



**NATION OF ORIGIN BIAS AND THE
ENFORCEMENT OF IMMIGRATION LAWS BY
THE IMMIGRATION AND NATURALIZATION
SERVICE**

**Jim F. Couch, Brett King, William H. Wells, Peter M.
Williams**

Independent Institute Working Paper Number 38

June 2001

NATION OF ORIGIN BIAS AND THE ENFORCEMENT OF IMMIGRATION LAWS BY
THE IMMIGRATION AND NATURALIZATION SERVICE

Corresponding Author:

Jim F. Couch

Department of Economics and Finance

University of North Alabama

Florence, Alabama 35632

Jcouch@unanov.una.edu

Brett King

Department of Economics and Finance

University of North Alabama

Florence, Alabama 35632

Baking@unanov.una.edu

William H. Wells

Department of Accounting and Finance

Merrimack College

North Andover, MA

Peter M. Williams

Department of Economics and Finance

University of North Alabama

Florence, Alabama 35632

Pmwillia@unanov.una.edu

Abstract

The Immigration and Naturalization Service (INS) is charged with the task of administering citizenship requests, providing for the proper documentation of temporary foreign workers, and apprehending illegal aliens. The apprehension of illegals, the most controversial duty of the INS, has placed the agency squarely in the headlines. The recent raid to seize Elian Gonzalez from his Miami relatives brought opprobrium upon the agency. The action, which involved 131 INS agents – some heavily armed – resulted in calls of discrimination from Miami’s Cuban community. This paper examines the inconsistent enforcement patterns of the INS and attempts to determine what factors may account for INS activity. We conjecture that the agency is influenced by political pressure and may practice discrimination against certain illegals.

Keywords: INS, Immigration and Naturalization Service, enforcement, political pressure, discrimination, Elian Gonzalez, illegal aliens.

Introduction

The decision to emigrate—to leave behind familiar places, family and friends—is perhaps one of the greatest bridges that people choose to cross. A strange land, with a new culture, represents both an opportunity and a challenge to an individual deciding to immigrate. For a relatively rich nation like the United States, immigration represents both an opportunity and a challenge as well.

The Immigration and Naturalization Service (INS) is charged with the task of administering citizenship requests, providing for the proper documentation of temporary foreign workers, and apprehending illegal aliens. The apprehension of illegals, the most controversial duty of the INS, has placed the agency squarely in the headlines. The recent raid to seize Elian Gonzalez from his Miami relatives brought opprobrium upon the agency. The action, which

involved 131 INS agents – some heavily armed – resulted in calls of discrimination from Miami’s Cuban community.

This is not the first time the agency has been accused of selective enforcement. Under something called Operation Vanguard, the INS checked the records of employers against those of the Social Security Administration.

Those workers identified as potentially unauthorized were interviewed and the illegals arrested. “Critics charged that the enforcement targeted Hispanics” (<http://migration.ucdavis.edu/rmn-archive/apr>).

Additional criticism of the INS comes from the Transactional Records Access Clearinghouse (TRAC) housed at Syracuse University. While the INS pledges that their services “will be timely, consistent, fair, and of high quality” (Towards INS 2000:1994), data released by TRAC suggest that the enforcement of immigration laws is far from consistent or even-handed. INS referrals for prosecution show wide variation from state-to-state. TRAC reports, “there often are variations that raise a preliminary question of basic fairness. Further exploration may turn up good explanations for the differences, but the differences on their face are worth probing” ([trac.syr.edu/tracins/findings/about INS](http://trac.syr.edu/tracins/findings/about%20INS)).

This paper examines the inconsistent enforcement patterns of the INS and attempts to determine what factors may account for INS activity. We conjecture that the agency is influenced by political pressure and may practice discrimination against certain illegals. The next section provides a brief summary of the INS and its history. In section two, the model is developed and the results presented. The final section provides some concluding remarks.

Section One

The United States established no laws regulating the entry of immigrants until the later part of the 19th century. As the composition of immigrants changed – from English to Irish, Chinese and German Catholics – so did attitudes about immigration. The Know Nothing Party was established and reflected the growing anti-immigrant sentiment.

In 1882, the nation passed the first piece of legislation regarding immigration. The Act prohibited the immigration of convicted felons, prostitutes and lunatics and delegated enforcement responsibilities to the Secretary of Treasury. The INS was moved from the Treasury Department to the Department of Labor in 1913 and finally, to the Justice Department in 1940.

Subsequent acts followed, including the Act of 1917 which required English proficiency as a condition for admittance and the National Origins Act of 1929 which established a quota system for admittance based upon the ethnic composition of the United States population at the time (Weissbrodt 1989).

The burgeoning multitude of illegals led to the passage of the Immigration Reform and Control Act of 1986 (IRCA). IRCA required employers to complete an I-9 Form for new hires to establish the worker's eligibility. Immigration law was once again amended by the Immigration Act of 1990. The Act expanded the number of visas available for employment preference immigrants – an attempt to address labor shortages in the U.S. economy (Lawson and Grin, 1992).

During the 1990s, the INS has seen its budget increase and its number of personnel swell. The agency now ranks second in federal convictions recently surpassing the Drug Enforcement Agency (DEA) and trailing only the FBI. Four criminal statutes represented almost 90% of INS referrals for prosecution in 1998. These statutes include reentry of removed aliens, improper entry by aliens, bringing in/harboring aliens, and fraud/misuse of visas/permits (trac.syr.edu/tracins/findings). “In 1998, the INS reported expelling or removing 172,312 aliens and referring 16,045 individuals for prosecution in the nation's federal courts” ([trac.syr.edu/tracins/findings/about INS/insResponsibilities.html](http://trac.syr.edu/tracins/findings/about%20INS/insResponsibilities.html)).

The number of illegals gaining access to the U.S. through our seemingly porous borders is, however, alarming. The INS estimated “the size of the nation's illegal immigration problem at five million residents (in the country for at least a year) as of 1996. The INS also estimated that the illegal immigrant population was rising at a net amount of 275,000 per year”

(www.fairus.org).

Part of the agency's problems in controlling illegal activity may stem from the challenge of carrying out contradictory tasks.¹ The current INS Commissioner, Doris Meissner, acknowledges the challenge: "generous immigration policies can persist only if the public has confidence in the Government's ability to admit people according to rules that are fair but firm" (Toward INS 2000, 1994).

The notion that our immigration policies should be generous is certainly not universally accepted. George Borjas (1999) argues that the net annual gains to the U.S. economy from immigration amount to roughly 0.1 percent of GDP. He also asserts that immigration may have depressed the wages received by native-born Americans by 3 percent. This issue has been addressed by a number of researchers including LaLonde and Topel (1991), Altonji and Card (1991), Sorensen et al. (1992) and Blackstone (1998) with mixed results.

Borjas suggests reducing immigration by about one-third and advocates a point system so that skilled and educated immigrants are given preference. Gary Becker offers a clever, market-based solution to determine the number of immigrants instead of the cumbersome criteria now utilized. Under Becker's proposal, the government would "auction off immigrant permits to the highest bidder" (Becker, 1992). The system would most likely attract highly skilled foreigners.

Young, ambitious, energetic and skilled immigrants – the kind any country would love to have – would tend to be successful bidders since such people would be likely to have accumulated capital before immigrating and could count on high earnings afterward, which would help them recoup even a large entry fee within a few years (Becker, 1992).

Despite the lack of empirical evidence suggesting that immigrants displace domestic workers and depress wages, a substantial number of Americans want to see the flow of

¹A federal advisory panel recommended breaking the INS into three parts. Control of the borders and the removal of illegal immigrants would remain within the Justice Department, the State Department would handle citizenship requests, and the Labor Department would administer the hiring of foreign workers (Schmitt, 1997).

immigrants slowed. Pat Buchanan, in his recent book, The Great Betrayal (1998:271), asserts, “By early 1995 illegal aliens were pouring across the U.S. border in record numbers to take jobs and get welfare benefits.” The Federation for American Immigration Reform (FAIR) agrees with Buchanan’s position stating, “Americans now realize that the costs of our present high level of immigration (legal and illegal) are enormous and growing. Illegal immigrants receive taxpayer support for their U.S. born children: immunizations, subsidized public health, and other programs.”

On the other hand, many industries have grown to depend on the flow of cheap dependable labor and benefit from lax enforcement. As Hedges and Hawkins (1996) point out, “Not much attention is paid to the big American industries – construction companies, nurseries, and fruit growers – that rely on these workers.” They assert:

Illegal immigrants are flocking to the United States to take the dangerous, low-paying jobs most Americans won’t. There’s a system that keeps the illegals coming and the industry humming – and the plants have come to rely on it (1996:17).

The system sometimes involves professional smugglers, known as coyotes, who lead illegals across the border, obtain fraudulent documentation, and are paid by employers per head. The illegal workers are willing to accept more dangerous working conditions and lower wages.

Political Pressure

While workers may view both legal and illegal immigrants as a threat, and consequently desire vigorous enforcement, others, particularly construction companies and the agricultural sector, want the INS to look the other way so that a reliable labor force is in place. The INS acknowledges these conflicting demands:

Public attitudes toward immigration will remain mixed. There will be greater pressure from some segments of the public – in states most heavily impacted by illegal immigration – for further restrictions on entry and intensified efforts to reduce the size of the illegal alien population entering and remaining in this country. Pressure ... will increase, especially from the Congress, immigration-impacted states and employers with international business interests (Toward INS

2000, 1994).

Thus, the inconsistent INS enforcement patterns may have its origin, at least in part, from both the type and the degree of pressure placed upon the agency. While the INS claims to discharge its duties “with proper regard for equity and due process” (Toward INS 2000, 1994), it also acknowledges that it is subjected to pressure from various interest groups.

Thomas Sowell explains:

Employers of agriculture and other low-paid labor have pressed for a national policy of more open access to the United States ... while groups concerned with crime, welfare dependency, or other social problems ... have pressed for more restrictive policies. Shifts in political strength among the contending groups of Americans are reflected in changing immigration policies and changing levels of enforcement (Sowell, 1981:249).

The immigrants themselves can likewise become an effective lobbying group. As Huntington (*American Enterprise* 2000:22) explains, “Sustained high levels of immigration build on themselves. After the first immigrants come from a country, it is easier for others from that country to come. Immigration is not a self-limiting process, it is a self-enhancing one.” The author continues, “And the longer immigration continues, the more difficult politically it is to stop. Leaders of immigrant organizations and interest groups develop a vested interest in expanding their own constituency. Immigration develops political support, and becomes more difficult to limit or reshape.”

Section Two

The Transactional Access Records Clearinghouse (TRAC) compiled records about the criminal enforcement efforts and staffing of the INS from a variety of sources including the Justice Department and the United States Office of Personnel Management. When an agency such as the INS investigates suspected wrongdoing and adequate evidence is collected, the criminal prosecutions are referred to the Justice Department “with a recommendation that the individuals involved be criminally prosecuted” (trac.syr.edu/tracins).

The TRAC observed a wide variation in INS criminal referrals from state-to-state and asserted, “further exploration may turn up good explanations for the differences, but the differences on their face are worth probing” (trac.syr.edu/tracins).

Dividing each state’s criminal referrals in 1996 by the INS estimates of illegal aliens residing in the state in that year yields interesting results. The INS is most active in North Dakota, Montana, and Iowa and least active in Illinois, Massachusetts, and South Carolina (the difference in some cases is over 100 fold). This ratio serves as the dependent variable in the model.

The independent variables include the number of INS employees assigned to each state in 1996 (AGENTS). The agency claims:

INS will concentrate resources in areas where the workload, or vulnerability to the integrity of our nation’s immigration policies, is greatest. This requires allocating resources on the basis of risk assessment ... (INS Toward 2000).

The percentage of the workforce that was members of organized labor in 1996 also serves as an independent variable (UNION). Increased unionization might lead to tighter enforcement of immigration laws – less legal and illegal immigrants to push wages downward. Declining membership, however, has led unions to reconsider their position:

Eliseo Meding, Vice President of the Service Employees Union declares, “I am ... convinced that as the labor movement is the best hope for immigrants so are immigrants the best hope of the labor movement (McElroy, July 2000:31).

In an effort to detect the influence of employers on the INS, the percentage of the state’s workforce engaged in construction (CONST) in 1996 and the number of farms in each state (FARMS) in 1996 is included in the model. These sectors typically pay low wages and/or have dangerous work environments. In short, these employers are perhaps more likely to exert pressure on the INS to ease their enforcement of immigration laws so that a reliable, low-cost workforce can be obtained.

The nation of origin of the immigrants for each of the fifty states is found in “INS Data

on Immigrant Settlement” produced by FAIR at www.fairus.org/html. Because nation of origin data for illegals in each of the states does not exist, the data are admittedly a proxy for illegals.

This method is closely related to INS procedures for estimating illegals in each of the states:

The state distribution of the undocumented population was based on the U.S. residence pattern of each country’s applicants for legalization under IRCA [Immigration Reform and Control Act of 1986]; the results were summed to obtain state totals. This assumed that, for each country of origin, undocumented immigrants who resided in the United States . . . had the same U.S. residence pattern as IRCA applicants for that country (<http://www.ins.usdoj.gov/graphics/aboutins/statistics/illegalien/index.htm>).

Thus, the percentage of legal immigrants from a particular country to each of the states in 1996 serves as an independent variable in the analysis.

Section 3

The results of the analysis are presented in Table 1. In constructing the model, several different regressions were constructed to insure consistency of the independent variables with respect to the overall model. The final model was chosen based on overall significance and simplicity. The model discussed herein explains roughly 53% of the variability of criminal referrals divided by estimated illegals. The model is also significant at the 1% level. As one might expect, a greater number of INS employees (EMP) results in a greater number of referrals per illegal. This variable was significant at the 1% level. Thus, the INS does appear to be allocating resources where the need is greatest.

The results suggest that neither union membership (UNION) nor states with a greater percentage of the workforce in farming (FARM) are significantly related to referrals per illegal. However, referrals per illegal were significantly lower in those states where construction (CONS) represented a larger percentage of the workforce. This variable was significant at the 1% level. The implication being that INS activity is less in states whose economies were more dependent on construction activities. Perhaps these employers were able to exert substantial influence on the agency, and the INS yielded to this pressure.

The other independent variables were included in the model to address the question of whether or not the country of origin affected the enforcement policies of the INS. Several of the variables were significantly related to the number of referrals per illegal. In those states where Russians (SOVIETUN) and Haitians (HAITI) were more concentrated, INS activity was significantly increased. These variables were significant at 1% and 10% levels respectively. However, in states where larger concentrations of illegals were Chinese (CHINA), Mexican (MEXICO) and Jamaican (JAMAICA), the agency exhibited significantly less activity. The

referrals per illegal were significantly lower for these variables at the 10%, 5% and 5% levels respectively. No other variables were significant.

Conclusion

While the INS vows to enforce the immigration laws in an equitable manner, there is significant variability in the agency's enforcement patterns. In states where construction jobs represent a large portion of the workforce, INS activity is significantly lower. Furthermore, while the agency is very active in enforcement in states where Russians and Haitians are prevalent, they appear to relax enforcement in states where Chinese, Jamaicans and Mexicans reside. These results raise some question about enforcement parity by the INS. Further research in this area is certainly warranted.

References

- Altonji, Joseph G. and Card, David. "The Effects of Immigration on the Labor Market Outcomes of Less Skilled Natives," in John M. Abowd and Richard B. Freeman, Immigration, Trade and the Labor Market, University of Chicago Press, 1991.
- Becker, Gary, "An Open Door for Immigrants – the Auction," Wall Street Journal, Oct. 14, 1992.
- Blackstone, Tanja, Unpublished Dissertation, University of Mississippi – Lewis Smith Chair, 1998.
- Borjas, George, Heaven's Door: Immigration Policy and the American Economy. Princeton: Princeton University Press, 1999.
- Buchanan, Patrick, The Great Betrayal, Little Brown and Company, Boston, 1998.
- Couch, Jim F., Atkinson, Keith, Singleton, Tommie, and Williams, Peter M., "Political Influence and the Internal Revenue Service," CATO Journal, Volume 19, Number 2.
- Faith, Roger L., Leavens, Donald R., and Tollison, Robert D. 1982, "Antitrust Pork Barrel," Journal of Law & Economics.
- Hedges, Stephen J. and Hawkins, Dana. "The New Jungle," U.S. News and World Report. September 23, 1996.
- Lalonde, Robert J. and Topel, Robert H. "Labor Market Adjustments to Increased Immigration," John M. Abowd and Richard B. Freeman, Immigration, Trade and the Labor Market, University of Chicago Press, 1991.
- Lawson, Miguel and Grin, Marianne, "The Immigration Act of 1990, Harvard: International Law Review, 1992, V. 33, pp 255-276.
- McElroy, Wendy, "Sweatshops: Look for the INS Label," Ideas on Liberty, July 2000:31.
- Morgan, Kathleen and Morgan, Scott, State Rankings 1997 and 1998, A Statistical View of the 50 United States, Morgan Quitno Press, Lawrence, KS.
- Politics In America 1996, Congressional Quarterly Press, Washington D.C., 1996.
- Read, Richard, "US Immigration Agency Vows to Change Its Image," The Oregonian, April 28, 2000.
- Schmitt, Eric, "U.S. Study Panel Recommends Plan to Break Up I.N.S.," New York Times, August 5, 1997.
- Sorenson, Elaine, Bean, Frank D., Ku, Leighton, and Zimmermann, Wendy., "Immigrant Categories and the U.S. Job Market. Do They Make a Difference?" Urban Institute Report 92-1.
- Sowell, Thomas, Ethnic America, Basic Books USA, 1981: 249.
-
- Toward INS 2000, Strategic Plan, Accepting the Challenge. U.S. Immigration and Naturalization Service, Office of Policy and Planning, 1994.
- [trac.syr.edu/tracins/findings/about INS/insResponsibilities.html](http://trac.syr.edu/tracins/findings/about%20INS/insResponsibilities.html) www.fair.us.org
- trac.syr.edu/tracins/findings/national.
- Weissbrodt, David, Immigration Law & Procedure, West Publishing Co., 1989.
- York, Byron, "Illegal Elian," American Spectator, June 2000, Volume 33, No. 5. Pages 24-27.

Independent audits determined that a flawed citizenship process had resulted in thousands of immigrants being naturalized without proper criminal background checks. Congressional critics ... asserted the problem had developed partly because of a desire of the Democratic administration to put new voters on the rolls before the last presidential campaign ([trac.syr.edu/tracins/findings/about INS](http://trac.syr.edu/tracins/findings/about%20INS)).

Despite the fact that the level of employment at the INS has grown in number from 17,368 in 1992 to 29,420 in 1998 (trac.syr.edu/tracins/findings/national), hundreds of thousands of illegal immigrants slip into the country every year and the number is growing. Increased

funding along with additional border agents, immigration inspectors, criminal investigators, and detention enforcement officers has failed to slow the flow of illegals.