

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

**CHRISTOPHER L. CRANE, DAVID A.)
ENGLE, ANASTASIA MARIE)
CARROLL, RICARDO DIAZ,)
LORENZO GARZA, FELIX)
LUCIANO, TRE REBSTOCK,)
FERNANDO SILVA, SAMUEL)
MARTIN, JAMES D. DOEBLER, and)
THE STATE OF MISSISSIPPI, by and)
through GOVERNOR PHIL BRYANT)**

Plaintiffs,

v.

**JANET NAPOLITANO, in her official)
capacity as Secretary of Homeland)
Security, JOHN MORTON, in his)
official capacity as Director of)
Immigration and Customs Enforcement,)
and ALEJANDRO MAYORKAS, in his)
official capacity as Director of United)
States Citizenship and Immigration)
Services)**

Defendants.

Civil Action No. 3:12-cv-03247-O

AMENDED COMPLAINT

INTRODUCTION

1. Plaintiffs are law enforcement officers of United States Immigration and Customs Enforcement (“ICE”), as well as the State of Mississippi by and through Governor Phil Bryant, pursuant to Miss. Code Ann. §§ 7-1-5(n) and 7-1-33.

2. On June 15, 2012, Defendant Secretary of Homeland Security Janet Napolitano issued a Directive entitled “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children” (hereinafter “the Directive”). The Directive, attached to

this Complaint as Appendix A, instructs ICE officers to refrain from placing certain aliens who are unlawfully present in the United States (“illegal aliens”) into removal proceedings, and to take actions to facilitate the granting of deferred action to aliens who are unlawfully present in the United States. The Directive also directs DHS personnel to grant employment authorization to certain beneficiaries of the Directive.

3. The requirements that an unlawfully present alien must assert to be granted the privileges described in the Directive are that the alien:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding June 15, 2012, and was present in the United States on June 15, 2012;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, or multiple misdemeanor offenses, and does not otherwise pose a threat to national security or public safety; and
- is not above the age of thirty.

4. The Directive commands ICE officers to violate federal law, as detailed below, commands ICE officers to violate their oaths to uphold and support federal law, violates the Administrative Procedure Act, unconstitutionally usurps and encroaches upon the legislative powers of Congress, as defined in Article I of the United States Constitution, and violates the obligation of the executive branch to faithfully execute the law, as required by Article II, Section 3, of the United States Constitution.

5. Plaintiffs bring this civil action to seek injunctive relief preventing the implementation of this unlawful and unconstitutional Directive.

6. This lawsuit seeks to prevent law enforcement officer Plaintiffs from being forced to either violate federal law if they comply with the unlawful Directive or risk adverse employment action if they disobey the unlawful orders of the DHS Secretary.

7. This lawsuit also seeks to protect the State of Mississippi from the fiscal burden imposed upon the State by illegal aliens who would otherwise be placed in removal proceedings and removed from the United States, but for the implementation of the unlawful Directive.

8. This lawsuit also seeks to preserve the balance of legislative and executive powers established by the United States Constitution.

THE PARTIES

Plaintiffs

9. Plaintiff Christopher L. Crane is an ICE Deportation Officer. He serves in Enforcement and Removal Operations at the Salt Lake City Field Office at 2975 Decker Lake Drive, Stop A, in West Valley City, Utah. He is also the President of the ICE Agents and Officers Union, AFGE Council #118. As an ICE Deportation Officer, Crane is authorized by law to, *inter alia*, arrest aliens for administrative immigration violations or for any criminal offense against the United States and execute administrative and criminal arrest warrants.

10. Plaintiff David A. Engle is an ICE Immigration Enforcement Agent. He serves in Enforcement and Removal Operations at the Dallas Field Office at 8101 N. Stemmons Freeway, in Dallas, Texas. As an ICE Immigration Enforcement Agent, Engle is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and execute administrative arrest warrants for aliens.

11. Plaintiff Anastasia Marie Carroll is an ICE Immigration Enforcement Agent. She serves in Enforcement and Removal Operations at the El Paso Field Office at 1545 Hawkins Boulevard, in El Paso, Texas. As an ICE Immigration Enforcement Agent, Carroll is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and execute administrative arrest warrants for aliens.

12. Plaintiff Ricardo Diaz is an ICE Immigration Enforcement Agent. He serves in Enforcement and Removal Operations at the El Paso Field Office at 1545 Hawkins Boulevard, in El Paso, Texas. As an ICE Immigration Enforcement Agent, Diaz is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and execute administrative arrest warrants for aliens.

13. Plaintiff Lorenzo Garza is an ICE Immigration Enforcement Agent. He serves in Enforcement and Removal Operations at the Port Isabel Detention Center at 27791 Buena Vista Boulevard, in Los Fresnos, Texas. As an ICE Immigration Enforcement Agent, Garza is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and execute administrative arrest warrants for aliens.

14. Plaintiff Felix Luciano is an ICE Immigration Enforcement Agent. He serves in Enforcement and Removal Operations at the San Diego Field Office at 880 Front Street, Suite B-2232, in San Diego, California. As an ICE Immigration Enforcement Agent, Luciano is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and execute administrative arrest warrants for aliens.

15. Plaintiff Tre Rebstock is an ICE Immigration Enforcement Agent. He serves in Enforcement and Removal Operations at the Houston Field Office at 7405 C-1 Highway 75 South, in Huntsville, Texas. As an ICE Immigration Enforcement Agent, Rebstock is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and execute administrative arrest warrants for aliens.

16. Plaintiff Fernando Silva is an ICE Immigration Enforcement Agent. He serves in Enforcement and Removal Operations at the El Paso Field Office at 1545 Hawkins Boulevard, in El Paso, Texas. As an ICE Immigration Enforcement Agent, Silva is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and issue administrative arrest warrants for aliens.

17. Plaintiff Samuel Martin is an ICE Immigration Enforcement Agent. He serves in Enforcement and Removal Operations in the El Paso Field Office at 8915 Montana Avenue, in El Paso, Texas. As an ICE Immigration Enforcement Agent, Martin is authorized to, *inter alia*, arrest aliens for immigration violations, arrest any person for felonies regulating the admission or removal of aliens, and execute administrative arrest warrants for aliens.

18. Plaintiff James D. Doebler is an ICE Deportation Officer. He serves in Enforcement and Removal Operations in the Dover Sub-Office at 1305 McD Drive, in Dover, Delaware. As an ICE Deportation Officer, Doebler is authorized by law to, *inter alia*, arrest aliens for administrative immigration violations or for any criminal offense against the United States and execute administrative and criminal arrest warrants.

19. Each ICE plaintiff is authorized to execute the laws of the United States pursuant to statutory authority and delegated authority under regulations of the Department of Homeland Security.

20. Illegal immigration imposes a wide variety of significant fiscal costs on Plaintiff the State of Mississippi and its taxpayers, including but not limited to: costs associated with educating illegal aliens in the State's K-12 school system; costs related to uncompensated healthcare provided by state agencies, hospitals, and clinics; law enforcement costs associated with arresting, prosecuting, and incarcerating illegal aliens in the State's criminal justice system; and lost tax revenues and economic losses related to illegal aliens who work "off the books" and thereby avoid paying state taxes and/or who send "remittances" to relatives in foreign countries, diverting dollars that otherwise would remain in the State's economy and generate additional state tax revenues.

21. Governor Phil Bryant brings this suit on behalf of the State of Mississippi pursuant to Miss. Code Ann. §§ 7-1-5(n) and 7-1-33.

Defendants

22. Defendant Janet Napolitano is the Secretary of Homeland Security and the head of the United States Department of Homeland Security ("DHS") and in her official capacity is responsible for the enforcement of federal immigration laws, 6 U.S.C. § 112, 8 U.S.C. § 1101, et seq., pursuant to 8 U.S.C. § 1103(a)(2).

23. Defendant John Morton is the Director of United States Immigration and Customs Enforcement (ICE) and in his official capacity is responsible for administering all operations of ICE. Defendant Morton is not authorized to promulgate regulations implementing the Immigration and Nationality Act.

24. Defendant Alejandro Mayorkas is the Director of United States Citizenship and Immigration Services (USCIS) and in his official capacity is responsible for administering all

operations of USCIS. Defendant Mayorkas is not authorized to promulgate regulations implementing the Immigration and Nationality Act.

25. Defendant Napolitano issued the Directive on June 15, 2012, and is the executive branch official responsible for its implementation by and through her inferior officers and other employees of DHS. Defendant Napolitano is the official authorized to promulgate regulations implementing the Immigration and Nationality Act in the Department of Homeland Security.

JURISDICTION AND VENUE

26. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 over Plaintiffs' claims under the Constitution and laws of the United States. This Court is authorized to grant Plaintiffs' requests for declaratory and injunctive relief pursuant to 28 U.S.C. §§ 2201 and 2202.

27. Venue is proper in this judicial district pursuant to 28 U.S.C. § 1391(e) because the majority of the Plaintiffs named in this complaint reside and work in the State of Texas. Plaintiff Engle resides and works in the Northern District of Texas.

THE DIRECTIVE AND RELATED EVENTS

28. On June 17, 2011, Defendant Morton issued a Memorandum entitled "Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens" (the "Morton Memorandum").

29. On June 15, 2012, Defendant Napolitano issued the Directive.

30. In July 2012, DHS issued the "ERO Supplemental Guidance: Exercising Prosecutorial Discretion With Respect to Individuals Who Came to the United States as Children" which directs Plaintiffs and other DHS personnel to implement the terms of the Directive.

31. In early August 2012, DHS issued a document of more than 90 pages explaining how applicants for the benefits of the Directive would be processed by DHS, entitled “National Standard Operating Procedures (SOP): Deferred Action for Childhood Arrivals (DACA) (Form I-821D and Form I-765).”

32. On August 15, 2012, DHS began full implementation of the Directive, including receiving applications and distributing the benefits of deferred action and employment authorization.

33. The orders in the field that have been given to Plaintiffs by their supervisors are that an alien only needs to *claim* that he is covered by the Directive in order to be released and offered the benefits of the Directive. ICE agents are prohibited from demanding that an alien provide proof that he meets the Directive’s criteria.

34. On August 16, 2012, DHS published a Federal Register Notice soliciting public comments on the Directive. The Notice offered for review and comment no actual rules that will be promulgated. Instead, it only solicited comments on the questions to be posed on the form that DHS has developed to accept applications for benefits under the Directive. DHS categorized the notice as an “information collection” exercise.

35. According to official estimates provided on August 16, 2012, by the U.S. Citizenship and Immigration Service, pursuant to the Paperwork Reduction Act, the number of aliens unlawfully present in the United States who qualify for the benefits offered by the Directive is estimated to be 1.76 million. Source: U.S. Citizenship and Immigration Services, *Agency Information Collection Activities: Consideration of Deferred Action for Childhood Arrivals, Form I-821D, New Information Collection; Emergency Submission to the Office of Management and Budget; Comment Request*, 77 Fed. Reg. 49451 (Aug. 16, 2012) (1,041,300

estimated total number of responses for new Consideration of Deferred Action for Childhood Arrivals, Form I-821D, USCIS); U.S. Citizenship and Immigration Services, *Agency Information Collection Activities: Application for Employment Authorization, Form I-765, Revision of a Currently Approved Information Collection; Emergency Submission to the Office of Management and Budget; Comment Request*, 77 Fed. Reg. 49453 (Aug. 16, 2012) (estimated 1,761,300 responses related to Application for Employment Authorization Document, Form I-765, USCIS; 1,385,292 responses related to Biometrics; 1,047,357 responses related to Application for Employment Authorization Document Worksheet, Form I-765WS, USCIS; and 1,761,300 responses to required Passport-Style Photographs).

36. According to DHS, the number of aliens unlawfully present in the United States is estimated to be 11.5 million. Michael Hoefer, Nancy Rytina, and Bryan Baker, “Estimates of the Unauthorized Immigrant Population Residing in the United States: January 2011” (March 2012), available at http://www.dhs.gov/xlibrary/assets/statistics/publications/ois_ill_pe_2011.pdf.

FEDERAL STATUTORY BACKGROUND

37. In 1996, Congress sought to significantly reduce executive discretion in the enforcement of federal immigration laws: “[I]mmigration law enforcement is as high a priority as other aspects of Federal law enforcement, and illegal aliens do not have the right to remain in the United States undetected and unapprehended.” H.R. Rep. 104-725 (1996), at 383.

38. Enacted in 1996, 8 U.S.C. § 1225(a)(1) provides that “an alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission.”

39. 8 U.S.C. § 1225(a)(3) provides that all applicants for admission “shall be inspected by immigration officers.”

40. 8 U.S.C. § 1225(b)(2)(A) mandates that “if the examining immigration officer determines that an alien seeking admission is not *clearly and beyond a doubt* entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title.” (emphasis added).

41. Deferred action is not specifically authorized anywhere in federal law. Historically, deferred action has been utilized sparsely for small numbers of aliens in discrete distress pending statutory or foreign policy-mandated regulatory changes. No group of aliens has been granted deferred action in the past 15 years that approaches a fraction of the size of the class of aliens subject to the Directive.

42. Regulations describe deferred action only in the application sense as authorizing employment upon *application* in 8 C.F.R. § 274a.12(c)(14), or application for social security benefits, 8 C.F.R. § 1.3(a)(4)(vi). Accordingly, “deferred action” is a substantive government *benefit*.

43. Federal regulations do not authorize the Secretary to grant deferred action wholesale to a large number of illegal aliens.

44. Eligibility for a substantive immigration benefit may not be conferred as a matter of prosecutorial discretion, but only by regulations promulgated under authority delegated by Congress, consistent with the terms of the law authorizing the regulations.

45. By definition, “prosecutorial discretion” cannot be used to confer a substantive benefit.

46. USCIS is not a law enforcement agency and has no “prosecutorial” authority. As such, USCIS cannot exercise “prosecutorial discretion.”

HARM

47. ICE Plaintiffs have each sworn an oath to support and defend the Constitution of the United States and the laws of the United States.

48. ICE Plaintiffs believe that if they follow the Directive, they will be violating their oath of office, as well as violating several laws of the United States.

49. ICE Plaintiffs reasonably fear, based upon official communications to them, their knowledge of communications to Plaintiff Doebler, Plaintiff Martin, and Plaintiff Crane from their superiors, past events, and public sources, that if they follow the requirements of federal law, contrary to the "Directive," and arrest an alien or issue an alien an Notice to Appear (NTA) in removal proceedings, they will be disciplined or suffer other adverse employment consequences.

50. Plaintiff James D. Doebler arrested an alien who was unlawfully present in the United States and issued the alien an NTA, contrary to the general directions of his supervisors that he should decline to issue NTAs to certain illegal aliens. Plaintiff Doebler was issued a Notice of Proposed Suspension. Plaintiff Doebler is facing a three-day suspension for arresting and processing the alien for a hearing rather than exercising the "prosecutorial discretion" commanded by his supervisors. Plaintiff Doebler requested a written directive ordering him not to issue the NTA. His supervisors have refused to give him a written directive and would not sign any paperwork authorizing the use of "prosecutorial discretion."

51. Plaintiff Doebler reasonably fears, based on his past experience, that if he follows the requirements of federal law, contrary to the "Directive," and arrests an alien or issues the alien an NTA, he will be disciplined again. He reasonably fears that a second disciplinary action will result in the loss of his job.

52. On July 17, 2012, Plaintiff Samuel Martin, along with another immigration enforcement agent, picked up an illegal alien from the El Paso County Jail. While the agents were trying to place the alien in the vehicle, the alien attempted to escape, and resisted and assaulted Plaintiff Martin and his colleague. The agents regained custody of the alien and transported him to the El Paso Criminal Alien Program office for processing. Plaintiff Martin's supervisors ordered him to release the alien without any charges being filed against the alien and ordered Plaintiff Martin not to issue an NTA. The agents who were present protested the release of the alien; but they were told "it was a management decision, based on the President's new immigration policies." No supervisor ever asked the agents if they were injured or if they needed assistance. It is the understanding of Plaintiff Martin, reflected in his signed statement concerning the incident, that his supervisors gave him these orders based on the Directive.

53. On January 25, 2012, Plaintiff Christopher L. Crane, in his capacity as President of the ICE Agents and Officers Union, filed a Demand to Bargain with Defendants, expressing significant concerns with the Morton Memorandum, including that the actions that ICE agents would have to take or not take under it were contrary to federal law. The Demand to Bargain included the proposal that: "No employee will be subject to disciplinary or adverse action for refusing to obey an unlawful order."

54. On April 5, 2012, Plaintiff Christopher L. Crane, in his capacity as President of the ICE Agents and Officers Union, submitted Additional Proposals, reiterating that officers should not be subject to discipline or adverse action for refusing to obey an unlawful order. Plaintiff Crane also filed an Information Request at that time.

55. On August 20, 2012, nearly eight months after the January 25, 2012, Demand to Bargain, Defendant Morton sent a letter to the ICE Agents and Officers Union merely indicating

that Defendant Morton “may” formally respond to the January 25, 2012, Demand to Bargain and the April 5, 2012, Additional Proposals at an unspecified time in the future. In the past, when confronted with a Demand to Bargain letter, Defendants have ultimately refused to bargain at all and have refused to make any changes to their policies.

56. As of the filing of this complaint, Defendants have not changed ICE policies in any way in response to Plaintiff Crane’s January 25, 2012, Demand to Bargain and April 5, 2012, Additional Proposals.

57. ICE Plaintiffs reasonably expect that the filing of a similar Demand to Bargain in order to protest the Directive would be treated in a similarly non-responsive manner, and that it would not result in any response or alteration of the Directive policy.

58. Because ICE Plaintiffs are now being ordered to implement the Directive, they have an immediate and urgent need for relief. They are being ordered to violate federal law and are facing discipline or adverse employment action if they follow federal law.

59. Defendants Napolitano and Morton are obligated, under the terms of their signed agreement with the ICE Agents and Officers Union, to issue an “Article 9A Notice of Proposed Change” prior to the alteration of agency policies. The purpose of such a Notice is to allow ICE agents and officers to provide input regarding proposed agency policies. No such Notice was issued prior to the June 15, 2012, Directive or its August 15, 2012, implementation date.

60. Plaintiff the State of Mississippi will be compelled to bear the foreseeable fiscal costs of the illegal aliens residing in Mississippi who are not placed in removal proceedings, who are granted deferred action, or who are otherwise permitted to remain in the State of Mississippi, as a direct consequence of the Directive.

61. Mississippi Governor Phil Bryant formerly served as the State Auditor of Mississippi. In that capacity, on February 21, 2006, he issued a report entitled “The Impact of Illegal Immigration on Mississippi: Costs and Population Trends” (OSA Report). A copy of the OSA Report is attached to this Amended Complaint.

62. The OSA Report concluded that the *net* fiscal impact of illegal aliens in the State of Mississippi was at least \$25 million per year. The OSA Report took into consideration the tax contributions made to the State by illegal aliens.

63. The OSA Report was based on an estimate that the number of illegal aliens in Mississippi in 2006 was 49,000. This represented a midpoint among various estimates available at the time. Upon information and belief, the State’s current illegal alien population remains that high, if not higher.

64. Prior to the issuance of the Directive, a significant number of illegal aliens aged 30 and younger were removed from the State of Mississippi by the federal government each year.

65. The implementation of the Directive will allow a significant number of illegal aliens aged 30 and younger, who would otherwise have been removed, to remain in the State of Mississippi.

66. The illegal alien beneficiaries of the Directive that remain in the State of Mississippi will impose a net fiscal cost on the State that is foreseeable, estimable, and significant. The sources of that fiscal cost are described in the OSA Report. They include, *inter alia*: costs associated with educating illegal aliens in the State’s K-12 school system; costs related to uncompensated healthcare provided by state agencies, hospitals, and clinics; law enforcement costs associated with arresting, prosecuting, and incarcerating illegal aliens in the

State's criminal justice system; and lost tax revenues and economic losses related to illegal aliens who work "off the books" and thereby avoid paying state taxes and/or who send "remittances" to relatives in foreign countries, diverting dollars that otherwise would remain in the State's economy and generate additional state tax revenues.

**FIRST CAUSE OF ACTION
THE DIRECTIVE EXPRESSLY VIOLATES FEDERAL STATUTES
REQUIRING THE INITIATION OF REMOVALS**

67. Plaintiffs reallege, adopt, and incorporate by reference all preceding paragraphs as though fully set forth herein.

68. 8 U.S.C. § 1225(a)(1) requires that "an alien present in the United States who has not been admitted ... shall be deemed for purposes of this chapter an applicant for admission." This designation triggers 8 U.S.C. § 1225(a)(3), which requires that all applicants for admission "shall be inspected by immigration officers." This in turn triggers 8 U.S.C. § 1225(b)(2)(A), which mandates that "if the examining immigration officer determines that an alien seeking admission is not clearly and beyond a doubt entitled to be admitted, the alien shall be detained for a proceeding under section 1229a of this title." The proceedings under 8 U.S.C. § 1229a are removal proceedings in United States immigration courts.

69. The Directive orders ICE Plaintiffs to violate the above-listed provisions of federal law by declining to place certain aliens into removal proceedings, when federal law clearly requires Plaintiffs to place such aliens into removal proceedings.

70. The Morton Memorandum, as implemented by Defendants, asserts "prosecutorial discretion... [not] to issue, reissue, serve, file, or cancel a Notice to Appear (NTA)," in direct contradiction of 8 U.S.C. § 1225(b)(2)(A) in cases in which that statute applies.

71. Because Congress has expressly limited the discretion of Defendants to not initiate removal proceedings, any “prosecutorial discretion” that Defendants exercise must be consistent with 8 U.S.C. § 1225 and can only occur after an alien has been placed into removal proceedings as required by 8 U.S.C. § 1225, or under a provision of federal law expressly authorizing such “prosecutorial discretion.”

72. Defendant Napolitano’s authority under 8 USC § 1103(a)(5) and 8 CFR § 2.1 does not authorize her to order her subordinate officers or employees to violate the requirements of federal law expressed in 8 U.S.C. § 1225.

73. Plaintiffs seek a declaratory judgment to these effects, together with corresponding injunctive relief.

**SECOND CAUSE OF ACTION
THE DIRECTIVE VIOLATES FEDERAL LAW BY CONFERRING A
NON-STATUTORY FORM OF BENEFIT, DEFERRED ACTION, TO
MORE THAN 1.7 MILLION ALIENS, RATHER THAN A FORM OF
RELIEF OR BENEFIT THAT FEDERAL LAW PERMITS ON SUCH A
LARGE SCALE**

74. Plaintiffs reallege, adopt, and incorporate by reference all preceding paragraphs as though fully set forth herein.

75. “Deferred action” is a benefit that is not authorized in federal statute and is only authorized to a limited extent and for limited purposes in federal regulations.

76. No federal regulation authorizes the granting of the benefit of deferred action to aliens who are in the position of the more than 1.7 million beneficiaries of the Directive.

77. No federal regulation authorizes the conferral of the benefit of deferred action to an entire category of unlawfully present aliens numbering in excess of 1.7 million persons.

78. If an executive agency’s practice contradicts the express terms of federal law, that practice is *ultra vires* and unlawful.

79. Defendant Napolitano's authority under 8 USC § 1103(a)(5) and 8 CFR § 2.1 does not authorize her to order her subordinate officers or employees to violate the requirements of federal law expressed in 8 U.S.C. § 1225.

80. Plaintiffs seek a declaratory judgment to these effects, together with corresponding injunctive relief.

**THIRD CAUSE OF ACTION
THE DIRECTIVE VIOLATES FEDERAL LAW BY CONFERRING THE
LEGAL BENEFIT OF EMPLOYMENT AUTHORIZATION WITHOUT
ANY STATUTORY BASIS AND UNDER THE FALSE PRETENSE OF
"PROSECUTORIAL DISCRETION"**

81. Plaintiffs reallege, adopt, and incorporate by reference all preceding paragraphs as though fully set forth herein.

82. The Directive purports to use "prosecutorial discretion" to grant the benefit of employment authorization to unlawfully present aliens.

83. Employment authorization is a benefit under federal regulations that is "granted" to beneficiary aliens. 8 C.F.R. § 274a.12(c)(14).

84. Federal law specifies the circumstances under which aliens may be granted the benefit of employment authorization.

85. The Morton Memorandum on pp. 2-3 lists twelve ways in which "prosecutorial discretion" may purportedly be exercised in immigration law, but nowhere mentions the conferral of the benefit of employment authorization.

86. "Prosecutorial discretion," insofar as it is permitted by federal immigration law, is by definition the exercise of discretion not to remove; it is not the conferral of a benefit.

87. To the limited extent that any "prosecutorial discretion" is permitted by federal immigration law, such discretion allows ICE to seek the cancellation or withholding of a

removal. The exercise of “prosecutorial discretion” does not permit any DHS employee or officer to grant unlawfully present aliens the benefit of employment authorization in the manner attempted by the Directive.

88. U.S. Citizenship and Immigration Services is not a law enforcement agency.

89. A non-law-enforcement agency cannot exercise prosecutorial discretion.

90. Defendant Napolitano’s authority under 8 USC § 1103(a)(5) and 8 CFR § 2.1 does not authorize her to order her subordinate officers or employees to confer a substantive benefit on aliens that is not authorized by federal law.

91. Plaintiffs seek a declaratory judgment to these effects, together with corresponding injunctive relief.

**FOURTH CAUSE OF ACTION
THE DIRECTIVE VIOLATES THE CONSTITUTIONAL ALLOCATION
OF LEGISLATIVE POWER TO CONGRESS**

92. Plaintiffs reallege, adopt, and incorporate by reference all preceding paragraphs as though fully set forth herein.

93. Article I, section 1, of the United States Constitution provides that “All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives.”

94. The Development, Relief, and Education for Alien Minors Act (DREAM Act), in various forms, has been proposed in Congress at least 24 times. It was introduced in the following bills: S. 1291, 107th Cong. §§ 2, 3 (2001); S. 1545, 108th Cong. (2003); S. 2863, 108th Cong. §§ 1801-1813 (2004); S. 2075, 109th Cong. (2005); H.R. 5131, 109th Cong. (2006); S. 2611, 109th Cong. §§ 621–632 (2006); H.R. 1275, 110th Cong. (2007); H.R. 1645, 110th Cong. §§ 621-632 (2007); S. 774, 110th Cong. (2007); S. 1348, 110th Cong. §§ 621–632 (2007)

(as amended by S.A. 1150 §§ 612–619); S. 1639, 110th Cong. §§ 612-620 (2007); S. 2205, 110th Cong. (2007); H.R. 1751, 111th Cong. (2009); S. 729, 111th Cong. (2009); H.R. 5281, 111th Cong. §§ 5-16 (2010); H.R. 6497, 111th Cong. (2010); S. 3827, 111th Cong. (2010); S. 3932, 111th Cong. §§ 531-542 (2010); S. 3962, 111th Cong. (2010); S. 3963, 111th Cong. (2010); S. 3992, 111th Cong. (2010); H.R. 1842, 112th Cong. (2011); S. 952, 112th Cong. (2011); S. 1258, 112th Cong. §§ 141-149 (2011); H.R. 5869, 112th Cong. (2012).

95. The principal provisions of the DREAM Act, as reiterated in the two dozen DREAM Act bills introduced in Congress, are that it establishes a class of unlawfully present aliens who may apply for cancellation of removal and either temporary or conditional lawful residence, and then may adjust to lawful permanent resident status or have the conditions removed. The class is generally defined as those aliens who arrived in the United States as minors, have been physically present in the United States for a period of years (typically five years) prior to enactment, have not been convicted of a felony or two or more misdemeanors and do not pose a threat to national security or public safety, have earned a high school diploma or a general education development certificate in the United States, and are below a certain age (typically early to mid-thirties) on the date of enactment. Qualifying aliens whose removal is cancelled and who are granted temporary or conditional residence then must be admitted to, or earn a certain number of credits in, an institution of higher education or serve honorably in the U.S. Armed Forces for a certain period in order to adjust to lawful permanent resident status or have the conditions on their status removed.

96. The DREAM Act has never been passed by both houses of Congress and signed into law by the President.

97. The fact that the DREAM Act has been proposed in Congress two dozen times, and has been voted on by the United States House of Representatives and by the United States Senate, indicates Congress's understanding that federal legislation is required in order to achieve these objectives.

98. The Directive attempts to confer continued presence in the United States, as well as employment authorization, to all aliens meeting the criteria specified in the Directive.

99. The unlawfully present aliens who are given benefits by the Directive are substantially the same aliens that would have been given benefits by the DREAM Act, had it passed both Houses of Congress and been signed into law by the President.

100. The conferral of legal rights and privileges to a large class of persons meeting certain criteria is a legislative act.

101. The application of "deferred action" to approximately 15% of aliens who are in the United States without authorization is not an exercise of executive branch discretion permitted by the Constitution. The application of "deferred action" to approximately 15% of aliens who are in the United States without authorization is a legislative act of amnesty, the granting of a legislative benefit, and an act otherwise exceeding the Secretary's authority as a principal executive officer under the Constitution. It therefore usurps the legislative authority conferred by the Constitution exclusively on Congress.

102. Because the Directive is a legislative act that Defendants have implemented through executive action, it is in violation of Article I, section 1, of the United States Constitution.

103. Defendant Napolitano's authority under 8 USC § 1103(a)(5) and 8 CFR § 2.1 does not authorize her to exercise legislative powers through the issuance of directives.

104. Plaintiffs seek a declaratory judgment to these effects, together with corresponding injunctive relief.

**FIFTH CAUSE OF ACTION
THE DIRECTIVE VIOLATES THE ARTICLE II, SECTION 3,
CONSTITUTIONAL OBLIGATION OF THE EXECUTIVE TO TAKE
CARE THAT THE LAWS ARE FAITHFULLY EXECUTED**

105. Plaintiffs reallege, adopt, and incorporate by reference all preceding paragraphs as though fully set forth herein.

106. Article II, section 3, of the United States Constitution requires that the President, by and through his executive branch officials, including Defendants, “shall take Care that the Laws be faithfully executed.”

107. The application of “deferred action” to approximately 15% of aliens who are in the United States without authorization is not consistent with the executive’s duty to take care that the laws be faithfully executed. In effect, the Directive orders that the immigration laws of the United States shall not be executed against a class of more than 1.7 million aliens.

108. Defendant Napolitano’s authority under 8 USC § 1103(a)(5) and 8 CFR § 2.1 does not authorize her to order her subordinate officers or employees to decline to enforce federal immigration laws against a class of more than 1.7 million aliens.

109. Plaintiffs seek a declaratory judgment to these effects, together with corresponding injunctive relief.

**SIXTH CAUSE OF ACTION
THE DIRECTIVE VIOLATES THE ADMINISTRATIVE PROCEDURE
ACT THROUGH CONFERRAL OF A BENEFIT WITHOUT
REGULATORY IMPLEMENTATION**

110. Plaintiffs reallege, adopt, and incorporate by reference all preceding paragraphs as though fully set forth herein.

111. The Administrative Procedure Act requires that agencies implementing Congressional statutes in whole or in part through an agency statement of general applicability and future effect designed to implement, interpret, or prescribe law or policy do so through a rulemaking. A rulemaking under the Administrative Procedure Act is defined as the agency process for formulating, amending, or repealing a rule through notice and comment procedures under the Administrative Procedure Act, 5 U.S.C. § 553. The Immigration and Nationality Act delegates authority to the Secretary of Homeland Security and the Attorney General to implement its provisions through regulations. The Secretary has not promulgated any regulation that establishes the criteria for eligibility for relief from removal from the United States or the granting of employment authorization. The Directive identifies a large class of individuals by specific eligibility criteria against whom the immigration laws of the United States requiring their removal shall not be executed and who are made eligible for specific benefits.

112. Establishing a class of eligibility by criteria for exception from removal from the United States and affirmative eligibility for benefits is quintessentially a “rule” under the Administrative Procedure Act, 5 U.S.C. § 551(4). The Secretary has not issued a notice of proposed rulemaking or promulgated a final rule in conformity with the Administrative Procedure Act. The Directive is not a rule under the Administrative Procedure Act.

113. The Directive is in excess of statutory jurisdiction, authority, or limitations, or short of statutory right, and without observance of procedure required by the Administrative Procedure Act.

114. Defendant Napolitano’s issuance of a Federal Register Notice on August 16, 2012, as part of a so-called “information collection” exercise in no way satisfies the publication and comment requirements for rulemaking under the Administrative Procedure Act.

115. Defendant Napolitano's authority under 8 USC § 1103(a)(5) and 8 CFR § 2.1 does not authorize her to order her subordinate officers or employees to circumvent the terms of the Administrative Procedure Act by simply issuing "directives" or "orders" that confer substantive legal benefits and privileges, and significantly transform the enforcement of federal immigration law.

116. Plaintiffs seek a declaratory judgment to these effects, together with corresponding injunctive relief.

PRAYER FOR RELIEF

Wherefore, Plaintiffs respectfully request that the Court:

A. Declare pursuant to 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. § 706(2)(B) that the Directive is unlawful and in violation of Article I of the Constitution of the United States as a usurpation of legislative authority, and vacate the Directive;

B. Declare pursuant to 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. § 706(2)(B) that the Directive is unlawful and in violation of Article II of the Constitution of the United States as in excess of executive authority and vacate the Directive;

C. Declare pursuant to 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. § 706(2)(B) that the Directive and relevant provisions of the Morton Memorandum are unlawful and in violation of 8 U.S.C. § 1225(b)(2)(A) and vacate the Directive and relevant provisions of the Morton Memorandum;

D. Declare pursuant to 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. § 706(2)(C) that the Directive is unlawful and in violation of the Immigration and Nationality Act as in excess of delegated authority and vacate the Directive;

E. Declare pursuant to 28 U.S.C. §§ 2201 and 2202 and 5 U.S.C. § 706(2)(D) that the Directive is unlawful and in violation of the Administrative Procedure Act as a rule promulgated without conforming to the procedure described therein and vacate the Directive;

F. Temporarily restrain, preliminarily enjoin, and permanently enjoin Defendants and their subordinate officers, employees, and agents from implementing or enforcing the Directive, or taking any adverse action against Plaintiffs pursuant to the Directive or for not following the Directive;

G. Direct Defendants to pay all costs associated with this lawsuit; and

H. Grant such other and further relief as this Court deems equitable, just, and proper.

Dated: October 10, 2012

By: s/ Kris W. Kobach

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Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that this Amended Complaint has been served on the defendants by mailing copies thereof to: Hon. Janet Napolitano, Secretary of Homeland Security, Department of Homeland Security, Washington, D.C. 20528; and Hon. John Morton, Director, Immigration and Customs Enforcement, 500 12th Street, S.W., Washington, D.C. 20536; both on this 10th day of October, 2012.

/s P. Michael Jung

P. MICHAEL JUNG

Secretary

U.S. Department of Homeland Security
Washington, DC 20528



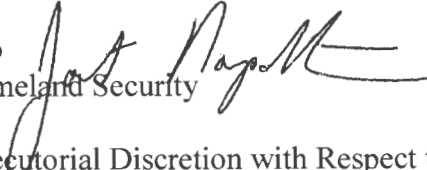
**Homeland
Security**

June 15, 2012

MEMORANDUM FOR: David V. Aguilar
Acting Commissioner, U.S. Customs and Border Protection

Alejandro Mayorkas
Director, U.S. Citizenship and Immigration Services

John Morton
Director, U.S. Immigration and Customs Enforcement

FROM: Janet Napolitano 
Secretary of Homeland Security

SUBJECT: Exercising Prosecutorial Discretion with Respect to Individuals
Who Came to the United States as Children

By this memorandum, I am setting forth how, in the exercise of our prosecutorial discretion, the Department of Homeland Security (DHS) should enforce the Nation's immigration laws against certain young people who were brought to this country as children and know only this country as home. As a general matter, these individuals lacked the intent to violate the law and our ongoing review of pending removal cases is already offering administrative closure to many of them. However, additional measures are necessary to ensure that our enforcement resources are not expended on these low priority cases but are instead appropriately focused on people who meet our enforcement priorities.

The following criteria should be satisfied before an individual is considered for an exercise of prosecutorial discretion pursuant to this memorandum:

- came to the United States under the age of sixteen;
- has continuously resided in the United States for a least five years preceding the date of this memorandum and is present in the United States on the date of this memorandum;
- is currently in school, has graduated from high school, has obtained a general education development certificate, or is an honorably discharged veteran of the Coast Guard or Armed Forces of the United States;
- has not been convicted of a felony offense, a significant misdemeanor offense, multiple misdemeanor offenses, or otherwise poses a threat to national security or public safety; and
- is not above the age of thirty.

Our Nation's immigration laws must be enforced in a strong and sensible manner. They are not designed to be blindly enforced without consideration given to the individual circumstances of each case. Nor are they designed to remove productive young people to countries where they may not have lived or even speak the language. Indeed, many of these young people have already contributed to our country in significant ways. Prosecutorial discretion, which is used in so many other areas, is especially justified here.

As part of this exercise of prosecutorial discretion, the above criteria are to be considered whether or not an individual is already in removal proceedings or subject to a final order of removal. No individual should receive deferred action under this memorandum unless they first pass a background check and requests for relief pursuant to this memorandum are to be decided on a case by case basis. DHS cannot provide any assurance that relief will be granted in all cases.

1. With respect to individuals who are encountered by U.S. Immigration and Customs Enforcement (ICE), U.S. Customs and Border Protection (CBP), or U.S. Citizenship and Immigration Services (USCIS):

- With respect to individuals who meet the above criteria, ICE and CBP should immediately exercise their discretion, on an individual basis, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.
- USCIS is instructed to implement this memorandum consistent with its existing guidance regarding the issuance of notices to appear.

2. With respect to individuals who are in removal proceedings but not yet subject to a final order of removal, and who meet the above criteria:

- ICE should exercise prosecutorial discretion, on an individual basis, for individuals who meet the above criteria by deferring action for a period of two years, subject to renewal, in order to prevent low priority individuals from being removed from the United States.
- ICE is instructed to use its Office of the Public Advocate to permit individuals who believe they meet the above criteria to identify themselves through a clear and efficient process.
- ICE is directed to begin implementing this process within 60 days of the date of this memorandum.
- ICE is also instructed to immediately begin the process of deferring action against individuals who meet the above criteria whose cases have already been identified through the ongoing review of pending cases before the Executive Office for Immigration Review.

3. With respect to the individuals who are not currently in removal proceedings and meet the above criteria, and pass a background check:

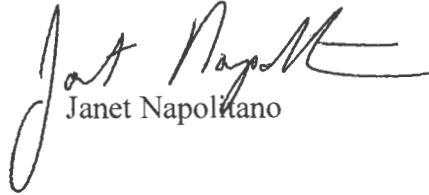
- USCIS should establish a clear and efficient process for exercising prosecutorial discretion, on an individual basis, by deferring action against individuals who meet the

above criteria and are at least 15 years old, for a period of two years, subject to renewal, in order to prevent low priority individuals from being placed into removal proceedings or removed from the United States.

- The USCIS process shall also be available to individuals subject to a final order of removal regardless of their age.
- USCIS is directed to begin implementing this process within 60 days of the date of this memorandum.

For individuals who are granted deferred action by either ICE or USCIS, USCIS shall accept applications to determine whether these individuals qualify for work authorization during this period of deferred action.

This memorandum confers no substantive right, immigration status or pathway to citizenship. Only the Congress, acting through its legislative authority, can confer these rights. It remains for the executive branch, however, to set forth policy for the exercise of discretion within the framework of the existing law. I have done so here.



Janet Napolitano

THE IMPACT OF ILLEGAL IMMIGRATION ON MISSISSIPPI: *COSTS AND POPULATION TRENDS*



PHIL BRYANT
STATE AUDITOR

A report from the Performance Audit Division

#102

February 21, 2006

www.osa.state.ms.us



STATE OF MISSISSIPPI
OFFICE OF THE STATE AUDITOR

PHIL BRYANT
AUDITOR

February 21, 2006

Honorable Haley Barbour
Office of the Governor
Woolfolk Building, 15th Floor
Jackson, MS 39201

Honorable Amy Tuck
Office of the Lt. Governor
315 New Capitol Bldg.
Jackson, MS 39201

Honorable Billy McCoy
Speaker of the House
306 New Capitol Bldg.
Jackson, MS 39201

Dear Governor, Lt. Governor and Speaker:

The Performance Audit Division of the State Auditor's Office has completed a review entitled, *"The Impact of Illegal Immigration on Mississippi: Costs and Population Trends."* A copy of this report is enclosed for your review.

Since the 1980's, experts estimate that Mississippi's illegal immigration population has increased tremendously; the actual impact of which must be studied in order to develop long term policy and budget strategies. This report is intended to be an objective look at the potential costs to Mississippi and its citizens. It attempts to quantify State costs associated with illegal immigrants, as well as the amount of money that may be contributed to the State through sales and income taxes.


The most significant finding of this report is Mississippi's inability to accurately quantify the costs of illegal immigrants because most state agencies, schools and other government entities do not currently document the actual numbers of illegal immigrants or their use of services.

The report does fairly estimate the net financial impact of illegal immigrants in Mississippi to be more than \$25 million per year. This amount takes into consideration the financial contributions of the estimated 49,000 illegal immigrants in Mississippi.

It is our hope this report will provide policy makers important and reliable recommendations about illegal immigrants. Future decisions related to this important issue can best be made with the necessary information included in this report.

If you have any questions or comments regarding this Performance Review, please do not hesitate to contact me.

With best regards, I remain,

Sincerely,

Phil Bryant
State Auditor

PB/dm
enclosure

PREFACE

The focus of this report is costs and population trends associated with illegal immigration in the State of Mississippi. This report attempts to differentiate between lawful immigrants who are here within the legal framework and process established by the United States federal government and illegal immigrants who have broken federal and State laws to be in our State.

This report provides limited regional and national background material and draws on national data sources where data collected by Mississippi State government is unavailable. Further, it contemplates recommendations for government data collection and changes to Mississippi law. These recommendations will help recover costs associated with illegal immigration in the State and help strengthen protections for law-abiding citizens and non-citizens (here legally) of Mississippi.

Due to time constraints and limitations of scope, this report should not be considered a comprehensive study of the issue of illegal immigrants and their cost to government, but rather it should be viewed as a snapshot of the estimated impact of illegal immigrants residing in Mississippi.

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Office of the
State Auditor of Mississippi
Phil Bryant

Executive Summary

THE IMPACT OF ILLEGAL IMMIGRATION ON MISSISSIPPI:
COSTS AND POPULATION TRENDS

Although the issue is not new, in recent years, *illegal* immigration has once again come to the forefront of policy discussions. The two main issues in Mississippi are A) costs (financial and societal) to Mississippi citizens and government and B) homeland security concerns. Since the 1980's, experts estimate that Mississippi's illegal immigrant population has increased tremendously; the actual impacts of which must be studied in order to develop long-term policy and budgeting strategies.

This report is intended to be an objective look at the potential costs to the State and its citizens by those people who have knowingly violated federal and state laws by coming into this country and state illegally. It attempts to quantify State costs associated with illegal immigrants, as well as the amount of money that may be contributed to the State through sales and income taxes.

Unfortunately, there is little reliable data in Mississippi for the various areas considered in this report. *The most significant finding of this report is Mississippi's inability to accurately quantify the costs of illegal immigrants because most State agencies, schools, and other governmental entities do not currently document the actual numbers of illegal immigrants or their use of services.* Because Mississippi has no accurate picture of the costs associated with illegal immigrants, the State may not be fully capturing available federal reimbursements. *OSA recommends that any state agency or local governmental entity not specifically prohibited by law should attempt to count illegal immigrants for the sole purpose of gaining an accurate picture of how many are in*

Mississippi and the costs associated with their use of government programs and services.

There are very few State agencies that have properly recorded any data on illegal immigrants. Those that do have information tend to combine legal and illegal immigrant applicants, so it is not possible to attribute a specific cost to a particular group. For example, the Mississippi Department of Medicaid determined eligibility on approximately 300 aliens (no distinction between legal and illegal) from January 2005 through December 2005.

Since May 2004, the Mississippi Department of Human Services reports 30 illegal immigrant adults and 10 illegal immigrant children who attempted to apply for food stamps and TANF assistance — they were identified and denied. Neither the Mississippi Department of Education (MDE) nor the school districts collect information about the immigration status of any of its school children. The Mississippi Department of Corrections reported 70 immigrant inmates for which they receive partial federal reimbursement. However, they rely on "self-reported" information from convicted felons and they only ask for country of origin, not immigration status. The federal government establishes the immigration status after the Department of Corrections reports information to them.

Other state agencies contacted by Performance Audit indicated that they do not collect immigration status information for reasons varying from a lack of revenue and resources to federal mandates preventing them from collecting such information. Several agencies have identified weaknesses in their

governing statutes that may allow illegally present immigrants to take advantage of their services because the term immigrant or alien is not specifically defined to mean aliens present legally. This could set up a situation where an illegal immigrant may qualify to receive lifetime benefits such as workers compensation, for example as happened recently in Alabama.

Nationwide, many universities, private research and policy organizations, as well as state and federal government entities have attempted to estimate the cost of illegal immigrants. Many times, however, a report acknowledged to consider the illegal immigrant issue actually combines all immigrants (legal and illegal) together or focuses on a single ethnic group regardless of immigrant status—such as the Hispanic or Asian immigrant population. These type reports do not paint a truly accurate picture of the costs of illegal immigrants. However, they can have a significant impact on policy making about the issue because lawmakers may make certain assumptions about the data and information they receive.

This report tries to make a distinction among these various categories and attempts to answer the question “How much do illegal immigrants cost the State of Mississippi and its citizens?”

One real challenge in data analysis stems from varying estimates of total illegal immigrant population and the lack of reliable State level data. In Mississippi, as in many other states, estimates vary by information source about the numbers and costs of illegal immigrants in Mississippi. The Census Bureau estimated 8,000 illegal immigrants in 2000, up from their estimate of 2,000 in 1990. In 2005, the Pew Hispanic Center estimated the State illegal immigrant population between 20,000 and 35,000. The Urban Institute estimated Mississippi’s illegal immigrant population to be less than 20,000 in a 2002 report. Federal immigration agents (formerly Immigration and Naturalization Service now Immigration and Customs Enforcement ICE) and immigrant advocacy groups have estimated the illegal immigrant population to be as high as 90,000 to 100,000 in the State today.

Regardless, Mississippi, like other Southeastern states, continues to face an increasing illegal immigrant population and must begin to examine the costs and make policy decisions based on those costs. For the purposes of this report, Performance Audit has chosen the midpoint figure (between the high estimated number of 90,000 and the low documented estimate of 8,000) of 49,000 illegal immigrants to illustrate potential costs/benefits. To provide additional perspective, this report also includes charts showing costs and benefits associated with other population estimates.

Because almost no entities actively collect data specific to illegal immigrants and since certain advocacy organizations on both sides of the issue find it useful to combine the two very different categories together, separating facts about illegal immigrants from facts about legal immigrants has been a difficult undertaking.

This report recommends that the State require better information from State agencies. That is, they should be required (where allowed under federal and State law) to collect information about immigration status from anyone attempting to use State services, thus allowing Mississippi to recover federal dollars, as

well as understand true costs associated with this issue. In addition, using such data can promote better long-term public policy and will help relevant laws to be crafted using good information. In no way are these recommendations intended to discriminate or intimidate, but rather are intended solely to impartially collect data that can be used to make educated policy decisions.

As a homeland security and general public safety issue, this report also recommends that the State consider sending state and local law enforcement officials to any available federal immigration law enforcement training. Florida, Arkansas, and Alabama have already signed agreements with the U.S. Department of Homeland Security to participate in this program. Those who attend the program are trained to question, detain, and arrest illegal immigrants they encounter during the course of their normal duties. A U.S. Attorney General’s

opinion already acknowledges states' authority to detain immigrants for deportable violations, so this training would just ensure that State and local law enforcement follow proper procedures.

While the State receives some revenue in the form of income taxes and sales taxes, the overall costs to Mississippi appear to be significant, especially in the area of health care, education and corrections. Best-case scenario estimates in this report suggest that illegal immigrants may contribute \$44 million in sales and income taxes to the State economy.

However, estimated health related costs alone in Mississippi from illegal immigrants who are uninsured might be more than \$35 million per year. Unfortunately, because there is little or no specific data regarding the immigration status of those using medical services throughout the State, it is virtually impossible to pinpoint a single dollar figure.

Costs associated with educating illegal immigrant children and their U.S. born siblings in Mississippi are estimated at almost \$24 million.

State incarceration of self-reported illegal immigrants who committed crimes in Mississippi costs about \$237,360 after federal reimbursements under the State Criminal Alien Assistance Program (SCAAP). This amount does not include additional medical costs, which vary by prisoner, nor does it account for local incarceration or any illegal immigrants who did not report being in this country illegally when they were being processed by the Department of Corrections. This report recommends all levels of government that detain illegal immigrants on criminal violations to utilize the SCAAP program for reimbursement, to help offset costs associated with housing illegal aliens.

The State Tax Commission does not collect information related to immigration status but says that there is no way to know what their contribution to the State tax base is unless they report themselves as illegal immigrants. Unfortunately, such self-reporting is very unlikely. If illegal immigrants pay taxes and don't file a return, they will get a "delinquent filer" notice just like a citizen would. If it is determined they are illegally working in Mississippi, they will be reported to the appropriate federal authorities.

One area that has not received a great deal of attention but may have a significant impact on Mississippi is remittance payments—money sent to

their home country by immigrant workers in the United States. Assuming 49,000 illegal immigrants, OSA has estimated approximately \$135,500,000.00 is sent out of the country each year from Mississippi. This is probably a conservative figure since legal immigrants also send money out of the country as well. This is money that will not be spent within the State. It is money that will not generate taxes to offset services provided to illegal immigrant families. It also results in approximately \$10.3 million in lost sales tax revenue per year.

In total, after accounting for the taxes paid, the net cost of illegal immigrants per year to the State—based on a population of 49,000—is about \$25 million, not including services such as Medicaid, worker's compensation, unemployment benefits, or other social welfare programs.

Mississippi's illegal alien population is on the rise and so are the financial and social challenges associated with this increase. This report summarizes the information available on costs and population trends attributed to illegal aliens, on a state and national basis. To properly address this issue, policy makers need information on the impact this population has on State resources. This is especially true when considering the impact on the state's K-12 education, health care and corrections systems.

For the first six months of 2005, state legislatures across the country considered almost 300 bills on immigrant and refugee policy issues and passed 47 new laws. In contrast, the Mississippi legislature gave very little consideration to the issue during 2005, ultimately only changing one law governing grants and loans from the Mississippi Development Authority.

The information contained in this report is the first step in understanding the impact of illegal immigration on Mississippi, the challenges we face, and the actions that may be needed to address this growing concern. The illegal immigrant population poses a substantial challenge to Mississippi for long term-policy. Not only the financial strain, but societal impacts should be examined, where appropriate, to attempt to gather data about both the costs and benefits to our State. On the following page is a summary table of the net effect of illegal immigrants on the State of Mississippi based on 49,000 population.



Office of the State Auditor, Phil Bryant

***Illegal Immigrants' Financial Impact on
Mississippi
(Estimated)***

Estimated Illegal Immigrant Population:	49,000
Estimated Contribution to Sales Tax/yr	\$40,866,000
Estimated Contribution to Income Tax/yr	\$3,381,000
<i>Total Illegal Immigrant Contributions:</i>	<u><i>\$44,247,000</i></u>
Estimated Education Costs/yr	\$23,700,000
Estimated Healthcare Costs/yr	\$35,011,580
Known Public Safety Costs/yr	\$237,360
Estimated Remittance Losses/yr	\$10,328,111
<i>Total Illegal Immigrant Costs:</i>	<u><i>\$69,277,051</i></u>
 <i>Estimated Net Financial Impact on Mississippi: (\$25,030,051)</i>	



INTRODUCTION:

ILLEGAL IMMIGRATION IN MISSISSIPPI AND THEIR COSTS TO THE TAXPAYER

Background and Trends

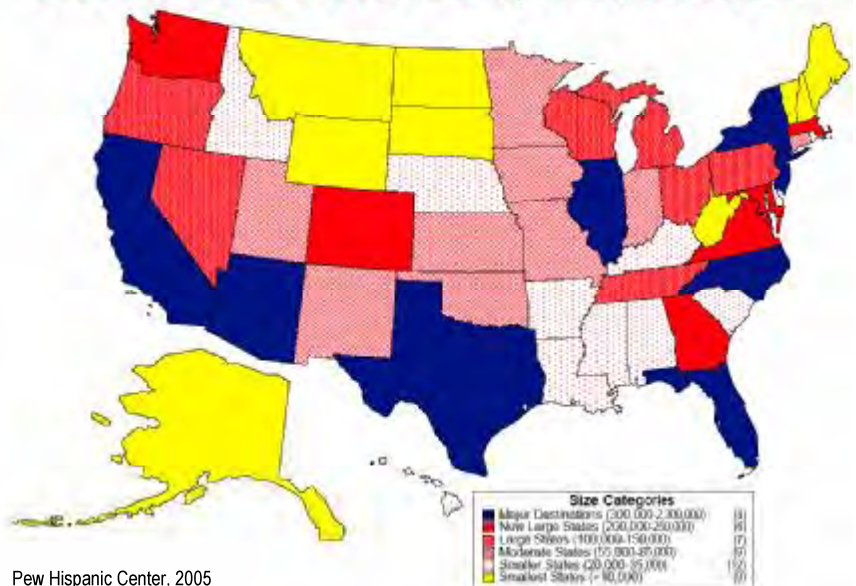
This report is about the impacts of illegal immigrants. Illegal immigrants are foreign-born people who are in this country without the proper authorization. Regardless of how they originally entered (legally or illegally), they don't have a valid visa or other necessary documentation. Some of the other terms used to refer to illegal immigrants include: "undocumented immigrants," "undocumented migrants," "undocumented aliens," and "illegal aliens." In addition to the term "illegal immigrant," another term frequently used is "noncitizen." A noncitizen is *not* necessarily an illegal immigrant. A noncitizen is anyone residing in this country who is not a citizen of the United States. The term noncitizen refers to various foreign-born people who are in this country temporarily or permanently, legally or illegally. This report attempts to differentiate between those immigrants who are here illegally versus those who are here legally.

The national illegal population has grown rapidly in recent years. While some federal agencies continue to enforce laws, others have accepted the influx of illegal workers. The IRS allows illegal immigrants to get individual tax payer identification numbers so that they can pay taxes, regardless of their immigration status. The Federal Reserve has allowed banks and other lending institutions to begin loaning money to illegal immigrants to purchase houses and property. In addition, a huge underground market for forged, fake, and stolen identification documents exists, which in turn allows them to register to vote, obtain drivers licenses, and gives them access to other governmental assistance programs they would not normally qualify for.

The Center for Immigration Studies attributes this rapid growth to the multiple amnesties of the past several decades, as well as the tens of thousands of illegal immigrants who are annually granted legal status. For example, in 2000 and 2003, more than 708,000 green cards were issued to Mexican immigrants alone.¹ As will be noted throughout this report, various sources cannot agree on the actual population numbers or even the percentages of increases, yet they all agree that illegal immigration has virtually exploded and the vast majority of the illegal population is from Central and South America. Additionally, it should be noted that estimating the size of a "hidden" population not generally part of the mainstream is difficult at best. Therefore, population size varies by source, but to get an idea several studies are discussed.

A 2000 study by the Office of Immigration and Naturalization Service Office of Policy and Planning² estimated the illegal population in the US to be about 7 million, with Mexico—69% of the total—being the largest contributor to the influx. According to estimates by the Pew Hispanic Center, in April 2000, there were 8.4 million illegal aliens living in the United States; as of March 2004, this number had grown to 10.3 million (or 29% of all immigrants in the United States). The average annual growth over this four-year period was about 475,000

Size of Unauthorized Population, 2002-04



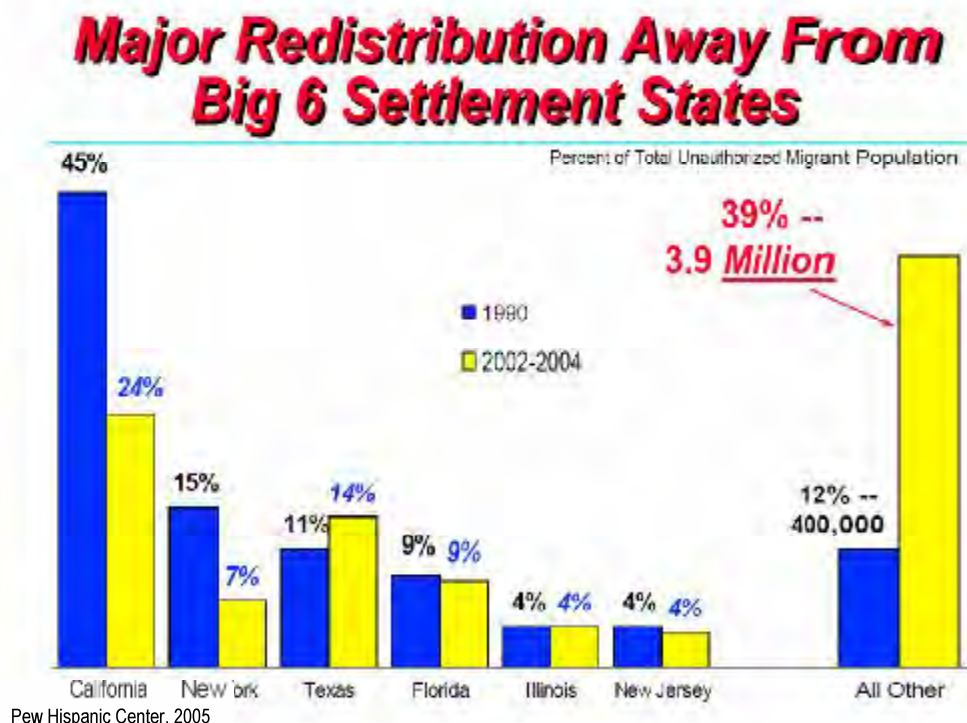
¹ "Economy Slowed, But Immigration Didn't," Center for Immigration Studies, November 2004.

² "Estimates of Unauthorized Immigrant Population Residing in the United States: 1990 to 2000," Office of Policy and Planning US Immigration and Naturalization Service, 2000.



per year, according to the Center. Assuming the growth continued at the same rate, the estimate for March 2005 is somewhat less than 11 million for the number of illegal residents in the United States.³

Also of interest is data showing the dispersal of illegal aliens. Historically, they concentrated in certain areas throughout the country, known as the “Big Six Settlement States” but are now moving to more varied locations. According to the Pew Hispanic Center, since the mid-1990s, the most rapid growth in the illegal immigrant population has taken place in new settlement areas, where previously they had been a relatively small presence. In 1990, about 88% of the illegal population lived in only six states – California, New York, Texas, Illinois, Florida, and New Jersey. However, by 2004, only 61% of the illegal population lived in those six states.⁴ The following figures further detail this phenomenon.



Because many illegal immigrants do not speak English, this has placed a tremendous financial burden on schools and governments in the Southeast and the Midwest where bi- and multi- lingual translators are difficult to find and keep.

Typically, illegal immigrants are in the U.S. because they have entered the country in an unauthorized manner, they have overstayed their nonimmigrant visas, or they have otherwise violated the terms under which they were admitted to the country. A small percentage of illegal aliens enter the U.S. with criminal records and/or with terrorist intent (see page 11 for chart detailing crimes committed by illegal aliens). While many simply come to work, there are also those who come to use government services. Studies by the Urban Institute, the Center for Immigration Studies, and the Journal of Labor Economics have shown that there are those who work and thus displace American citizens and legal aliens from jobs that could have legitimately gone to them.⁵

³ “Estimates of the Size and Characteristics of the Undocumented Population,” Pew Hispanic Center, March 21, 2005.

⁴ See footnote 3.

⁵ Many studies show this to be true: Steven Camarota. 2004. “A Jobless Recovery? Immigrant Gain and Native Losses.” Washington, D.C.: Center for Immigration Studies; David Card. 2001. “Immigration Inflows, Native Outflows, and the Local Labor Market Impacts of Higher Immigration.” *Journal of Labor Economics* 19(1): 22-64; and Harry Holzer. “New Jobs in Recession and Recovery: Who are Getting Them and Who Are Not?” Urban Institute. Most studies show that, over the longer term, immigrants have very modest negative effects on the employment of less-educated workers in the United States, but generate other benefits for the U.S. economy. Professors George Borjas and Lawrence Katz of Harvard University have recently calculated that immigration from 1980 to 2000 might have reduced the earnings of native-born U.S. workers by 3 to 4 percent, with large negative impacts among high school dropouts and smaller impacts among all other education groups. Their estimates are at the high end of those generated by labor economists; others, including Professor David Card of the University of California at Berkeley, have found negative effects.



Regardless of anything else, illegal aliens are here in violation of federal and state law. Arguments are made that they do jobs that Americans do not want. However, what they really do is potentially displace skilled and unskilled workers because they are willing to work for lower wages and less benefits than those established by the federal government. As a result, over the last several decades, the percentage of foreign-born workers in certain industries has increased significantly. Below is a chart using U.S. Census data to show a breakdown of jobs by native versus foreign workers from 2003.

U.S. Citizen Workers by Occupation, 2003 (All workers age 16 and over; in thousands)			
Occupation	Total Workers	Percent Native Born	Percent Foreign Born
Farming, fishing and forestry	1,050	61.2%	38.8%
Building and grounds cleaning	4,947	67.7%	32.3%
Production occupations	9,700	77.0%	23.0%
Construction and extraction	8,114	78.2%	21.8%
Food preparation and serving	7,254	78.2%	21.8%
Computer and mathematical	3,122	81.3%	18.7%
Life, physical and social science	1,375	82.7%	17.3%
Transportation and material moving	2,926	82.9%	17.1%
Healthcare support occupations	8,320	83.4%	16.6%
Personal care and service	4,232	84.3%	15.7%
Architecture and related	2,727	85.3%	14.7%
Healthcare practitioner and technical	6,648	86.7%	13.3%
Installation, maintenance and repair	5,041	87.9%	12.1%
Sales and related occupations	15,960	88.3%	11.7%
Arts, design, entertainment, sports, media	2,663	89.2%	10.8%
Business and financial operations	5,465	89.8%	10.2%
Management	14,468	90.8%	9.2%
Office and administrative support	19,536	90.9%	9.1%
Community and social services	2,184	91.3%	8.7%
Education, training and library	7,768	91.7%	8.3%
Protective service occupations	2,727	93.9%	6.1%
Legal occupations	1,508	94.8%	5.2%
ALL OCCUPATIONS	137,736	85.7%	14.3%

Current Population Survey, 2003, U.S. Census Bureau

Interestingly, because the information is about all immigrants (not just illegal or legal ones), it must be acknowledged that some portion of the data are about legal aliens. Therefore, the actual percentages of illegal immigrant workers in the listed areas should be somewhat smaller. It is clear that there are still a larger percentage of native born citizens who are in the fields listed. Anecdotal evidence of change can be seen in construction and hospitality service areas over the last ten years, though.

Nationwide, universities, private research and policy organizations, as well as state and federal government entities have attempted to estimate these costs in other states. Many times, however, a report acknowledged to consider the illegal immigrant issue actually combines all immigrants (legal and illegal) together or focuses on a single ethnic group regardless of immigrant status—such as the Hispanic or Asian immigrant population. North Carolina recently completed a study on the impact of the Hispanic population there. Unfortunately, there is no distinction between Hispanic immigrants and Hispanic citizens, nor is there a distinction between legal and illegal Hispanic immigrants. Texas has also recently completed a demographic study profiling the changes in race and



ethnicity and focusing on the Hispanic population, but with no distinction between immigrants (legal or illegal) and citizens.

Many who read these reports may jump to the conclusion that they are actually about the illegal Hispanic population. One reason for this is, by all estimates, the Hispanic illegal immigrant population is the largest in the nation, and illegal Mexican immigrants are thought to comprise 60% to 70% of the total illegal alien population in the U.S.⁶ So most studies about immigrants today are assumed by the general public to be about the illegal Hispanic population. These type reports do not paint a truly accurate picture of the costs of illegal immigrants. However, they can have a significant impact on policymaking about the issue because lawmakers may make certain assumptions about the data and information they receive.

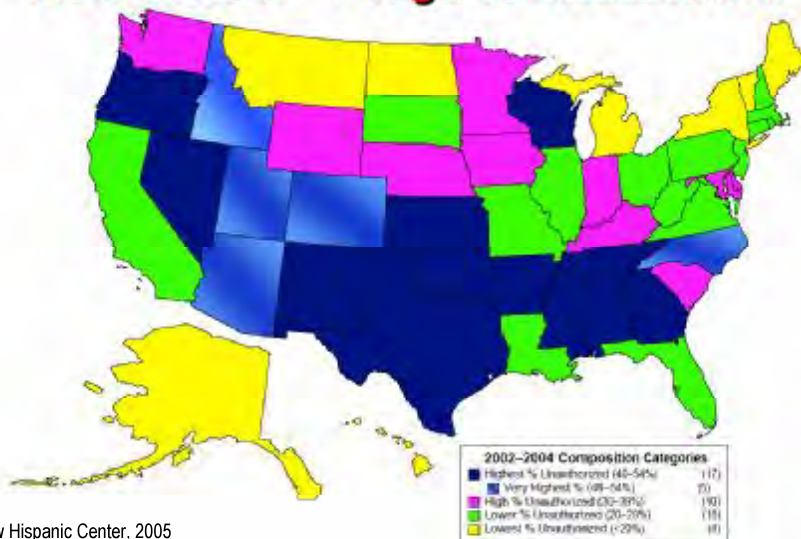
Mississippi's Population

According to national estimates, Mississippi's illegal immigrant population varies widely. In 2004, estimates were between 8,000⁷ and 90,000⁸ illegal immigrants in Mississippi. Some advocacy organizations have even suggested the number may be as high as 100,000, however, no data has been provided to begin to verify this estimate.⁹

The South is considered a "high-growth" region for illegal immigrants for several reasons such as numerous agricultural and low-skilled wage jobs. Further, Mississippi is considered a "corridor state" because large numbers of illegal immigrants pass through on a regular basis stopping for short periods of time on their way to more permanent areas such as Georgia, Florida, etc. Recently, Mississippi population has grown even more, although no studies have been undertaken to determine the extent of this accelerated growth. As the population of illegal immigrants who are generally, low skilled, low wage workers with minimal education attainment increases in the State, so does the potential use of government services and entitlement programs. There is no clear data about how many illegal immigrants in Mississippi have payroll taxes withheld or who are covered by an employer's insurance. However, there is an acknowledged sub-culture, which works on a cash basis and does not contribute to State or local revenue through wage taxes. So, while some do and some do not contribute to the tax system the numbers of illegal aliens continues to grow. Because Mississippi has many low and non-skilled workers, there is a real possibility that illegal immigrants may displace Mississippi workers in the service, agriculture, and construction industries. At best, they potentially serve to drive real wages down by generally being willing to work for less than minimum wage. Regardless of whether they contribute to the economy, displace workers, etc. data should be collected so their impact can be studied.

The growing number of illegal immigrants in Mississippi can be viewed as part of the national trend over the last 30 years. More and more illegal immigrants have moved through or to areas that are more rural to take agricultural jobs. They have also followed increased jobs in the service, hospitality, and construction industries. Mississippi's growth in these areas is no exception, nor is the tremendous increase in the use of illegal immigrants in jobs here. The graphic to the right shows the percentage of growth and population increases nationwide and places Mississippi in the highest growth bracket.

New Growth --> High % Unauthorized



Pew Hispanic Center, 2005

⁶ "Economy Slowed, But Immigration Didn't," Center for Immigration Studies, November 2004.

⁷ Based on the United States Census Bureau Decennial Census for 2000

⁸ Estimate from an Immigration and Customs Enforcement Agent, November 2005

⁹ This report uses the midpoint of 49,000 for a population estimate to illustrate an average cost/benefit between the high and low documented estimates. The Urban Institute estimated Mississippi's illegal immigrant population to be less than 20,000 in a 2002 report.



ILLEGAL IMMIGRANTS IN MISSISSIPPI AND THEIR COST TO THE TAXPAYER

This report attempts to provide a snapshot of the potential financial costs of having illegal immigrants in Mississippi. Due to time constraints, this report cannot provide comprehensive costs for all programs that may incur costs from illegal immigrants, but does make estimates in a number of areas, namely education, health, and public safety. While there are some statistics from certain agencies, there are no dollar figures available at this time to tie to those figures.

In calculating the costs to the State, this report attempts to provide a “best case” scenario based on the concept that illegal immigrants contribute taxes to Mississippi’s general fund. Their estimated contribution assumes that all illegal aliens work and pay into the tax system. It also assumes that none of them work on a cash basis. Working on a cash basis or actually filing returns to get overpayments of taxes back would significantly decrease their financial contribution to state and local revenue and would significantly increase the calculated per capita cost of serving illegal immigrants.

Education and unpaid healthcare claims are two of the highest costs facing the State. School districts are required to supply foreign language assistance regardless of cost. Hospitals are heavily impacted by illegal immigrants who receive free medical attention. These are not just large private institutions, but also include small county hospitals, rural doctors, etc. The following is a discussion of some of the costs associated with illegal immigrants.

Education: K-12 Costs

The Pew Hispanic Center reported that there were about 1.7 million illegal migrant children under 18 in the United States in 2004. Additionally, there were more than three million U.S.-born children of illegal immigrant parents.¹⁰ Mississippi is no exception with a projected continuous growth in illegal immigrant school children and their U.S. born siblings¹¹. Of these children, Mississippi is estimated to have 1,796 illegal immigrants and 2,514 of their U.S. born siblings in their school system.¹²

In Mississippi, illegal immigration has a significant impact on the K-12 school system. The estimated cost to Mississippi in 2004 was \$23.7 million for education.¹³ It is expected that as the illegal immigrant population grows, this cost will rise. Associated social and financial costs of special language classes, meal programs, and potential overcrowded classrooms can also increase the total cost to the local and State government, especially if there is not an equivalent offset contribution to the tax base in the affected areas. The Mississippi Department of Education does not collect any specific information about the immigration status of children enrolled in schools, however, they are able to report total immigrants (with no distinction made for legal status) each year. Their policy of non-documentation is explained in their manual entitled *Guidelines for English Language Learners: Policies, Procedures, and Assessments, 2005*.

Students without social security numbers should be assigned a number generated by the school. Adults without social security numbers who are applying for a free lunch and/or breakfast program on behalf of a student need only indicate on the application that they do not have a social security number.

The Court also stated that school systems are not agents for enforcing immigration laws, and it determined that the financial burden of educating undocumented aliens placed in a school system is not an argument for denying services to English language learner (ELL) students. Schools should not request any information related to U.S. residency, including, but not limited to, Social Security numbers, passports, and visas.

¹⁰ See footnote 3.

¹¹ Another common term for these U.S. born children of illegal immigrant parents is “anchor babies.”

¹² “Breaking the Piggy Bank: How Illegal Immigrants are Sending Schools Into the Red,” Federation for American Immigration Reform, 2003.

¹³ See footnote 1.



School districts may require only two kinds of information for enrollment: proof of residency in the district and proof of required vaccinations. As long as students can provide this information, they must be allowed to enroll in school.

For additional information regarding school enrollment and attendance as outlined by the State of Mississippi, please contact the MDE's Office of Compulsory Schools at (601) 354-7760. Also, additional information regarding school enrollment and attendance as outlined by the State of Mississippi may be found in the Mississippi Code of 1972, as amended, SEC. 31-15-1 and SEC. 41-23-37, the Office of the Attorney General of the State of Mississippi, Memorandum No. 2003-0699, which references the State Board of Education Residency Verification Policy.

Their guidelines discuss the court cases that have led to their policy development. A review of recent court cases is important to understand why the Mississippi Department of Education does not collect any data about legal status of immigrant children. Federal and state governments have enacted laws and regulations, including Title VI of the Civil Rights Act of 1964 and the Equal Education Opportunities Act of 1974, to protect the rights of English language learners and their families. Every public school in the United States is required to provide a free and equitable education to all school age children who live within the boundaries of the school district. Some federal laws are supported by funding to which all eligible school districts are entitled (i.e., Title I and Title III of the No Child Left Behind Act of 2001). However, regardless of funding, public school districts must comply with the laws and regulations to the best of their abilities.

The Supreme Court ruled in *Plyler v. Doe* (1982) that illegal immigrant children and young adults have the same right to attend public primary and secondary schools as do U.S. citizens and permanent residents, regardless of their immigrant status. Like other children, undocumented students are obliged under state law to attend school until they reach a mandated age.

Department of Education guidelines also point out that according to the National Coalition of Advocates for Students, as a result of the *Plyler v. Doe* ruling, public schools may not:

- deny admission to a student during initial enrollment or any other time on the basis of undocumented status;
- treat a student disparately to determine residency;
- engage in any practices to "chill" the right of access to school;
- require students or parents to disclose or document their immigration status;
- make inquiries of students or parents that may expose their undocumented status; or
- require social security numbers from all students, as this may expose those with undocumented status.

According to a recent United States General Accounting Office report,¹⁴ they believe the Supreme Court's decision in *Plyer v. Doe*, 457 U.S. 202 (1982), said only that children may not be denied education on the basis of their immigration status. Their report recommends—as does this report—that as long as the data is not being gathered or used for discriminatory purposes, it should be collected for planning purposes. Further, certain federal law prohibits government from restricting the collection of such information.¹⁵

Subsequently, a 1997 district court case (*League of the United Latin America Citizens v. Wilson*, 997 F. Supp. 1244 (C.D. Cal. 1997)) declared unconstitutional a provision in California's Proposition 187 that required schools to verify the status of schoolchildren because the Court found that the intent of the requirement was to deny the students access to a public education. Presumably, a state or local government could inquire about legal status for another, constitutional reason (such as to seek federal reimbursement).

The total K-12 school expenditure for illegal immigrants costs the states nearly \$12 billion annually, and when their U.S. born siblings are added, the costs more than double to \$28.6 billion. Mississippi ranked 48th in

¹⁴ "Illegal Alien Schoolchildren: Issues in Estimating State-by-State Costs," United States General Accounting Office, June 2004.

¹⁵ In general, the courts have held that illegal aliens have no constitutional privacy interest in hiding their unlawful immigration status. In previous years, some courts ruled that immigration status was "irrelevant" for many government and judicial actions. But since the passage of the Welfare Reform Act and IIRAIRA in 1996, that is no longer the case. Two provisions of those bills, 8 USC 1373 and 8 USC 1644, expressly prohibit state and local officials and agencies from prohibiting or restricting in any way the collection or maintenance of information regarding the citizenship or immigration status of "any person" for "any reasons allowed by law" by state or local personnel, or sharing that information with other agencies at any level of government.



education expenditures for illegal immigrants and their U.S. born siblings, spending a total of \$23.7 million in 2004. Comparatively, neighboring Alabama, who ranks 35th, spent \$82.5 million.¹⁶

Although these numbers seem high, they still do not represent total costs. Because the No Child Left Behind Act requires that schools provide the foundation for guidance in establishing an equitable, quality education for the immigrant students, who are also known as English Language Learners (ELL), schools have been required to take on additional financial burdens. For example, a recent study found that dual language programs represent an additional expense of \$290 to \$890 per pupil depending on the size of the class.¹⁷ In addition, because these children of illegal immigrants come from families that are most often living in poverty, there is also a major expenditure for them on supplemental feeding programs in the schools. (These costs are not included in any of this report's cost calculations due to time limitations.)

In addition to these costs, schools in some areas may also be experiencing overcrowding from increases in illegal immigrant children. In Madison County, the foreign-born population increased by 263 percent in the 1990s. In DeSoto County, where the foreign-born population increased by 579 percent in the 1990s, school enrollment rose from 15,400 in 1996 to 21,000 in 2002, a 36 percent increase in six years.¹⁸ Both illegal immigrant advocate groups, as well as anti-illegal immigrant groups believe that the vast majority of all immigrants in Mississippi are here illegally.

The Office of the State Auditor recommends that schools collect data about illegal immigrants and transmit it to their district for compilation. OSA further recommends that the State Department of Education compile all district level data in an annual report which will show the numbers of illegal immigrants and their siblings on a statewide level. This report should be used for policy making and planning.

Education: Universities and Community Colleges

The Illegal Immigration Reform and Immigrant Responsibility Act Of 1996 places restrictions on the tuition and other public benefits that may be charged to illegal immigrants attending institutions of higher learning.¹⁹ It says that colleges and universities may not allow illegal immigrants to pay in-state tuition or receive other postsecondary education benefits unless those same benefits are provided to all lawfully present students (citizens or noncitizens). Several states have attempted to prohibit in-state tuition prices to illegal immigrants, while others have pushed to provide in-state tuition.

The Institute for Higher Education Law and Governance at the University of Houston Law Center estimated in 2001 that about 25,000 undocumented students attend public U.S. colleges and universities, and another 50,000 to 75,000 are qualified but do not attend due to financial reasons. However, like other population numbers related to illegal immigrants, other organizations have different estimates. The Congressional Research Service estimated in 2000 that close to 126,000 illegal immigrants under the age of 21 were enrolled in colleges and universities nationwide. Because virtually no one actually collects this information, it is not possible to determine which figures are more accurate. For the purposes of this report, numbers from the Congressional Research Service will be used.

Potentially, if illegal immigrants did not pay the out-of-state tuition that other legal immigrants and students from other states would be charged, each year states and schools would lose between \$348 million and \$454 million nationally.²⁰ There is a social cost as well when an American citizen or a legally present non citizen pays a higher tuition rate than one who has broken federal and state laws. In 2004, the estimated tuition amount to be paid was estimated to be between \$839 million and \$1.092 billion. A discount for in-state tuition would reduce that to about

¹⁶ See footnote 11.

¹⁷ Rafael Lara-Alecio et al., "Texas Dual Language Program Cost Analysis," January 2005.

¹⁸ Immigration Impact – Mississippi, Federation for American Immigration Reform.

¹⁹ TITLE V--RESTRICTIONS ON BENEFITS FOR ALIENS Subtitle A--Eligibility of Aliens for Public Assistance and Benefits. SECTION 505: LIMITATION ON ELIGIBILITY FOR PREFERENTIAL TREATMENT OF ALIENS NOT LAWFULLY PRESENT ON BASIS OF RESIDENCE FOR HIGHER EDUCATION BENEFITS. (a) In General.--Notwithstanding any other provision of law, an alien who is not lawfully present in the United States shall not be eligible on the basis of residence within a State (or a political subdivision) for any postsecondary education benefit unless a citizen or national of the United States is eligible for such a benefit (in no less an amount, duration, and scope) without regard to whether the citizen or national is such a resident. (b) Effective Date.--This section shall apply to benefits provided on or after July 1, 1998.

²⁰ Andorro Bruno and Jeffery J. Kuenzi, "Unauthorized Alien Students: Issues and Legislation," Report for Congress, Congressional Research Service, May 16, 2003.



\$258 million to \$336 million; leaving a difference of \$581 million to \$756 million nationally.²¹ This report does not attempt to quantify that cost for Mississippi because no reliable data or estimates were available on which to base calculations.

Proposed federal legislation to give illegal immigrants in-state tuition rates would carry additional costs. According to the Congressional Budget Office, making illegal immigrant students eligible for federal tuition assistance through Pell grants would have cost \$195 million in 2003 and \$362 million over the 2003 – 2006 period.²²

Higher education entities in Mississippi do not collect data about immigrant status other than original verification of country of origin. At this time, it is not possible to quantify the cost of illegal immigrants attending public universities in Mississippi, nor is it reasonably possible to even verify legal status of those non citizens attending higher education institutions in this State. *However, OSA recommends that universities and community colleges collect data on the legal status of immigrants annually. Further OSA recommends that they try to quantify costs associated with serving illegal immigrants where applicable.*

Healthcare Costs

The increase of the illegal immigrant population in the United States has very serious hidden medical costs. These costs must be examined not only from a financial standpoint, but also from a social one. Though both of these are very different in nature, they are a very important aspect of the healthcare industry.

First, the financial cost to the United States is one that is ever increasing. The American Hospital Association reported that its member facilities provided \$21 billion in uncompensated healthcare services in 2002. While not all of these costs are attributed to illegal immigrants, a recent study by the RAND Corporation found that 68% of the undocumented immigrant adults they studied had no health insurance.²³

Nationwide, many illegal immigrants without health insurance seek medical treatment at small and rural hospitals and clinics, as well as county health clinics. When medical services are provided and not paid for, especially at small facilities, those unpaid costs cause others' bills to rise to cover losses. In addition, it should be noted that county health clinics & hospitals, as well as other larger facilities such as the University Medical Center (UMC), that provide these services to illegal immigrants also receive some amount of funding from the State.

The Mississippi Hospital Association estimates that the state's hospitals provided \$504,618,583 in uninsured healthcare services in 2004. Those that provided the most uninsured care include the University Medical Center, Forrest General, Memorial Gulfport, Singing River, and North Mississippi Medical Center. Based on the Rand study findings, OSA has estimated the amount of uninsured healthcare losses in Mississippi from illegal aliens. Of the \$504,618,583, OSA estimates that about \$35,011,580 may be attributed to illegal immigrant costs, not including other governmental backed medical benefits they may receive. However, because no data regarding immigration status is collected, it is difficult to determine the accuracy of this estimate, especially since Mississippi has a large number of uninsured and under insured people.

While these costs are continuously increasing, the federal government is trying to assist states with the financial costs of caring for uninsured immigrants. In 2003, Congress passed the Medicare Prescription Drug, Improvement, and Modernization Act of 2003. Section 1011 of this Act, entitled Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens, sets aside \$250,000,000 for each of fiscal years 2005 through 2008 for the purpose of making payments directly to providers for certain services rendered to illegal immigrants. Mississippi providers will be reimbursed a total of \$190,775 for FY 2005 based on an estimated illegal population of 8,000, which OSA believes is not an accurate estimate (See Appendix B for all 50 states' allocations).

The funds can be used to reimburse a portion of costs incurred by eligible providers for emergency health services provided to undocumented immigrants and other specified immigrants. Two-thirds of the funds will be divided among all 50 states and the District of Columbia based on their relative percentages of undocumented aliens. One-third will be divided among the six states with the largest number of undocumented alien apprehensions. When asked about the number of illegal aliens apprehended in Mississippi, ICE was unable to provide OSA with annual

²¹ See footnote 2.

²² See footnote 2.

²³ Dana P. Goldman, James P. Smith, and Neeraj Sood. "Legal Status and Health Insurance Among Immigrants." Health Affairs, Vol. 24, Issue 6, 1640-1653. (Rand Corporation study, 2005)



deportation data for Mississippi; however, the Department of Homeland Security reported 638 deportations from Mississippi between April 2003 and March 2004 for the purposes of the above funding allocation. *OSA recommends that Mississippi begin to keep documentation about the number of illegal immigrants apprehended at the State and local level so that we may better capture federal dollars that may come available.*

From the respective state allotments, payments are made directly to hospitals, physicians, and ambulance service providers for some or all of the costs of providing emergency healthcare. Payments under Section 1011 may only be made to the extent that care was not otherwise reimbursed. Payments may be made for services furnished to certain individuals described in the statute as: 1) undocumented aliens; 2) aliens who have been paroled into the United States at a United States port of entry for the purpose of receiving eligible services; and 3) Mexican citizens permitted to enter the United States for not more than 72 hours under the authority of a biometric machine readable border crossing identification card (also referred to as a "laser visa") issued in accordance with the requirements of regulations prescribed under a specific section of the Immigration and Nationality Act.

Although this act may decrease some medical costs states incur, it will not eliminate all of them. These payments will be made based on the percentage of illegal immigrants residing in the state as compared to the total number of illegal immigrants residing in all States, as determined by the Statistics Division of the Immigration and Naturalization Service, as of January 2003, based on the 2000 decennial census.

Second, the social costs of illegal immigrants can be deadly. Because of the lack of insurance and their citizenship status, illegal immigrants are less likely to be treated for infectious diseases, and because they have not gone through the proper channels, they have probably not undergone standard health exams or checks that legal immigrants have before entering the United States. Since the influx of illegal immigrants in the early 2000s, diseases, such as drug-resistant tuberculosis; Chagas disease; leprosy; Dengue Fever; polio; and hepatitis A, B, and C, that were virtually wiped out have begun to reappear.²⁴ These diseases are common in many third world countries, especially among the poor population.

Many illegals crossing our borders may have tuberculosis. That disease had largely disappeared from the United States thanks to modern medicine. However, this is one of the diseases that remain common in many other countries worldwide.²⁵ Chagas disease, also called the "kissing bug disease," infects 18 million people annually in Latin America and causes approximately 50,000 deaths/year. This disease can affect the U.S. blood supply and can be transferred through blood transfusions and organ transplants. No cure exists.²⁶ Leprosy was so rare in America that in 40 years only 900 people were afflicted. Suddenly, in the past three years, America has more than 7,000 cases of leprosy. It is now endemic to northeastern states because illegal immigrants and other immigrants brought leprosy from India, Brazil, the Caribbean, and Mexico.²⁷ Another growing problem, while exceptionally rare in the United States, Dengue Fever is common in Ecuador, Peru, Vietnam, Thailand, Bangladesh, Malaysia, and Mexico. Recently, there was a virulent outbreak of it in a Texas border town. Though Dengue Fever itself is not usually fatal, Dengue Hemorrhagic Fever routinely kills.²⁸ Finally, polio, which had been eradicated from the United States, now reappears in illegal immigrants, as do other conditions such as intestinal parasites, malaria and the infectious malady called Kawasaki disease.²⁹

Similar to the financial costs, at this time Mississippi does not collect data that will help determine the extent of illegal immigrants' contribution to the spread of infectious diseases that were virtually nonexistent only decades ago. *The Office of the State Auditor recommends that hospitals, schools, the MS Department of Health, and MS Department of Human Services collectively attempt to gather relevant data to determine the impact of illegal immigrants and infectious diseases. Further, OSA recommends that these entities come together for long- and short-term policy planning.*

²⁴ Dr. Madeline Cosman, "Illegal Aliens and American Medicine," Journal of American Physicians and Surgeons, Vol. 1 No. 1, Spring 2005.

²⁵ See footnote 24.

²⁶ See footnote 24.

²⁷ See footnote 24.

²⁸ See footnote 24.

²⁹ See footnote 24.



Public Safety Costs

Since 2001, the border patrol has caught 4.5 million people trying to get into the United States illegally. However, many still get through each year, swelling the ranks of illegally present individuals. Most illegal immigrants come into the United States just looking for work and a way to send money to their families back home. However, according to statistics from Immigration and Customs Enforcement (ICE), a small percentage of illegal immigrants enter the country with criminal records or commit crimes while here (See chart on page 11). In addition, illegal immigrants have created an extremely large and active black market industry for fraudulent and stolen identification documents.³⁰ These documents are not only used to secure jobs, but to establish bank accounts, get credit cards, buy property, and also to register to vote. In theory, the new federal ID program, known as the “Real ID Act,” will mitigate this problem to some extent. This law, which goes into effect in less than three years, is still an unknown cost to the State. *OSA recommends that the MS Department of Public Safety determine the cost that will be mandated to the State for implementing the Real ID Act prior to its implementation date and publicize that cost for planning purposes.*

In addition, it is becoming more and more common for people from countries other than Mexico to illegally enter the United States through Mexico. These illegal immigrants are known as OTMs or “Other than Mexicans,” and in numerous cases, are a very real threat to U.S. security. A subgroup of OTMs is known as SIAs (Special Interest Aliens). These are people from countries where al-Qaeda, and similar terrorist organizations, are known to operate.³¹ This report does not intend to minimize illegal entry of immigrants from Canada or any other point, but most current data and research points to the Southern border with Mexico as the key entry point for illegal activity including terrorism, drugs (“narco-terrorism”), and human trafficking.

Immigration and Customs Enforcement works in all states to apprehend and deport these criminals. Unfortunately, at this time the Office of the State Auditor is unable to determine from ICE, how many illegal immigrants were apprehended and/or deported from Mississippi last year. However, based on a Department of Homeland Security report, from April 2003 to March 2004, 638 illegal immigrants were apprehended in Mississippi. (See appendix B) This state is known as a corridor state that many illegal immigrants pass through on their way to other places. Drugs come through and into Mississippi along with some of these illegal immigrants. Since ICE officials are generally the only ones properly trained to detect, apprehend, and process illegal immigrants, State law enforcement is not usually equipped to properly detain a suspected illegal alien. Currently Florida, Arkansas, Alabama and several other states have begun to train their state law enforcement to identify and arrest illegal immigrants without violating federal laws with the help of the Department of Homeland Security (DHS). Known as “Section 133 Law Enforcement-DHS Cooperation and Training Agreements,” one very important benefit of these formal arrangements is that police officers acting within the scope of a 133 MOU are granted statutory federal immunity for their actions, thus eliminating significant liability concerns of many small police departments. *OSA recommends that the State follow the same training procedures that other states like Alabama, Arkansas, and Florida are undergoing to ensure the proper skills to identify and detain illegal aliens.*

Local and State law enforcement must deal with all aspects of these pass-through issues, including incarceration costs. *The Office of the State Auditor recommends that the Department of Public Safety in conjunction with all other state and local law enforcement agencies begin to track the apprehension of illegal immigrants.* This will help justify Mississippi’s requests for federal reimbursement of incarceration and healthcare costs. It will also help policy makers understand the extent of the issue.

Costs of Incarcerating Illegal Immigrants in Mississippi

On the federal level, according to a study by the Center for Immigration Studies, the costs imposed by illegal immigrants on the federal prison and court system are significant, totaling \$1.6 billion in 2002. Although persons in illegal households account for about 3.6% of the nation’s total population, they account for almost 20% of those in

³⁰ “Millions of Mexican Illegal Aliens Endanger U.S. Security,” NewsMax.com Wires, August 7, 2002

³¹ Jon Dougherty, “Lawmaker: Terror War Spilling Across Border: Concern Rising Following Arrest of al-Qaeda Suspect in Mexico,” World Net Daily.com, November 16, 2005.



federal prison and others processed by the federal courts. The \$1.6 billion cost does not include federal State Criminal Alien Assistance Program (SCAAP) payments to the states.³² On a state level, the Mississippi Department of Corrections (DOC) estimates that it cost approximately \$36.54 per inmate/day, excluding medical costs, in FY 2005 to incarcerate illegal immigrants in Mississippi. Accounting for federal SCAAP payments that reimburse the State for some of these costs, the net total State cost was approximately \$237,360 for all reported illegal immigrant inmates in FY 2005. However, this does not account for local incarceration or any illegal immigrants who did not report being in this country illegally. The DOC relies on a “self-reported” system to determine which inmates might be eligible for federal SCAAP funds. The number of incarcerated illegal immigrants decreased from 83 in FY 2001 to 70 in FY 2005. This decrease has been in part due to a transition in computer systems and software and all the inherent problems that tend to go with a system change.

Finally, only two counties—Pike and Lauderdale Counties—currently participate in the SCAAP program. *OSA recommends that the Department of Corrections develop material to be distributed to all local governments explaining their eligibility for federal SCAAP funds and encourage these local entities to participate in the program.*

The following national statistics indicate the types of crimes committed by criminal aliens deported.³³

Top Twenty Categories of Crimes
(number of aliens removed and % of total criminal aliens, ranking based on FY 2005)

	FY 2004		FY 2005	
Total	85,770	100	78,487	100
Dangerous Drugs	32,526	38	30,810	39
Immigration	13,206	15	11,423	15
Assault	9,193	11	8,557	11
Burglary	3,251	4	2,990	4
Robbery	2,790	3	2,760	4
Sexual Assault	2,701	3	2,487	3
Larceny	2,689	3	2,371	3
Family Offenses	2,399	3	1,922	2
Sex Offenses	1,941	2	1,800	2
Stolen Vehicle	1,715	2	1,586	2
Weapon Offenses	1,597	2	1,522	2
Fraudulent Activities	1,390	2	1,275	2
Forgery	1,414	2	1,208	2
Homicide	836	1	865	1
Stolen Property	802	1	702	1
Traffic Offenses	800	1	572	1
Obstructing Police	542	1	439	1
Kidnapping	422	0	446	1
Health Safety	482	1	315	0
Obstructing Judiciary etc.	415	0	297	0

³² “The High Costs of Cheap Labor: Illegal Immigration and the Federal Budget,” Center for Immigration Studies, August 2004.

³³ Office of Detention and Removal, United States Immigration and Customs Enforcement, Department of Homeland Security.



Employment, Income Taxes, and Sales Taxes

Federal Laws

It is against federal law to hire an illegal alien. U.S. Code Title 8, §1324a on unlawful employment of unauthorized aliens *makes it unlawful for a person or entity to hire or continue to employ a known illegal alien; this includes contract and subcontract labor.* While there are a few exceptions to an employer's liability, the employer must attest that they did examine documents (U.S. passport, resident alien card, alien registration card, social security card, driver's license, etc.), that appeared to be genuine, to establish the employee's employment authorization and identity. In order to assist employers with verifying documents, the Social Security Administration has a toll free number (800-772-1213) and a website (www.ssa.gov/employer) that an employer may use at any time to verify the individual's name and social security number. The employer must retain this information for a period of not less than three years after hiring an employee. If the employee is terminated, then the information must remain on file for one year after the termination date. While this is still no absolute guarantee and must be used with no intent to discriminate, it does provide some immediate level of assurance that documents presented are not fraudulent.

Under the federal law, when a potential violation occurs, the U.S. Attorney General investigates. In conducting investigations, immigration officers and administrative law judges have legal authority to examine all evidence. Upon completion of the investigation, the U.S. Attorney General must provide written notice to the entity in violation and if requested provide the entity a hearing. If no hearing is requested, the U.S. Attorney General shall issue a final and unappealable order. This order may be a cease and desist order with civil money penalty for hiring, recruiting, and referral violations; an order for civil money penalty for paperwork violations; or an order for prohibited indemnity bonds. If the accused entity disagrees with the order, it may, within 45 days, file a petition in the Court of Appeals for review of the order. If the entity fails to comply with the order, the U.S. Attorney General's Office shall file suit to seek compliance in any appropriate district court of the United States, at which time the final order shall not be subject to review.

Any person or entity, which engages in a pattern or practice of violations, shall be fined not more than \$3,000 for each unauthorized alien, imprisoned for not more than six months for the entire pattern or practice, or both. If the U.S. Attorney General has reasonable cause to believe that a person is engaged in a pattern or practice of employing, recruiting, or referring illegal aliens, the U.S. Attorney General may bring civil action in the appropriate district court of the United States. *OSA recommends that the State should abide by all federal laws with regard to employment of illegal immigrants.*

The Mississippi legislature is currently considering a bill that would require employers who have contracts with the State to be in compliance with this federal law. If the bill passes, employers with State contracts, who openly violate federal immigration laws, risk a loss of their contracts for violations. *OSA recommends the State Legislature pass SB2433 to protect state contracts and to ensure Mississippi abides by current federal immigration employment laws.*

Contributions and Losses Through Taxes

There have been a number of studies on the national level that examine the illegal immigrant cost to the federal government and a few attempts within states to quantify costs and benefits of various groups ranging from all illegal immigrants, Hispanic immigrants (legal and illegal), Asian immigrants (legal and illegal), and others. Generally, it is believed that illegal immigrant households have an overall negative financial effect on the federal budget. A study by the Center for Immigration Studies estimates

...that illegal immigrant households create a combined net benefit for Social Security and Medicare in excess of \$7 billion a year, accounting for about 4 percent of the total annual surplus in these two programs. They create a net deficit of \$17.4 billion in the rest of the budget, for a total net loss of \$10.4 billion...if the Social Security totalization agreement with Mexico signed in June goes into effect, allowing illegals to collect Social Security, these calculations would change.³⁴

³⁴ See footnote 32.



The Social Security Totalization Agreement was signed by the Mexican and United States' Social Security Administration on June 29, 2004. The process to finalize this agreement requires the State Department and the White House to review the document and then the President must submit it to Congress. Congress has 60 days to disapprove the agreement or it will go into effect. In a 2003 report about this agreement, the GAO noted that when estimating costs, the Social Security Administration did not consider the millions of current and former Mexican citizen illegal aliens who may be paying into the Social Security system and who, if they become legal immigrants or can prove that they paid into the system could claim benefits. Ultimately, the cost could be much higher than the Social Security Administration originally estimated. Their estimate of \$78 million per year only takes into account 50,000 Mexican workers who are currently eligible. If the potentially eligible illegal immigrants and those who did work under false documentation attempted to claim benefits, the amount could climb to as much as \$17 billion per year.³⁵ This would increase the net federal deficit from \$17.4 billion to approximately \$27 billion per year and would negate the estimated \$7 billion per year paid by illegal immigrants.

While there is no equivalent Social Security program in Mississippi, many illegal immigrants do pay into the State tax system. However, according to representatives of the Mississippi State Tax Commission, there is currently no unclaimed pool of money contributed by illegal immigrants. While it is not legal for businesses to hire illegal aliens, the practice continues to go virtually unpunished nationwide. Since employers hire these illegal workers, it is important to attempt to quantify the contribution that they make to the State's revenue system in order to arrive at some net cost to the State.

This report makes certain assumptions, such as all working illegal immigrants pay into the tax system and none work on a cash-only basis. Anecdotally, we know this to not be the case. But since there is no hard data about the number of illegal immigrants in Mississippi who are employed, this assumption allows for a best case scenario of potential contributions to the State tax system. However, for each immigrant who works for cash, less money is paid in to the State's general fund and therefore, the overall contributions will be lower.

Similarly, this report assumes that all illegal immigrants who work do not intend to file income tax returns, and therefore, receive nothing back from the State Tax Commission. In an effort to provide a best case scenario, this assumption ultimately increases the illegal immigrant contribution to the State. Again, anecdotally, we know this to not be true. In addition, the State Tax Commission would pursue taxpayers who do not file claims as "delinquent filers." Based on national estimates, our calculations use a family of four, earning an average annual salary of \$27,400.³⁶

As noted earlier in this report, there are a wide variety of population estimates, which make determining a single dollar amount very difficult. Since almost all of the calculations are based on some verifiable data and therefore have some level of legitimacy, this report uses a chart to illustrate costs and benefits based on population size. Any number of unknown factors could change the numbers even if the population changes. *OSA recommends the State attempt to determine what its illegal immigrant population is as a first step to determining the net cost of illegal immigrants.* Because there are arguments that the amount of money contributed to the State's economy by illegal immigrants is significant, this report tries to determine what that might be, given a maximum contribution and a minimum refund on taxes.

In addition to accounting for money that may be put in to the revenue system, there is the problem of portions of the money earned in Mississippi by illegal immigrants being sent out of State to relatives in a foreign country. This money—known as remittances—sent by individuals usually using electronic wire transfer methods is money that will never be spent in Mississippi and will never generate taxes on consumable goods. Nationwide, it is estimated that remittances cost the U.S. \$27 billion per year. The estimated cost to Mississippi in lost sales ranges

³⁵ "Social Security: Proposed Totalization Agreement with Mexico Presents Unique Challenges," United States General Accounting Office, September 2003. "Under U.S. law, immigrants may not work in the United States unless specifically authorized. Nevertheless, immigrants often do work without authorization and pay social security taxes. Under the Social Security Act, all earnings from covered employment...count towards earning Social Security benefits, regardless of the lawful presence of the worker, his or her citizenship status, or country of residence. Immigrants become entitled to benefits from unauthorized work if they can prove that...contributions belong to them...they cannot collect such benefits unless they are either legally present in the United States or living in a country where SSA is authorized to pay them their benefits. Mexico is such a country."

³⁶ Just as various organizations estimate different total illegal immigrant populations, they also estimate varying household/family sizes, some of which may be dependant on race or country of origin and which range from around 2.7 to about 4.



from just over \$24 million to more than \$271 million (depending on the population estimate). That translates into a tax loss of between \$1.68 million and \$18.97 million (depending on the population estimate).

The charts below illustrate the potential contributions and costs to Mississippi of sales tax, income tax, and remittances sent to other countries. *OSA recommends that the State develop a means of accurately estimating lost sales through remittances, gained income from unclaimed income tax refunds, from sales tax spent, and from other tax sources.*

Potential Contributions by Illegal Immigrants to the Mississippi Tax Base in FY 2005			
Estimated Illegal Immigrant Population ³⁷	Estimated Income Tax Paid (FY 2005) ³⁸	Estimated Sales Tax Paid (FY 2005) ³⁹	Total Estimated Benefit to State
8,000	\$552,000	\$6,672,000	\$7,224,000
25,000	\$1,725,000	\$20,850,000	\$22,575,000
49,000	\$3,381,000	\$40,866,000	\$44,247,000
90,000	\$6,210,000	\$75,060,000	\$81,270,000
100,000 ⁴⁰	\$6,900,000	\$83,400,000	\$90,300,000

The Cost of Sending Mississippi Money Out of the United States			
MS illegal immigrant population estimate	MS percentage of US illegal immigrant population	Remittances estimate ⁴¹	Potential lost taxes
8,000	0.09%	\$24,088,889	\$1,686,222
25,000	0.28%	\$75,277,778	\$5,269,444
49,000	0.54%	\$147,544,444	\$10,328,111
90,000	1.00%	\$271,000,000	\$18,970,000
100,000	1.11%	\$301,111,111	\$21,077,778

³⁷ Various entities estimate the illegal immigrant population in Mississippi differently. We acknowledge that without a system to correctly identify and count the illegal immigrant population, any one of these estimates could be correct. Therefore, we have created a chart to identify the low figure, high figure, and several estimates in between. 49,000 is the midpoint between 8,000 (Census estimate) and 90,000 (ICE estimate). 25,000 is in the 20,000-35,000 range of the Pew Hispanic Center and 100,000 is an unconfirmed estimate from a pro-illegal immigrant advocacy organization.

³⁸ The income tax estimate assumes \$27,400 (Pew Hispanic Center) for a family of 4. (We know the median household size in MS is 3.1 from Census Bureau data but we also know that illegal immigrants tend to have larger household sizes (Census Bureau, Pew Hispanic Center). We have no verifiable data on the size of illegal immigrant households in Mississippi, so we assume a family of four for the purposes of these calculations. We realize that there are also potentially a large number of single illegal immigrants but without any means of accurately estimating that number no calculations were done using a household size of one. We also assume that these illegal immigrants are claiming maximum exemptions and minimum withholding (with no intention of claiming a refund). The Mississippi State Tax Commission has indicated that if they determine people are paying in income taxes, but not filing returns, they will be pursued as delinquent filers. If they are found to be illegally present in the United States, then the Tax Commission will report them. The MSTC has indicated that there is no "pool" of money that they have that has been paid by illegal immigrants and which has not been refunded. It should be noted that if illegal immigrants file State income tax returns the benefit to the State will be significantly less than the calculations provided. Although, with smaller household size (fewer exemptions available), the income tax paid in would be slightly higher. Due to the lack of concrete data, there is no exact way to determine the actual amount of the benefit to the State at this time. Based on the above assumptions, the estimated tax paid in per person would be \$69 (or \$267/household) per year of State income taxes.

³⁹ Similar to income tax estimates, sales tax estimates can be calculated using several different methods. We chose to use a simplified method that should provide a fairly accurate picture of the potential contribution of illegal immigrants in Mississippi. The total population of Mississippi is 2,902,966 (2004 Census Bureau). The estimated illegal immigrant population is some percentage of this population (depending on which estimates one feels is more accurate). Sales in Mississippi for FY 2005 were \$39,398,421,864 (MSTC FY 2005 Annual Report) and sales taxes (all levels) were \$2,421,536,722. We assume level and average purchases regardless of income or age for the entire population. So, sales tax collections per person were estimated to be \$834/per person (or \$3,336 per household size of 4) in MS for FY 2005.

⁴⁰ This number is based on information from illegal immigrant rights organizations. No other verification for this has been determined.

⁴¹ Assumes that the majority of immigrants in Mississippi are illegal, and that they each send the same amount home each year. It also assumes the Congressional Budget Office estimate of \$27.1 billion in US remittances is correct.



Other States and Illegal Immigration

State Legislation

Regardless of how state legislatures or the federal government are dealing with illegal immigration—whether they are making it easier or harder to be an illegal immigrant in their states, Mississippi must make decisions and plans for the future based on the information it can gather about this very controversial subject.

In 2005, several states considered legislation relating to illegal immigrants. The following is legislation that passed at least one legislative chamber:⁴²

- Arizona - H.B. 2592 prevents cities from constructing day labor centers if the centers assist unauthorized immigrants; S.1372 gives local law enforcement the ability to arrest smugglers and to penalize human trafficking (signed by the governor in March); S. 1118 would have enhanced voting requirements and prohibited use of ID cards issued by Mexican consulates as valid identification (vetoed by governor); S. 1511 would have required the use of federal, state, or tribal identification to receive state services (vetoed by governor); A ballot initiative that would deny bail to unauthorized immigrants (H.C.R. 2028) will appear on the next general election ballot; A.Z. 2259 allows immigration status to factor into sentencing (signed by governor); H. 2709 would have constructed a prison in Mexico to house unauthorized immigrants who commit crimes in Arizona (vetoed by governor); and S. 1306 would have allowed local law enforcement to enforce immigration laws (vetoed by governor).
- Arkansas - H.S. 2539 establishes several new guidelines including but not limited to minimum document requirements to obtain a driver's license, a prohibition on use of foreign documents except a passport to prove identity, and provisions to prevent fraud (signed by governor) and H.B. 1012 designates state law enforcement officers to enforce immigration laws and establishes steps needed to enter into a Memorandum of Understanding with the federal government (signed by governor).
- Colorado - H.B. 05-1086 reinstated SSI and Medicaid eligibility for certain legal immigrants; H.B. 1143 creates a task force on human trafficking (signed by governor); and H.B. 05-1278 provides a mechanism of distributing federal funds from the Immigration and Nationality Act to the state's Department of Corrections for criminal aliens (signed by governor).
- Florida - S. B. 498 provides child welfare services without regard to citizenship.
- Idaho - H.C.R. 18 authorizes an interim study on human trafficking (it passed the House and Senate in April and does not require gubernatorial action).
- Illinois - H.B. 1469 criminalizes involuntary servitude (including sexual servitude of minors) and human trafficking and ensures that victims are referred to appropriate state and federal services (signed by governor) and S.B. 1623 allows state agencies to recognize consular identification documents as valid identification except in certain circumstances (signed by governor).
- Kansas - S.B. 72 criminalizes human trafficking as a class 2 felony and aggravated trafficking as a class 1 felony (signed by governor).
- Kentucky - H.B. 275 requires proof of citizenship for licensing for several professions (signed by governor).
- Louisiana - H.B. 56 criminalizes human trafficking and establishes penalties including fines and imprisonment (signed by governor).
- Maine - L.D. 37/S.P. 17 created a demonstration project for mental health and substance abuse services for refugees.
- Missouri - H.B. 353 creates standards for international "matchmaking" services and classifies the provision of incorrect information as a class D felony (signed by the governor).
- Montana - H.B. 385 imposes lawful presence and displays immigration status on driver's licenses and links expiration date of license to immigration status, among other provisions.

⁴² Lindsay Littlefield, "Immigration Policy – News from the States: 2005," National Conference of State Legislatures, August 11, 2005.



- New Jersey - A. 2730 criminalizes human trafficking and authorizes victim compensation (signed by governor).
- New Mexico - S.B. 582 extends in-state tuition to certain unauthorized immigrant students (signed by the governor in April).
- Tennessee - H.B. 698/S.B. 1627 requires proof of citizenship to obtain a handgun permit (signed by governor).
- Texas - H.B. 1137 allows the DMV to enter into agreements with foreign governments with similar licensing and driving laws so that licenses issued by one entity are recognized by the other and in the cases of individuals who fall under these agreements, proof of lawful presence is required (signed by governor).
- Utah - S.B. 223 imposes lawful presence and links expiration of driver's license with visa expiration. S.B. 227 allows unauthorized immigrants to use identification cards for driving but for no other purposes.
- Virginia - driver's license bill, S.B. 821, allows anyone age 19 or older to waive the learner's permit and driver's education requirements if that person has a foreign license (signed by governor).
- Washington - H.B. 1441 reinstated SCHIP eligibility to immigrant children (including unauthorized immigrant children and legal immigrant children eligible but for the five-year federal bar); H.B. 5127 creates a working group to develop written protocols for the delivery of services to human trafficking victims and was signed into law by the governor; and a ballot initiative was filed on June 14, 2005 that requires proof of citizenship to register to vote.
- Wyoming - Redefined the term "employee" in state law to be someone an employer believes to be a citizen or permanent resident at the date of hire in S.B. 82, a measure approved by the governor.

Additionally,

- *Fifteen states considered bills to restrict immigrant benefits* (Alabama, Arizona, Arkansas, Colorado, Florida, Georgia, Idaho, Maryland, Mississippi, New Hampshire, New York, North Carolina, South Carolina, Tennessee, and Virginia) but Virginia's bill was the only one signed into law; H.B. 1798/S.B. 1143 prohibits unauthorized immigrants from receiving state or local public benefits.
- In 2005, *ten states* (Arkansas, Connecticut, Massachusetts, Minnesota, Mississippi, Nebraska, New Jersey, New Mexico, Oregon, and Rhode Island) *examined legislation to grant in-state tuition to unauthorized immigrant students*.
- *Seven states* (Arizona, California, Florida, Kentucky, North Carolina, Tennessee, and Wyoming) *considered bills prohibiting unauthorized immigrants from receiving in-state tuition*; Arizona's H.B. 2030 passed the legislature, and it was vetoed by the governor.
- *Three states*, including Georgia, New York, and Virginia, considered but did not pass *legislation to bar unauthorized immigrants from enrolling in state post-secondary institutions*.
- *Several states considered legislation regarding employment of immigrants*. Florida, Kansas, Maine, Mississippi, Missouri, and Tennessee would have prohibited the awarding of government contracts to firms that employ unauthorized workers, though none were signed into law. Arizona, Connecticut, Georgia, New York, and South Carolina considered bills to punish employers of unauthorized workers through the imposition of fines and the revoking of licenses but none of these measures passed the legislature.
- *South Carolina and Virginia sought to deny workers' compensation for unauthorized workers* but neither state's bill advanced.
- *Alaska (H.B. 102), Illinois (S.B. 2064), and North Dakota (S.B. 2388) considered bills to enable foreign medical practitioners to work under certain conditions*. Illinois' measure awaits gubernatorial action and Alaska and North Dakota's bills were signed by their governors.



Illegal Immigration Studies from Other States

Other states have also begun to consider the impact that illegal immigration has had on their economy. Below are some of the studies, listed by state, that have been completed. While this is not comprehensive, it does illustrate some of the challenges facing Mississippi.

- **Texas - *The Population of Texas: Historical Patterns and Future Trends Affecting Education*** by Steve H. Murdock, Institute for Demographic and Socioeconomic Research, College of Business, The University of Texas at San Antonio. This study examines the change in rates and sources of population growth, increases in the Non-Anglo population, and the aging of the population in the State of Texas. Although this study uses current population trends to project the population in 2040, it does not mention the immigration status and it only breaks the population down by Anglo, Black, Hispanic, and other. It does not provide relevant information for this report about illegal immigrant trends.
- **Minnesota – *Illegal Immigrants' Cost Impact to Minnesota*** – Minnesota Office of Strategic Planning and Results Management in the Department of Administration. This study estimates the economic impact of illegal immigrants in the State of Minnesota. Although it gives a general idea of the costs associated with illegal immigrants, some of the estimates combine legal and illegal immigrant data and statistics. Many of the costs are estimated using data from the US Census Bureau's Current Population Survey, which is only given to about 50,000 households across the country. In addition, the Current Population Survey does not ask respondents about their immigration status.
- **North Carolina – *The Economic Impact of the Hispanic Population on the State of North Carolina*** – Frank Hawkins Kenan Institute of Private Enterprise and the University of North Carolina at Chapel Hill – January 2006. This study documents the nature and magnitude of North Carolina's Hispanic population change and the economic impact. This study only examines the ethnic group of Hispanics and it does not take into consideration immigration status, citizenship, or any other immigrant group, such as Asians, etc.

Many research organizations, "think tanks," universities, and advocacy organizations have been and are completing reports about illegal immigration on a daily basis. Almost all of them begin their studies with census data and most use the Current Population Survey (CPS). However, Mississippi is often overlooked because it is not seen as a high illegal immigrant population state. States around Mississippi are starting to put various laws in place that will restrict illegal immigrants' use of services, employment opportunities, and place greater penalties on businesses who hire illegal immigrants. *OSA recommends that Mississippi become aware of laws being passed by surrounding states so that our laws are reflective of regional policy.*



Findings and Recommendations

Finding 1: Mississippi is not able to accurately quantify the costs of illegal immigrants because most State agencies, schools, and other governmental entities do not currently document the actual numbers of illegal immigrants or their use of services. Mississippi can not make quality long-term policy decisions without accurate data and information about costs.

Recommendations:

- A. Any state agency or local governmental entity not specifically prohibited by law should attempt to count illegal immigrants for the sole purpose of gaining an accurate picture of how many are in Mississippi and the costs associated with their use of government programs and services. (p. i)
- B. Schools should collect data about illegal immigrants and transmit it to their district for compilation. OSA further recommends that the State Department of Education compile all district level data in an annual report which will show the numbers of illegal immigrants and their siblings on a statewide level. This report should be used for policy making and planning. (p. 7)
- C. Universities and community colleges collect data on the legal status of immigrants annually. Further OSA recommends that they try to quantify costs associated with serving illegal immigrants where applicable. (p. 8)

Finding 2: Currently, anecdotal evidence suggests that employers hire illegal immigrants in certain industries and businesses. Some of these employers may have contracts with the State. There is potential for State money to be used to pay the salaries of illegal workers.

Recommendations:

- A. The State should abide by all federal laws with regard to employment of illegal immigrants. (p. 12)
- B. In addition, State law should allow any State contract to be cancelled and the violators to be fined where illegal immigrants have been knowingly used. The State Legislature should pass SB2433 to protect state contracts and to ensure Mississippi abides by current federal immigration employment laws. (p. 12)

Finding 3: Education and unpaid healthcare claims are two of the highest costs facing the State. Mississippi is eligible for some reimbursement of certain healthcare costs, but due to a lack of data, the State may not be receiving the maximum amount for which it could be eligible. In addition to direct financial costs, the social cost of increased infectious disease from unscreened illegal aliens is growing in Mississippi.

Recommendations:

- A. Mississippi should begin to keep documentation about the number of illegal immigrants apprehended at the State and local level so that we may better capture federal dollars that may become available, such as the federal medical reimbursements that are tied to the number of deportations as well as total population. (p. 8)
- B. Hospitals, schools, the MS Department of Health, and MS Department of Human Services collectively attempt to gather relevant data to determine the impact of illegal immigrants and infectious diseases. Further, OSA recommends that these entities come together for long- and short-term policy planning. (p. 9)



Finding 4: Mississippi's correction facilities are not capturing the full amount of federal reimbursement dollars for which they may be eligible. Local and State law enforcement and corrections facilities have no accurate picture of the costs associated with illegal immigrants.

Recommendations:

- A. OSA recommends that the MS Department of Public Safety determine the cost that will be mandated to the State for implementing the Real ID Act prior to its implementation date and publicize that cost for planning purposes. (p. 10)**
- B. The MS Department of Public Safety, in conjunction with all other state and local law enforcement agencies, should begin to track the apprehension of illegal immigrants. (p. 10)**
- C. The Mississippi Department of Corrections should develop material to be distributed to all local governments explaining their eligibility for federal SCAAP funds and encourage these local entities to participate in the program. (p. 11)**

Finding 5: Mississippi's local and State law enforcement agents are not uniformly trained to detect, apprehend, and process illegal immigrants.

Recommendation:

- OSA recommends that the State follow the same training procedures that other states like Alabama, Arkansas, and Florida are undergoing to ensure the proper skills to identify and detain illegal aliens. (p. 10)**

Finding 6: Other states around Mississippi are moving ahead with plans and policy to deal with the issue of illegal immigration.

Recommendation:

- Mississippi should be aware of laws being passed by surrounding states so that our laws are reflective of regional policy. (p. 17)**



Conclusion

Mississippi's illegal immigrant population is on the rise and so are the financial and social challenges associated with this increase. This report attempts to summarize the information available about costs and population trends attributed to illegal immigrants on a state and national basis. The difficulty in quantifying these costs lies in the lack of definitive information and data collection.

However, using estimates based on census data and national experts, this report identifies certain costs associated with illegal immigrants. Since estimates of the illegal immigrant population range from 8,000 to as much as 90,000, for the purposes of this report, OSA used a midpoint of 49,000. Based on news reports and events of the last several months it is assumed that the total number of illegal immigrants in Mississippi may have temporarily risen.

Even accounting for the estimated \$44 million contribution to the State through a "best case scenario" income and sales tax collection, illegal immigrants are costing Mississippi approximately \$25 million per year. Per capita, this amounts to about \$510 per illegal immigrant in costs. These estimates make many assumptions and allowances in favor of some contributions. However, it does not take into account certain costs that (due to time constraints of the report) were not available, such as Medicaid and other social welfare programs as well as programs like Workers Compensation, etc. OSA recommends that these costs be compiled for financial planning and policy making. To properly address this issue, policy makers need information on the impact this population has on State resources. This is especially true when considering the impact on the state's K-12 education, healthcare, and corrections systems.

For the first six months of 2005, state legislatures across the country considered almost 300 bills on immigrant and refugee policy issues and passed 47 new laws. In contrast, the Mississippi legislature gave very little consideration to the issue during 2005, changing one law governing grants and loans from the Mississippi Development Authority. A bill that would have prohibited illegal immigrants from receiving in-state tuition advantages did not pass. In 2006 and years to come, this issue will return and eventually decision will need to be made. The facts contained in this report are the first step in understanding the impact of illegal immigration on Mississippi, the challenges we face and the actions that may be needed to address this growing concern. In some cases legislation may need to be considered, in some cases simply enforcing existing law, and in some cases policy planning and decision making are needed to appropriately handle the growing illegal immigrant population.

Illegal immigrants pose a substantial challenge to Mississippi for long term-policy. Not only the financial strain, but societal impacts should be examined where appropriate to attempt to gather data about both the costs and benefits to our state.

APPENDIX A:
Objective, Scope, and Methodology

Objective

One objective of this study is to address questions of costs and benefits of illegal immigrants who live and work in Mississippi. It also addresses data availability and reliability regarding the illegal immigrant population in Mississippi. Finally, this report provides recommendations related to long-term policy planning to deal with the financial issues related to illegal immigrants.

Scope

The scope of this report is limited to an examination of data to determine the financial costs and or benefits of illegal immigrants who live and work in Mississippi. Costs examined include education, public safety, healthcare, employment and taxes and other related issues. Benefits to the State included revenue generated from sales and income taxes. The scope of this report was narrowly construed due to a lack of data collected on the subject.

Methodology

Telephone and in-person interviews as well as literature and data reviews were used to compile this report. Data and information used for this report was examined for sound methodology. Where applicable, similar methodology was used to calculate cost and benefit estimates for Mississippi. Special consideration was given to government and medical institutional data, statistics, and estimates in an attempt to quantify the impacts of illegal immigrants in Mississippi. Nationwide, a wealth of data estimates are available, but very little hard evidence has been collected. Virtually nowhere (states or federal government) collects data on immigration status. This issue plays a very important role in the recommendations of this report. The problem with consistent data is summed up in a 2003 Urban Institute report. In his report, "The New Neighbors: A Users' Guide to Data on Immigrants in U.S. Communities," Jeffrey Passel, a noted expert on illegal immigrant population studies states:

Getting a good idea about the undocumented immigrant population is a challenge, since most surveys do not identify them as such, even when they are included in the sample. This omission is important, because over one quarter of all immigrants are undocumented. The Immigration and Naturalization Service dataset, as noted, omits them altogether because it only includes legal immigrants. The Census data include undocumented immigrants, but they do not distinguish among refugees, legal immigrants, and undocumented immigrants. On a related point, there is evidence that the 2000 Census undercounted some groups, including undocumented immigrants, but the true extent of such undercounts is unknown. However, it is thought to be small relative to the 1990 Census and other major government surveys because of extensive marketing and outreach to immigrant and minority communities.

APPENDIX B:

State Allocations for Medical Cost Reimbursements

Final FY 2005 State Allocations for Section 1011 of the Medicare Modernization Act
Federal Reimbursement of Emergency Health Services Furnished to Undocumented Aliens

State	Estimated Unauthorized Resident Population: January 2000 (thousands) /1	State Allocations Based on the Percentage of Undocumented Aliens	Number of Apprehensions by State from April 2003- March 2004 /2	FY 2005 State Allocation Based on the Number of Alien Apprehensions	Final FY 2005 State Allocation (Total)
Alabama	24	\$572,326	642		\$572,326
Alaska	5	\$119,235	325		\$119,235
Arizona	283	\$6,748,679	491,242	\$38,230,527	\$44,979,206
Arkansas	27	\$643,867	901		\$643,867
California	2,209	\$52,677,852	232,991	\$18,132,343	\$70,810,196
Colorado	144	\$3,433,957	6,718		\$3,433,957
Connecticut	39	\$930,030	497		\$930,030
Delaware	10	\$238,469	-		\$238,469
District of Columbia	7	\$166,928	1,243		\$166,928
Florida	337	\$8,036,413	8,315	\$647,108	\$8,683,521
Georgia	228	\$5,437,098	1,577		\$5,437,098
Hawaii	2	\$47,694	517		\$47,694
Idaho	19	\$453,092	1,138		\$453,092
Illinois	432	\$10,301,871	2,565		\$10,301,871
Indiana	45	\$1,073,112	513		\$1,073,112
Iowa	24	\$572,326	1,124		\$572,326
Kansas	47	\$1,120,805	-		\$1,120,805
Kentucky	15	\$357,704	646		\$357,704
Louisiana	5	\$119,235	3,758		\$119,235
Maine*	0.5	\$11,923	339		\$11,923
Maryland	56	\$1,335,428	865		\$1,335,428
Massachusetts	07	\$2,074,602	1,195		\$2,074,602
Michigan	70	\$1,669,285	3,104		\$1,669,285
Minnesota	60	\$1,430,815	1,925		\$1,430,815
Mississippi	8	\$190,775	638		\$190,775
Missouri	22	\$524,632	4,115		\$524,632
Montana*	0.5	\$11,923	1,000		\$11,923
Nebraska	24	\$572,326	1,326		\$572,326
Nevada	101	\$2,408,539	744		\$2,408,539
New Hampshire	2	\$47,694	440		\$47,694
New Jersey	221	\$5,270,170	1,898		\$5,270,170
New Mexico	39	\$930,030	53,620	\$4,172,935	\$5,102,965
New York	489	\$11,661,145	7,623	\$593,254	\$12,254,399
North Carolina	206	\$4,912,466	1,007		\$4,912,466
North Dakota*	0.5	\$11,923	672		\$11,923
Ohio	40	\$953,877	1,210		\$953,877
Oklahoma	46	\$1,096,958	831		\$1,096,958
Oregon	90	\$2,146,223	2,038		\$2,146,223
Pennsylvania	49	\$1,168,499	2,857		\$1,168,499
Rhode Island	16	\$381,551	812		\$381,551
South Carolina	36	\$858,489	355		\$858,489
South Dakota	2	\$47,694	363		\$47,694
Tennessee	46	\$1,096,958	1,250		\$1,096,958
Texas	1,041	\$24,824,647	272,715	\$21,223,833	\$46,048,479
Utah	65	\$1,550,050	2,012		\$1,550,050
Vermont*	0.5	\$11,923	1,375		\$11,923
Virginia	103	\$2,456,233	392		\$2,456,233
Washington	136	\$3,243,181	4,249		\$3,243,181
West Virginia	1	\$23,847	120		\$23,847
Wisconsin	41	\$977,724	468		\$977,724
Wyoming	2	\$47,694	-		\$47,694
Total	7,003	\$167,000,000		\$83,000,000	\$250,000,000

Source /1: Statistics Division of the Immigration and Naturalization Service

Source /2: Department of Homeland Security.

* States that had less than 1,000 estimated aliens received values of .5 (500 illegal aliens)