chinese are getting in across the southern border. Well, gosh, if they can come in, who cannot come in across the southern border?”

How much enforcement is enough so that every year the illegal alien population goes down incrementally? It does not have to disappear. It does not have to go away all at once or in ten years. It just needs to go down incrementally, every single year. If we can accomplish that, the immigration system that we have now would be functional.

That is exactly what is happening now. The numbers are going down every year. The immigration system works. It is not broken. I disagree with the premise that the immigration system is somehow broken. And indeed, if we have the level of enforcement that incrementally reduces the illegal alien population in the United States every single year, the system is working.

What is the pressure to do something different here? I understand the arguments for rising population, and I acknowledge those arguments. You know, India and China are stabilizing their population naturally.

The U.S. has a rising population due to immigration.<sup>30</sup> The U.S. needs to decide whether we buy into those arguments, whether we want to be one of the fast, strong, industrialized countries in the world with all the consequences and benefits that flow from that or not.

This argument entails more questions. Do we need more high-skill people? Do we need more low-skill people? There are some who argue that we need both high-skill and low-skill, so let us just let everyone in. Why not?

---

Contract (2007), [http://www.thesocialcontract.com/pdf/seventeen-four/tsc\\_17\\_4\\_elbel.pdf](http://www.thesocialcontract.com/pdf/seventeen-four/tsc_17_4_elbel.pdf).

<sup>29</sup> See Ceasar, *supra* note 21.

<sup>30</sup> See Pew Report, *supra* note 1.

The answer is simply that it is not politically acceptable to do so, but we have a lot of smoke and mirrors to try and dress up what amounts to legalization in kind of a political cover to make it politically acceptable.

Even if people are not willing to argue for open borders, they are proponents of market forces and supply and demand. Well, supply and demand market forces, in other words, people that want to come in here. People whose cost benefit analysis says, "Oh, I can have a better life here." They should all be able to come in if we institute a supply and demand policy.

That is not open borders? Of course that is open borders. You cannot call it open borders, but that is just terminology. A lot of the campaign for comprehensive immigration reform tries to dress up a politically unacceptable bill into something that can scrape together a bare majority in Congress and get passed.

I do not think it is going to happen. You heard it here first. It is not going to happen in 2010. It is not going to happen in 2011.

In the United States, a wealthy country that has its own domestic problems with drug use, how do we deal with the tremendous demand that exists in the United States for cocaine that originate in Columbia and in other countries? The drug war we have going on at the border of Mexico and beyond the border of Mexico well into Latin America extending to Columbia and other countries. Is the U.S. using too blunt an instrument in dealing with the drug issue? Is the immigration policy implemented for something that is, in part, a domestic demand issue?

We know that people are talking about legalization of drugs as a solution, and I agree that is something we should think about and talk about more. I think the reality is that, for whatever reason, we have this huge wave of violence on our southern border, and it is not just south of the southern border. It is creeping north of the southern border. And it is affecting communities in the United States all along the border.<sup>31</sup> And that is the reality that we need to think about right now.

What are we going to do about that while we think about the cosmic

---

<sup>31</sup> See Ted Galen Carpenter, *Mexico's Drug War: The Growing Crisis on Our Southern Border*, Cato Policy Report (May/June 2009), [http://www.cato.org/pubs/policy\\_report/v31n3/cpr31n3-4.pdf](http://www.cato.org/pubs/policy_report/v31n3/cpr31n3-4.pdf).

problem of prohibiting narcotic drugs? I appreciate your question. And surely, we need to deal with it and think about what the cosmic solution to that cosmic problem.

Meanwhile, we have an immediate problem on our southern border. Foreign criminals are using our side of the border as refuge and for all kinds of things. And violence is coming across and kidnappings and shootings and murders. And that requires stronger enforcement at the border.

We have been unwilling to put the fence up, even though we know the fence works. We know the fence works, because we have built the fence along stretches of the border,<sup>32</sup> and it has had a strong deterrent effect, pushing people across at other parts of the border.<sup>33</sup> We have been reluctant to build a fence for political reasons out of fear it is going to offend people on the other side of the fence.

Now we have abandoned the virtual fence because it is too expensive.<sup>34</sup> It does not work. It is not a practical alternative to building a real fence. I think we have to get to work. We need to strengthen the border. I am glad we have hired more border patrol.<sup>35</sup>

San Diego<sup>36</sup> and El Paso<sup>37</sup> are two of the cities in the United States with the lowest crime rate, right across from Juarez and Tijuana, which are murder capitals in the world. These are two places where we built the fence. That is how we know the fence works to stop, or at least substantially reduce, illegal entry.

The proper architecture is the numerical limitations on who can come. Sometimes, you hear the arguments, well, “Why not just apply legally to

---

<sup>32</sup> Richard Marosi, *U.S. Accelerates Border-Fencing Work*, SEATTLE TIMES, Sept. 30, 2007, available at [http://seattletimes.nwsourc.com/html/nationworld/2003913698\\_border30.html](http://seattletimes.nwsourc.com/html/nationworld/2003913698_border30.html).

<sup>33</sup> See Blas Nunez-Neto & Stephen R. Vina, *Border Security: Fences Along the U.S. International Border* (Sept. 15, 2006), <http://trac.syr.edu/immigration/library/P1069.pdf>.

<sup>34</sup> See *Virtual Borders*, *supra* note 11.

<sup>35</sup> See Babington, *supra* note 12.

<sup>36</sup> Ted Robbins, *San Diego Fence Provides Lessons in Border Control*, NPR (Apr. 6, 2006), <http://www.npr.org/templates/story/story.php?storyId=5323928>.

<sup>37</sup> *Border Fence in El Paso County Costing \$220 Million* (Sept. 26, 2008), <http://borderwallinthenews.blogspot.com/2008/09/border-fence-in-el-paso-county-costing.html>.

come?" Well, they cannot.

There is no preference available them, because we have made the decision that we are going to numerically limit the number of immigrants who come here every year, and we are going to pick and choose which ones we want.

We are going to set up preference categories. We are going to set up numeric limits. And if you do not fit within one of those preference categories, there is no legal way for you to come. And therefore, the only way you can come is come illegally. That is the reality.

So they are not making a decision, "Well, legally or illegally, which way do I want to come?" No, they do not have a choice, because we choose to have a numerically limited system in which we pick and choose who is legally allowed to come and who is not.

That is the debate that we need to have. Do we want to maintain a system like that, or do we want to adopt an open borders policy, without numeric limitation, for all the reasons that have been presented here about why immigration is a good thing.

For every single removal, deportation that we have, the alien must be referred to a detention center. These detention centers are really buildings that are leased by major national companies that specialize in essentially jails. These detention centers have hard conditions in many instances. These small, detailed aspects of removals and deportations need to be addressed.

I am not saying the system is perfect. There are lots of things that need to be fixed about it, and I encourage people to shine a light on the problems in our immigration system that need to be fixed, and including adjudication so people spend less time in detention.

I think there are a lot of things that can and should be done to make our system better. But on the positive question of whether we should have open immigration or numerically limited immigration, I think we have made the choice that the American people want.

Despite efforts to dress up an alternative, which is some sort of more open-market-driven border system, supply and demand borders, I do not think that is what the American people want. Let us fix the problems with

the existing immigration system.

There is an issue about jobs for U.S. workers. The reality is there are jobs that U.S. workers do not want at the wages that employers want to pay. Employers would much rather hire people at much lower wages.

The question is, “What would happen if those low-wage workers were not available?” You know, John McCain got in trouble during the ’08 campaign for saying no Americans would want to do agricultural labor even for \$50 an hour.<sup>38</sup> Americans started e-mailing him, “Where are these jobs? Where are these \$50 an hour jobs working in the sun picking fruit for \$50?” Is it surprising that Americans expect higher wages in their jobs than immigrant workers, legal or illegal?

It is also true that the people who are most affected by immigrant labor are other people who previously immigrated, and other less skilled, less educated segments of the American workforce.

Finally, I want to say that, historically, our American immigration system has viewed and encouraged immigrants as future Americans.

We view legal immigrants as people who are on a track to full citizenship and equality with all of us. The notion of temporary workers runs afoul of that. That is inconsistent with this notion of immigrants as future citizens.

Temporary worker sounds like indentured servitude. We ought to bring immigrants into this country with all the rights of any American under the constitution in terms of their ability to choose their job, choose their employers, and seek the opportunities that they feel are suited for them.

The reality is the United States admits every year under the current system more legal immigrants with a clear path to citizenship, we issue in this country every year under the current system more green cards, than all the rest of the nations of the world combined.<sup>39</sup>

---

<sup>38</sup> See John McCain, Address at the Building and Construction Trades Department 2006 Legislative Conference, available at <http://www.youtube.com/watch?v=rW0ZKeOauNI>. See generally *\$50 an Hour Picking Lettuce? You Bet* (Apr. 5, 2006), <http://blog.aflcio.org/2006/04/05/50-an-hour-to-pick-lettuce-you-bet/>.

<sup>39</sup> DHS reported that 1.13 million aliens were issued legal permanent residence in 2009. See generally Randall Monger, *U.S. Legal Permanent Residents: 2009*, Annual Flow



That is a system to be proud of. It is not perfect. There are things that we can fix about it, but I think that we are on the right track. Having worked at the old immigration service, and with District Director Andrea Quarantillo, I think our government is doing a good job of trying to create an immigration system which is fair and even handed, serves the national interest, and is best for most people.