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ILLEGAL IMMIGRATION

INTRODUCTION

In April 2006, the Pew Hispanic Center in Washington, D.C. estimated that of the 11 million foreign-born individuals thought to be living illegally in the United States today, between 75,000 and 115,000 live in Wisconsin. The federal government is concerned with illegal immigration because it presents potential threats to the country's domestic and economic security. But illegal immigration also has an immense impact on state and local governments, involving education, law enforcement, health, and public assistance. For the most part, immigration has been under the jurisdiction and control of the federal government, which has prioritized eliminating unlawful entry at the borders, especially in the American Southwest. However, as illegal immigration grows more prevalent across the country, and its effects increasingly impact localities far from national borders, states are beginning to take action.

FEDERAL LAW

Congress enacted the McCarran-Walter Bill of 1952, which combined existing immigration laws scattered throughout the federal statutes and recodified them into the Immigration and Nationality Act (INA), located in Title 8 of the U.S. Code. The INA contains both civil and criminal laws that are applied to immigration issues. Traditionally, the federal government has reserved civil enforcement power, such as verifying citizenship and deporting undocumented aliens, for itself, while allowing state and local governments some power over the

criminal enforcement that supports illegal immigration control. While state police may investigate criminal activities such as a false identification or alien smuggling rings, federal immigration officials will handle civil issues involving citizenship and deportation, and do so without any input or assistance from the state. However, this traditional separation of sovereign powers is slowly eroding as states are granted, and in some cases are taking, more of a role in dealing with illegal immigration.

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996

The Illegal Immigration Reform and Immigrant Responsibility Act of 1996 amended the INA to allow the U.S. Attorney General to enter into agreements with state and local governments to use their own local agents in immigration enforcement within their local jurisdiction. At that time, there were over 500,000 state and local law enforcement agents, a number which dwarfed that of the available federal immigration agents. This was the motivating factor in approving the act, despite its effect of blurring the line between federal and state immigration enforcement powers.

Increases in illegal immigration in the intervening years have made the agreements that resulted from the act a vital part of immigration law enforcement efforts. Because of this, Congress continues to consider bills such as the Homeland Security Enhancement Act of 2005 and the Clear Law Enforcement for Criminal Alien Removal Act of 2005, which would increase the role of state and local governments in immigration law enforcement. The federal government

has also sought to involve the states in immigration through administrative means not related to law enforcement.

The Real ID Act of 2005

In some cases, the federal government involves states in less direct immigration enforcement, as with the Real ID Act of 2005. The Real ID Act requires, in part, that a person present a federally accepted identification card in order to do such things as open a bank account, travel on a plane, or take advantage of a variety of government services. The act further requires that the states issue driver's licenses that comply with Real ID standards, which require more in-depth identification and a citizenship inquiry.

Critics have accused the federal government of essentially coercing the states into fighting illegal immigration, but not compensating them for the expense. States will have to make changes to their state identification, and changes to the application process itself, because state identification will be less useful if it does not comply with federal requirements. The claim that the federal government is coercing states into immigration enforcement has been somewhat diminished, however, as many states have voluntarily taken on citizenship issues, independent of any direction from the federal government.

In March 2006, the Wisconsin Legislature passed 2005 Assembly Bill 69, which added a proof of permanent legal status requirement to the criteria for acquiring a Wisconsin driver's license or identification card. Governor Doyle signed the bill and it became 2005 Wisconsin Act 126. When it became effective on April 1, 2007, Act 126 brought Wisconsin into compliance with the requirements of the Real ID Act and officially made Wisconsin identification federally accepted.

WISCONSIN LEGISLATION

Immigration enforcement typically falls into one of two categories: border enforce-

ment or interior enforcement. Although Wisconsin is a border state, its northern border with Canada is not seen as a major entry point for illegal immigrants, so enforcement in the state has largely been focused on interior issues. Traditionally, the federal government has focused funding on border enforcement in the American Southwest, giving less attention to other issues and areas. This has led states with interior enforcement problems, like Wisconsin, to explore more creative ways to enforce immigration law. In addition to Act 126, the legislature considered various other measures intended to address illegal immigration during the 2005 legislative session. None, however, were enacted.

2005 Assembly Bill 227 - Legal Services

2005 Assembly Bill 227 would have created new legal requirements and limits for notaries public who are not licensed attorneys. Specifically, the bill would have prohibited a notary from taking actions or making statements that could mislead others into thinking he or she is an attorney. This bill involved immigration issues because of its prohibition on non-English advertising, unless the advertisement includes, in both English and in the language of the advertisement, that the notary is not an attorney. The concern is that recent immigrants from Spanish-speaking countries may confuse a notary public for a notario publico. A notario publico is a profession in some Spanish-speaking countries, which is similar to our notary public, but carries more legal authority and responsibility, making them more like attorneys than notaries in the United States.

In some southern border states, there have been reports of notaries public misrepresenting their role in the immigration process, providing dubious, unsanctioned legal advice and accepting payment for simple tasks from immigrants who assume they have such authority based on their title. In response to such situations, several similar bills have been introduced in other states.

The bills are an attempt to protect legal immigrants and non-English-speaking citizens from being victimized, and to discourage relationships between notaries public and immigrants seeking illegal entry into the United States.

The bill was introduced in March 2005 but was not reported out of committee.

2005 Assembly Bill 576 – Education

2005 Assembly Bill 576 would have allowed aliens who are not permanent legal residents of the United States to pay resident, as opposed to higher nonresident, tuition or fees at a University of Wisconsin System or Wisconsin Technical College System school if they meet certain requirements. Additionally, the Wisconsin Technical College System normally only admits Wisconsin residents, but the bill would allow admission of a nonresident if these same requirements are met. The bill would essentially allow a citizen of any other country to become a Wisconsin resident for the purposes of the UW and Wisconsin Technical College Systems if they meet the necessary requirements.

Undocumented aliens who wished to be treated as Wisconsin residents by the UW or Wisconsin Technical College Systems would have to meet three requirements: 1) be a graduate of a Wisconsin high school or have acquired a general equivalency diploma (GED) in Wisconsin, 2) have been continuously present in the state for at least three years following his or her first day of attending a Wisconsin high school, and 3) enroll in a UW or Wisconsin Technical College System school and provide the school with an affidavit stating that he or she has filed an application for permanent legal residency in the United States, or will file such an application as soon as he or she is eligible to do so.

The bill was introduced in July 2005 and referred to the Committee on Colleges and Universities, where it ultimately died. This proposal has returned as part of the

2007-2008 biennial budget bill, 2007 Senate Bill 40.

2005 Assembly Bill 703 – Employment

2005 Assembly Bill 703 would have created certain penalties against for-profit enterprises hiring an undocumented alien. Again, this designation includes both foreign citizens who overstay a visa, and those who immigrate to the United States illegally.

The penalty for hiring an undocumented alien would essentially preclude guilty companies from receiving certain government benefits. Specifically, a company would be denied any income or franchise tax credits and any property tax exemptions from the state, would be unable to enter into the most common kinds of public contracts with state or local governments, and would be ineligible to receive any grants or loans from any local government unit. This bill is an example of the kind of interior immigration enforcement that is increasingly found in many states that do not have a high-traffic border, but still face problems as a result of the immigration that happens elsewhere.

The bill was introduced in September 2005 and referred to the Assembly Committee on Labor, where it died. The proposal has been reintroduced in this session as 2007 Assembly Bill 101.

2005 Senate Bill 43 – Housing Assistance

2005 Senate Bill 43 would have required a social security number from an applicant for any housing or economic development loan from the Wisconsin Housing and Economic Development Authority (WHEDA).

Requiring a social security number from those applying for a loan essentially makes those without a social security number ineligible for assistance from WHEDA. The bill would therefore deny WHEDA assistance to any undocumented alien, though it would do so based on the absence of a social security number rather than on any inquiry into an applicant's citizenship, which is a power normally reserved for the federal govern-

ment. Many states have attempted to put pressure on undocumented aliens by requiring a social security number as a condition to utilizing popular programs and services. These laws also generally deal with matters of state concern, thereby avoiding conflicts with the federal government on immigration jurisdiction and tradition.

The bill was introduced in February 2005 and referred to the Committee on Housing and Financial Institutions. It was withdrawn from that committee two months later and referred to the Committee on Veterans, Homeland Security, Military Affairs, Small Business and Government Reform, where it was recommended for passage but died before a full senate vote was taken.

2005 Senate Bill 715 – Law Enforcement

2005 Senate Bill 715 would have prohibited units of local government from passing a law or ordinance prohibiting immigration status inquiries by their own employees.

Local government in Wisconsin derives its powers from the state constitution and the legislature; therefore, the legislature is able to impose some limits on what kind of laws cities, villages, towns, and counties can pass. As an example, barring any conflict with other laws, a city could pass an ordinance prohibiting its employees from inquiring about the citizenship of residents who seek services, perhaps to avoid deterring immigrants from reporting crimes. Senate Bill 715 would have prohibited municipalities from being able to pass or enforce an ordinance that prohibits inquiring about immigration status. Although the bill would not grant any civil immigration enforcement powers to Wisconsin municipalities, it would guarantee that no municipality could prohibit the exercise of such a power if it were ever realized.

The bill was introduced in April 2006 and referred to the Committee on Judiciary, Corrections and Privacy. It received a favor-

able committee recommendation but received no further action.

2005 Senate Bill 567 – Public Assistance

2005 Senate Bill 567 would have required documentary proof of citizenship from any person applying for public assistance from the Wisconsin Department of Health and Family Services or the Wisconsin Department of Workforce Development. Public assistance includes low-income services such as Wisconsin Works income assistance, medical assistance, and food stamps. The measure was introduced in February 2006 and passed the legislature three months later, in May.

This bill was passed by the legislature, but was vetoed by Governor Doyle on May 26, 2006. According to the governor's veto message, he vetoed the bill because the federal Deficit Reduction Act of 2005 already created a similar requirement of documentary proof of citizenship, which Wisconsin adheres to. This proposal has returned as part of the 2007-2008 biennial budget bill, 2007 Senate Bill 40.

STATE LAWS

States have adopted various approaches to deal with immigration.

Employment – Colorado

The governor of Colorado signed a number of immigration-related bills on July 31, 2006, including 2006 House Bill 1017, which requires that employers verify each employee's citizenship within 20 days of hire, and retain proof of each employee's legal status. Under the law, the state has the power to audit employers and assess a fine of \$5,000 against those who show "reckless disregard" in their investigation of employees or submission of proof of citizenship. States such as Georgia and Idaho have passed similar laws to give private firms more responsibility in the enforcement of immigration laws and to reiterate and reinforce existing federal laws.

Human Trafficking – Iowa

2006 Iowa Senate Bill 2219 was signed into law by the governor on April 21, 2006. It was comprehensive human trafficking legislation that makes human trafficking a felony under Iowa state law. The State Department estimates that 18,000 to 20,000 individuals are trafficked into the United States each year, in violation of existing federal law. The Iowa law defines the different acts that constitute human trafficking, makes trafficking a crime under state law, sets a penalty for violating that state law, and creates a Victim's Compensation Fund. The law also calls for a study to examine the effects of human trafficking on its victims in an effort to combat the circumstances that make people vulnerable to traffickers.

Voting – Virginia

Many states are dealing with concerns that undocumented aliens are voting in elections in the United States. The governor of Virginia signed 2006 House Bill 170, which addresses noncitizens voting in Virginia elections, on May 18, 2006. The law requires the Virginia Department of Motor Vehicles to provide the State Elections Board each month with a list of driver's license applicants who are not documented citizens. The State Elections Board is able to cancel the voter registration of anyone who appears on the Department of Motor Vehicles list as undocumented. The State Elections Board must then keep those with undocumented individuals in a separate database for four years to prevent re-registration as a legal voter.

Health Care – Arizona

The Arizona Legislature passed a bill, signed by the governor on April 24, 2006, which requires an individual to be a United States citizen or a permanent legal resident in order to receive any state health care benefits or assistance. Individuals who do not fit

either of those designations, such as undocumented aliens, can receive only emergency medical services under the law. Other states have proposed such laws, and some have even proposed providing absolutely no health care assistance for undocumented aliens, including emergency care.

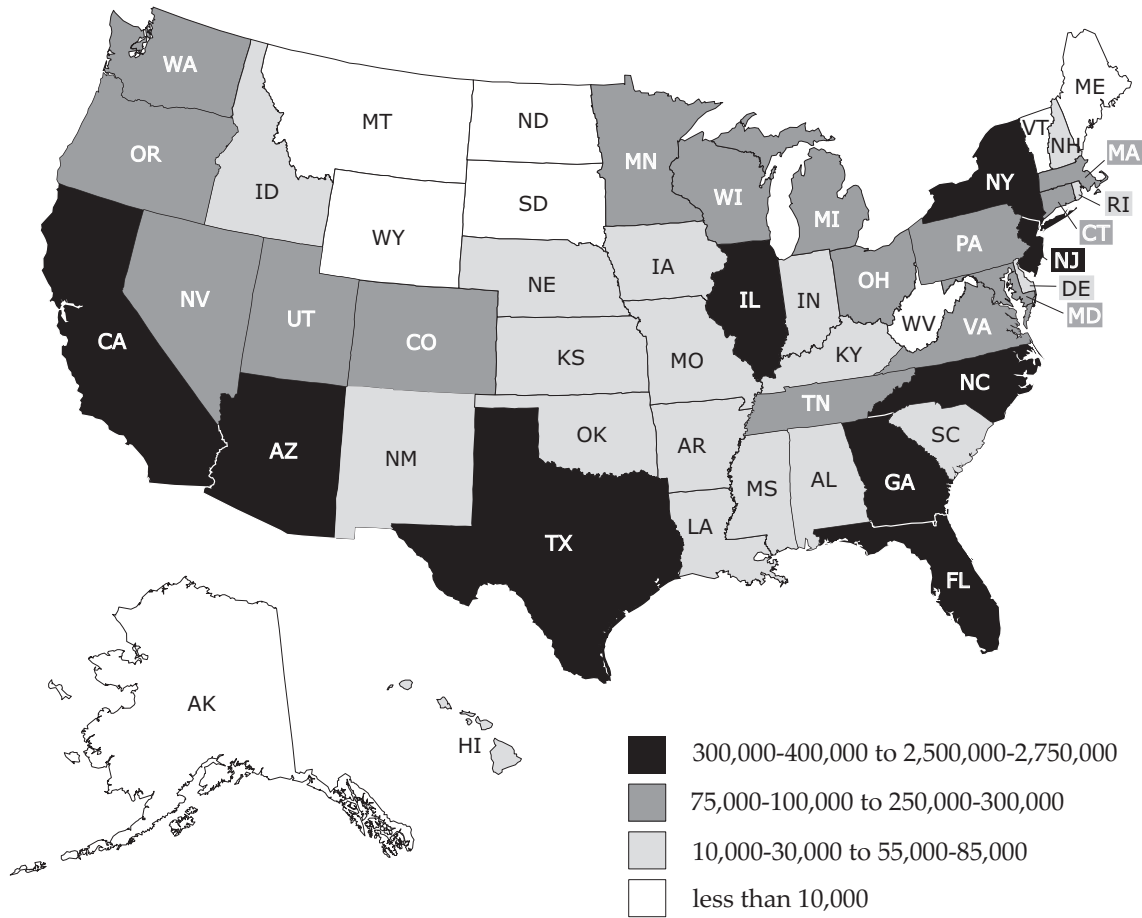
Study – North Carolina

The governor of North Carolina signed 2006 House Bill 1723 on August 16, 2006. The bill became The Studies Act of 2006, and it contains instructions and funding for the Legislative Research Commission to begin a variety of state sponsored studies. Section 2.1(e) directs the Commission to study the impact of undocumented aliens on the state of North Carolina. Under the law, the Commission may consider illegal immigration's impact on social services, the criminal justice system, and the state's economy, among other topics. This study marks one of the first times a state has looked at the wide-reaching repercussions of illegal immigration and how it impacts one state, rather than the country as a whole.

Omnibus – Georgia

In a somewhat novel approach, Georgia chose to deal with illegal immigration through one wide-ranging bill. The Georgia Legislature passed 2006 Senate Bill 529 and it was signed on April 17, 2006, by the governor. The bill addressed a number of illegal immigration-related issues, from human trafficking to state enforcement of federal immigration law to state tax and benefit treatment for aliens. The law is known as The Georgia Security and Immigration Compliance Act, and it is an example of how states can address many immigration concerns with one unified legislative response. Other states are considering using the interest in immigration reform to fast-track their own omnibus immigration bills to cut down on the obstacles and distractions of multiple bills.

Estimated Illegal Immigrant Population, by State, 2005



High Illegal Immigrant Population States

- California - 2,500,000-2,750,000
- Texas - 1,400,000-1,600,000
- Florida - 800,000-950,000
- New York - 550,000-650,000
- Arizona - 400,000-450,000
- Illinois - 375,000-425,000
- Georgia - 350,000-450,000
- New Jersey - 350,000-425,000
- North Carolina - 300,000-400,000

Medium Illegal Immigrant Population States

- Virginia - 250,000-300,000
- Maryland - 225,000-275,000
- Colorado - 225,000-275,000
- Washington - 200,000-250,000
- Massachusetts - 150,000-250,000
- Nevada - 150,000-200,000
- Pennsylvania - 125,000-175,000
- Oregon - 125,000-175,000
- Tennessee - 100,000-150,000
- Michigan - 100,000-150,000
- Ohio - 75,000-150,000
- Wisconsin - 75,000-115,000
- Minnesota - 75,000-100,000
- Utah - 75,000-100,000
- Connecticut - 75,000-100,000

Low Illegal Immigrant Population States

- Indiana - 55,000-85,000
- Iowa - 55,000-85,000
- Oklahoma - 50,000-75,000
- New Mexico - 50,000-75,000
- Kansas - 40,000-70,000
- South Carolina - 35,000-75,000
- Missouri - 35,000-65,000
- Nebraska - 35,000-55,000
- Kentucky - 30,000-60,000
- Alabama - 30,000-50,000
- Mississippi - 30,000-50,000
- Arkansas - 30,000-50,000
- Louisiana - 25,000-40,000
- Idaho - 25,000-45,000
- Rhode Island - 20,000-40,000
- Hawaii - 20,000-35,000
- Delaware - 15,000-35,000
- New Hampshire - 10,000-30,000

Very Low Illegal Immigrant Population States

- Alaska - Less than 10,000
- Wyoming - Less than 10,000
- South Dakota - Less than 10,000
- Maine - Less than 10,000
- Vermont - Less than 10,000
- North Dakota - Less than 10,000
- Montana - Less than 10,000
- West Virginia - Less than 10,000

U.S. Total Illegal Immigration Population - 10,700,000-11,500,000. Estimates calculated by the Pew Hispanic Center and based on March 2005 Current Population Survey.