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Ryan Petersen

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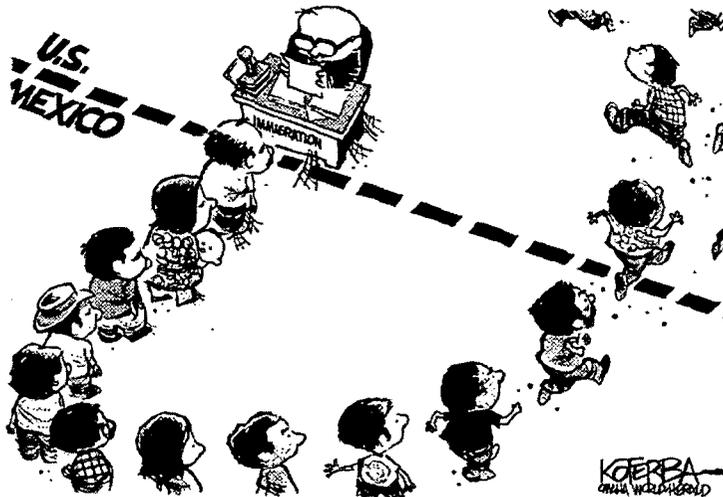
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**BE OUR GUEST, BUT PLEASE DON'T STAY:
A COMPARISON OF U.S. AND GERMAN IMMIGRATION POLICIES
AND GUEST WORKER PROGRAMS**

*Ryan Petersen**



I. INTRODUCTION

Within the United States, President Bush's proposals for immigration reform, including implementing a guest worker program, have faced serious

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opposition from both sides of the political spectrum.¹ The United States and Germany are nations that share a number of similarities regarding immigration issues, and have addressed similar concerns regarding immigration.² Both countries have faced challenges relating to the “ethnic, racial, and religious composition” of their immigrant populations.³ Additionally, both the United States⁴ and Germany⁵ have recently undertaken legislative action to reform their immigration policies.⁶ They have done so to combat rising immigration problems, such as stopping illegal immigrants from seeking economic prosperity, and preventing terrorists from exploiting current weaknesses in the immigration system.⁷ A comprehensive national security strategy contains ways to establish and maintain effective border control mechanisms.⁸ In recent months President Bush has consistently stated that a clear immigration policy and a secure border are essential elements of a comprehensive national security policy.⁹

In Germany, the topic of immigration reform is also a controversial political issue.¹⁰ The German government is reforming its immigration policies, including its guest-worker programs.¹¹ Not only has Germany had to confront conflicts between immigrants and natives, but government leaders also believe that these conflicts could have been handled more effectively if proper legislation had been in place.¹² To address these concerns, the German

1. Editorial, *Temporary Insanity*, NATIONAL REVIEW, Feb. 9, 2004, at 16 [hereinafter *Temporary Insanity*].

2. Nicole Jacoby, *America's De Facto Guest Workers: Lessons From Germany's Gastarbeiter For U.S. Immigration Reform*, 27 FORDHAM INT'L L.J. 1569, 1576 (2004) (discussing the political debate regarding Turkish immigration in Germany).

3. *Id.* at 1577.

4. Official White House Website, *Immigration: Border Security and Immigration Reform*, <http://www.whitehouse.gov/infocus/immigration> (last visited Nov. 3, 2006) [hereinafter *Comprehensive Immigration Reform*].

5. David Boles, *The (Un)Development of German Immigration Law*, www.humboldt-foundation.de/de/programme/stip_aus/doc/buka/berichte_02/boles.pdf (last visited Nov. 3, 2006) (The Alexander von Humboldt Foundation is a non-profit foundation established by the Federal Republic of Germany for the promotion of international research cooperation. It enables highly qualified scholars not resident in Germany to spend extended periods of research in Germany and promotes the ensuing academic contacts).

6. *Comprehensive Immigration Reform*, *supra* note 4.

7. *Id.*

8. *Id.*

9. *Id.*

10. Jacoby, *supra* note 2, at 1605.

11. Boles, *supra* note 5.

12. Otto Schily, *German Immigration Issues* (Nov. 21, 2005), available at <http://www.cceia.org/resources/transcripts/5280.html> (last visited Nov. 3, 2006) (The Council was

government has recently passed legislation called The New Immigration Act.¹³ A major element of this legislation attempts to integrate immigrants into German society by offering programs such as language classes and civics lessons.¹⁴

Despite the controversy and opposition in the United States, immigration reform has been a priority of the Bush administration.¹⁵ A key component of the President's plan to reform immigration is the plan to create a temporary or guest worker program that would allow employers to hire foreign workers for a set period of time before requiring the worker to return to his or her home country.¹⁶ This is not the first time the United States has attempted to institute a guest worker program with Mexico.¹⁷ The problem with guest worker programs in high-paying countries, such as the United States, is that the programs are never temporary and usually last much longer than anticipated.¹⁸

Germany has also sought to create effective guest worker programs that meet the needs of German employers while preventing permanent settlement by foreign workers.¹⁹ The similarities between the United States and Germany make for a useful study when examining immigration reform because of the similarities in the immigrant populations, and the fact that both countries are highly industrialized nations that have a large population of immigrants.²⁰ Policies related to immigration reform must also scrutinize the national security concerns that are inherent with any immigration policy.²¹

This paper will examine programs undertaken by both the United States and Germany in regards to immigration reform, including the history of guest worker programs, and the consequences these reforms may have on state security. Furthermore, the reforms undertaken by the United States and Germany to secure their national borders and to control illegal immigration will be explored. Section II will review the history of U.S. immigration policies and analyze U.S. efforts to reform the current immigration laws. Section III takes an in-depth look at German immigration history and analyzes the present efforts made by the

established by Andrew Carnegie in 1914 to work toward the ideal of world peace. Today it is the world's premier forum for research and education in ethics and international policy.).

13. *Id.*

14. *Id.*

15. *Comprehensive Immigration Reform, supra note 4.*

16. *Id.*

17. Jacoby, *supra note 2*, at 1573-1574.

18. Philip L. Martin & Michael S. Teitelbaum, *The Mirage of Mexican Guest Workers*, FOREIGN AFFAIRS, Nov.-Dec. 2001, at 119.

19. Elmar Hönekopp, *Non-Germans on the German Labour Market*, EUR. J. MIGRATION & LAB., 69, 69 (2003) (discussing the effects of immigrant labor on the employment situation in Germany and the effects of proposed immigration reform legislation in Germany).

20. Jacoby, *supra note 2*, at 1576.

21. *Comprehensive Immigration Reform, supra note 4.*

German government to undertake a comprehensive immigration reform program. Section IV examines the security problems related to immigration, such as ways terrorists exploit weak border controls and the implications that immigration reform efforts have for national security, as well as methods utilized by terrorists to exploit the current problems in the U.S. immigration system. This section also examines various methods used by the United States and Germany to improve border security and further control the movement of immigrants. Section V concludes that without significant changes in the enforcement of laws related to guest worker programs, like those currently proposed, the result will be the permanent settlement of immigrant populations within host countries such as the United States. To combat the problem of permanent settlement of temporary workers in the United States, methods such as employer sanctions against those who employ illegal immigrants must be increased and enforced. Enforcement of employer sanctions helps control the number of guest workers who refuse to return to their home country once their temporary stay is completed. Issues related to securing national borders, such as terrorists utilizing lax border security to conduct attacks and the continued smuggling of illegal drugs or people must be addressed by policy makers. Left unaddressed, these concerns will continue to be an issue in the United States.

This paper will argue that the United States appears to be making mistakes similar to that of other countries such as Germany in establishing guest workers programs. If the United States does not learn from the difficulties encountered by Germany in instituting its own guest worker program, and employers are not sanctioned for hiring known illegal immigrants, the situation in the United States may very well follow a predictable path. Further, so long as policy makers do not address the issues related to immigration reform, grave social problems will arise and the exploitation of frightening security weaknesses at the nation's borders will continue to expose the United States to future attacks and the continued smuggling of illegal drugs or people.

II. REFORMING IMMIGRATION LAW IN THE UNITED STATES

A. History of U.S. Immigration Law

The United States has historically been known as a "Nation of Immigrants."²² Citizens of the United States are often reminded of this fact by the phrase "'e pluribus unum' (from many, one)."²³ Since 1820, when

22. David M. Kennedy, *Can We Still Afford to Be a Nation of Immigrants?*, THE ATLANTIC MONTHLY, Nov. 1996 at 52 (examining America's history regarding immigration and discussing whether examining America's history regarding immigration can be instructive in examining present immigration issues within the United States).

23. CONTROLLING IMMIGRATION: A GLOBAL PERSPECTIVE 51 (Wayne A. Cornelius et al. eds., Stan. Univ. Press 2004) [hereinafter CONTROLLING IMMIGRATION].

immigration numbers were initially recorded, sixty-six million legal immigrants have been admitted to the United States.²⁴ The Constitution of the United States gives Congress the authority to pass immigration laws,²⁵ but it is the duty of the judicial branch to ensure the rules are followed so that the invaluable gift of citizenship will not diminish.²⁶

Despite congressional authority to pass laws regarding immigration, Congress failed to use these powers to create an agency specifically to handle immigration until 1864.²⁷ Subsequently, the United States saw a dramatic increase in the number of immigrants at the end of the nineteenth century and the early years of the twentieth century.²⁸ Specifically, twenty-six million people immigrated to the United States in the fifty year period from 1870 through 1920.²⁹ These figures are astounding when one considers that the population of the United States in 1850 had not reached twenty-six million.³⁰ Since 1965, alone it is estimated that twenty million authorized immigrants have come to the United States.³¹ Throughout history, no other country has accepted more immigrants than the United States.³²

Foreigners in the United States can be categorized into three groups: immigrants, non-immigrants, and unauthorized foreigners.³³ An immigrant is defined as "foreign-born persons entitled to live and work permanently in the United States and, after five years, to become naturalized U.S. citizens."³⁴ Non-immigrants are tourists, workers or students who are in the United States for a specific period and reason, whom return to their home country upon completion of their task.³⁵ Finally, unauthorized foreigners are people who either enter the country illegally or those who violate the terms of their initial entry authorization and stay beyond the authorized time.³⁶

24. *Id.*

25. LISA MAGAÑA, *STRADDLING THE BORDER* 13 (Univ. of Tex. Press 2003).

26. *Fedorenko v. United States*, 449 U.S. 490, 506-07 (1981).

27. MAGAÑA, *supra* note 25, at 14.

28. Max J. Castro, *Immigration and Integration in the Americas*, 46 *THE N. S. AGENDA*, 4 (2001) (The Dante B. Fascell North-South Center at the University of Miami is an independent research and educational institution committed to promoting better relations among the United States, Canada, and the nations of Latin America and the Caribbean by advancing knowledge and understanding of the major political, social, economic, and cultural issues affecting the citizens of the Western Hemisphere.).

29. MAGAÑA, *supra* note 25, at 14.

30. *Id.*

31. Kennedy, *supra* note 22, at 53.

32. Castro, *supra* note 28, at 4.

33. *CONTROLLING IMMIGRATION*, *supra* note 23, at 52.

34. *Id.*

35. *Id.*

36. *Id.* at 52-53.

In examining the history of immigration policy in the United States three distinct phases appear.³⁷ These phases can be characterized as “laissez-faire, qualitative restrictions, and quantitative restrictions.”³⁸ In the laissez-faire period, the United States took a hands-off approach to immigration and generally had an “open door” policy for accepting immigrants.³⁹ During this period, only two percent of immigrants entering the United States were turned away upon arrival; in the rare case an immigrant was turned away, it was usually because they had a communicable disease or incorrectly answered one of the immigration official’s questions upon arriving at Ellis Island.⁴⁰

Historically, immigration to the United States has been sporadic.⁴¹ There were periods of high volumes of immigration followed by periods of low volumes of immigration.⁴² At the turn of the century, a surge of European immigrants provided the labor required by the industrialization of American society.⁴³ European immigration to the United States was also driven by changes in Europe caused by the Industrial Revolution and the rapid increase in population across Europe.⁴⁴ After World War II, immigration increased, but was kept in check by quotas set in place over two decades before.⁴⁵ The amendments to the Immigration and Nationality Act passed in 1965 eliminated discriminatory quotas and caused a significant increase in the number of immigrants coming to the United States.⁴⁶ The Immigration and Nationality Act favored immigrants who either had familial ties to the United States or skills sought by employers.⁴⁷

While immigrants entering the United States primarily arrived from European nations such as Germany, Great Britain, and Ireland, this trend began to shift to Asian and Latin American countries.⁴⁸ In the last thirty years, immigration has changed radically. More than fifty percent of the immigrants entering the United States came from seven countries, excluding Europe.⁴⁹ Specifically, Mexico, China (including Taiwan), the Philippines, Korea, India,

37. CONTROLLING IMMIGRATION, *supra* note 23, at 64.

38. *Id.*

39. Andrew J. Glass, *A Cruel Lottery Waiting for Immigration Reform*, THE NEW LEADER, July-Aug. 2005, at 10 (examining recent developments in immigration reform policy in the United States).

40. *Id.*

41. CONTROLLING IMMIGRATION, *supra* note 23, at 62.

42. *Id.*

43. Kennedy, *supra* note 22, at 61.

44. *Id.* at 64.

45. Castro, *supra* note 28, at 4.

46. *Id.*

47. CONTROLLING IMMIGRATION, *supra* note 23, at 63.

48. Jacoby, *supra* note 2, at 1577.

49. Kennedy, *supra* note 22, at 64.

Vietnam, and the Dominican Republic provide the vast majority of the immigrant population to the United States.⁵⁰ These countries began to provide “[what] came to be known as the ‘new immigration.’”⁵¹ The shift was driven by the removal of quotas and European post-war prosperity.⁵² During the first ten years following the removal of the quota system, less than twenty percent of immigrants to the United States came from European countries.⁵³ From the time of the elimination of immigration quotas up until the 1980s, immigration laws changed often in response to social and economic pressures being felt around the globe.⁵⁴

Immigration was driven by a number of different factors, but primarily influenced by labor shortages such as those during the industrial revolution or following World War II.⁵⁵ It was during a period of labor shortage following World War II that the United States instituted its first guest worker program.⁵⁶ During the periods 1917-1921 and 1942-1964, the United States began to seek guest workers from Mexico to perform agricultural labor.⁵⁷ These programs were known as the Bracero programs,⁵⁸ which significantly increased Hispanic immigration to the United States.⁵⁹ Although the program increased the number of legal immigrants which benefited employers, it also caused an increase in the number of illegal immigrants to the United States.⁶⁰

The Bracero program that began in 1942 was scheduled to expire in 1947.⁶¹ However, a variety of factors, including the Korean War, caused the program to last longer than planned.⁶² Another problem with the program was that while legal admissions during the program peaked at 445,000, there were no penalties

50. *Id.* at 64.

51. Castro, *supra* note 28, at 4.

52. CONTROLLING IMMIGRATION, *supra* note 23, at 63.

53. *Id.*

54. *Id.* at 66.

55. Jacoby, *supra* note 2, at 1577.

56. Philip Martin, *There is Nothing More Permanent Than Temporary Foreign Workers*, CTR. FOR IMMIGR. STUDIES, April 2001, at 3, available at <http://www.cis.org/articles/2001/back501.pdf> (last visited Nov. 3, 2006). (“The Center for Immigration Studies is an independent, non-partisan, non-profit research organization founded in 1985. It is the nation’s only think tank devoted exclusively to research and policy analysis of the economic, social, demographic, fiscal, and other impacts of immigration on the United States.”). CTR. FOR IMMIGR. STUDIES, <http://www.cis.org/aboutcis.html> (last visited Aug. 31, 2006).

57. Martin, *supra* note 56, at 1.

58. *Id.*

59. *Id.*

60. *Id.*

61. *Id.*

62. Martin, *supra* note 56, at 2.

for employers who hired illegal workers.⁶³ The Bracero program caused number of unintended consequences.⁶⁴ One of these consequences was an increase in the populations of Mexican border towns; in addition, the program encouraged Mexican workers to immigrate illegally to avoid paying bribes to Mexican government officials.⁶⁵ When illegal immigrants were caught by United States officials they were returned to Mexico, but during the process the United States issued legal work permits to Mexican workers so they could legally return to the United States.⁶⁶ It is clear that these programs provided incentives for people to immigrate illegally to the United States in hope for obtaining a legal work permit.⁶⁷ When the Bracero program was terminated, many predicted there would not be enough workers to continue the pace of harvesting and production, causing a rise in the price of food.⁶⁸ However, such predictions were proven false.⁶⁹ In fact, the opposite effect resulted. Farmers faced with the loss of human labor, actually improved harvesting methods by using mechanical means to do the jobs previously completed with immigrant labor.⁷⁰ As a result of the mechanization, production expanded and prices on agricultural goods such as tomatoes actually fell.⁷¹

While the growth of the Hispanic population in the United States was driven primarily by immigration, both legal and illegal,⁷² it is difficult to ascertain how much of the immigration growth has been, or is currently, driven by illegal immigrants. This is because there are no hard numbers regarding illegal immigrants in the United States.⁷³ Immigration specialists estimate that the total number of undocumented immigrants within the United States is currently around ten million.⁷⁴ Recently, the President praised the House for passing the Secure America and Orderly Immigration Act, which seeks to strengthen the borders and urged the Senate to take similar action so that the

63. *Id.*

64. *Id.*

65. *Id.*

66. *Id.*

67. Martin, *supra* note 56, at 2.

68. *Id.* at 3.

69. *Id.* at 2.

70. *Id.* at 3.

71. *Id.*

72. PEW HISPANIC CENTER, HISPANICS: A PEOPLE IN MOTION 2 (2005) (The Pew Hispanic Center is a project of the Pew Research Center, a nonpartisan "fact tank" that provides information on the issues, attitudes, and trends shaping America and the world. It is supported by the Pew Charitable Trusts); available at <http://pewhispanic.org/about> (last visited Nov. 4, 2006).

73. *Id.*

74. *Id.*

President can sign the bill into law in 2006.⁷⁵ In addition to legislation already proposed and passed, the United States and Mexico have engaged in a number of high level discussions regarding the issue of immigration reform and the possibility of amnesty or a temporary guest worker program.⁷⁶

In the past, immigration fueled the growth of the number of Hispanics in the United States, but their population is now being fueled by birth.⁷⁷ Hispanic birth rates are double those of other ethnic groups in the United States.⁷⁸ Birth, not immigration, "will be the key source of population growth in the near future."⁷⁹ Experts estimate there are eight million Hispanic illegal immigrants in the United States, six million from Mexico and two million from other Latin American countries.⁸⁰

In response to the growing immigration numbers by the native population, the United States began passing legislation which limited the number of immigrants allowed into the country.⁸¹ Qualitative restrictions were imposed on individuals who were not desired by the government of the United States; these restrictions included prostitutes, convicts, and eventually citizens from specific countries such as China.⁸² The Chinese Exclusion Act, passed in 1882, was enacted in response to the perception that there was a problem with the number of Chinese immigrants in the United States.⁸³ Quantitative restrictions were restrictions on the number of people allowed in the United States in any given year.⁸⁴ These restrictions included legislation such as the National Origins Quota Act of 1924, which set limits on the number of immigrants allowed into the United States, and reiterated the ban on immigrants from Asia and Africa from immigrating legally to the United States.⁸⁵

The United States has attempted to reform immigration through methods such as the Immigration Control and Reform Act of 1986.⁸⁶ In 1986, the United States attempted to make deportations of illegal immigrants easier, and since that

75. Press Release, Office of the Press Secretary, The White House, President Applauds House for Passing Immigration Reform Bill (Dec. 16, 2005) (on file with author).

76. Barbara Hines, *So Near Yet So Far Away: The Effect of September 11th on Mexican Immigrants in the United States*, 8 TEX. HISP. J.L. & POL'Y 37, 42 (2002) (discussing the history of the immigration reform talks between President Bush and Mexican President Vicente Fox).

77. PEW HISPANIC CENTER, *supra* note 72, at 4.

78. *Id.* at 2.

79. *Id.* at 4.

80. *Id.* at 2.

81. Castro, *supra* note 28, at 4.

82. CONTROLLING IMMIGRATION, *supra* note 23, at 64.

83. MAGAÑA, *supra* note 25, at 14.

84. CONTROLLING IMMIGRATION, *supra* note 23, at 65.

85. Castro, *supra* note 28, at 4.

86. *Id.*

time the number of deportations has risen at a steady pace.⁸⁷ The President's recent proposals to initiate immigration reform, including the guest worker program, also include means to speed up removal of illegal immigrants.⁸⁸ These proposals are in response to an overwhelming increase in cases involving illegal immigrants in the federal court system.⁸⁹

B. Immigration Reform Efforts

To expose the government's confusion in addressing the issue of border control, one needs only to examine the government's efforts to control the border prior to the creation of the Department of Homeland Security.⁹⁰ The job of securing the borders was divided up among agencies ranging from "the State Department, the Justice Department through [the] Immigration and Naturalization Service, Customs, [the] Coast Guard, the Border Patrol, [the] Department of Agriculture, [and] the Department of Defense . . ."⁹¹ With no coordination between the aforementioned agencies, there was a continuous attempt to track "about 500 million legal border-crossings a year and an unknown number of illegal ones . . ."⁹² There are more than 317 points of entry into the United States, and before Homeland Security was created, no single agency was responsible for coordinating efforts to secure the border.⁹³

Border control is not the only problem the government faces when dealing with immigrants.⁹⁴ Once immigrants cross the border legally or illegally, the federal government faces a number of other problems in keeping track of immigrants.⁹⁵ "[A]fter [the September 11th attacks], the US government realized that about 70,000 Saudi men between the ages of 18 and 35 had entered the US between December 2000 and August 2001, but the US government had no idea where they were." The United States is faced with the problem of adding new protections and tightening the borders, while at the same time

87. *Id.* at 1.

88. *Comprehensive Immigration Reform*, *supra* note 4.

89. *See id.*

90. Didier Bigo, Jeremy Shapiro & Andrei Federov, *European Homeland Security Post March 11th and Transatlantic Relations*, 13, 16 (European Security Forum, Working Paper No. 17, 2004), available at http://shop.ceps.be/downfree.php?item_id=1164 (last visited Nov. 3, 2006).

91. *Id.* at 18.

92. *Id.* at 16.

93. Barry S. Zellen, *Preventing Armageddon I: Enhancing America's Border and Port Security After 9/11*, STRATEGIC INSIGHTS, Nov. 2004, available at <http://www.ccc.nps.navy.mil/si/2004/nov/zellenNov04.pdf> (examining the issues facing the protection of the borders and ports within the United States) (last visited Nov. 3, 2006).

94. Bigo, Shapiro & Federov, *supra* note 90, at 16.

95. *Id.*

fostering relationships with foreign countries so that terror can be confronted at its roots instead of within the borders of the United States.⁹⁶

With the creation of the Department of Homeland Security, one of the largest federal government reorganizations in history, the federal government sought to bring together twenty-two separate agencies under one umbrella.⁹⁷ The Department of Immigration and Naturalization Service, the primary governmental agency tasked with monitoring and regulating immigration before September 11th, was brought under the control of Homeland Security.⁹⁸ The obstacles facing officials and agencies attempting to secure the borders of the United States are numerous and difficult to overcome.⁹⁹ “The United States has 5,525 miles of border with Canada . . . and 1,989 miles with Mexico. But its maritime border is nearly fifteen times longer than its land borders”¹⁰⁰

III. GERMAN EFFORTS TO REFORM IMMIGRATION POLICIES

A. History of German Immigration Law

Historically, Germany has been extremely restrictive in allowing individuals to immigrate and naturalize.¹⁰¹ Germany first enacted citizenship laws in 1913, but these laws “restricted German citizenship to those ethnic Germans except in a few exceptional cases.”¹⁰² In Germany the policy had been one of simply ignoring immigration, or if it was acknowledged, “treated . . . primarily as a burden and a problem.”¹⁰³ Until the passing of new legislation in 2000, German laws regarding citizenship were “based exclusively on the concept of *ius sanguinis*, whereby a German citizen was strictly defined as someone of German blood.”¹⁰⁴ These laws were vague and did not provide mandatory governmental requirements for granting citizenship.¹⁰⁵ Instead, it was left to the government to determine if allowing naturalization was in its best interest.¹⁰⁶

Despite the lack of a formal plan and the general reluctance of the German government and population to accept immigration, Germany has a history of recruiting foreign workers to meet labor shortages when necessary.¹⁰⁷ There

96. Zellen, *supra* note 93.

97. Bigo, Shapiro & Federov, *supra* note 90, at 16.

98. *Id.*

99. Zellen, *supra* note 93.

100. *Id.*

101. Boles, *supra* note 5.

102. *Id.*

103. Schily, *supra* note 12.

104. Gabrielle Frölich, *Discrimination in German Immigration*, 16 PEACE REV. 475, 476 (2004).

105. Boles, *supra* note 5.

106. *Id.*

107. *Id.*

have typically been three categories of people who make up Germany's immigrant population: "[f]irst, the 'Gastarbeiter' (guest workers), . . . [s]econd, the 'Ausseidler,' ethnic Germans from formerly Communist countries, . . . [a]nd third, asylum seekers . . ."¹⁰⁸ However immigration has continued to prove problematic and the plight of German guest workers was summed up nicely by Max Frisch when he stated, "'We asked for workers, and we got people . . .'"¹⁰⁹ The German guest worker programs were intended to fuel the economy after the revival in West Germany following World War II, but policy makers never intended for these workers to remain on a permanent basis.¹¹⁰ Despite the fact that the workers were only invited to stay for a short period of time, these workers remained.¹¹¹ German government leaders failed to address the reality, that the guest workers were developing roots in Germany and feeling less and less a part of their native countries and more a part of Germany.¹¹² At the same time, the native population viewed these workers as temporary guests in Germany and treated them like temporary help who did not have the same rights as the natives.¹¹³

Germans began to resent the immigrant labor within the country, and problems began to erupt between immigrants and native Germans.¹¹⁴ Elmar Hönekopp examined the effect of immigrants on the labor market in Germany and stated that eight million foreigners live within Germany, with four million of those immigrating within the last decade.¹¹⁵ Some of the problems that surfaced regarding immigration in Germany are directly related to the German government's failure to formally address the issues related to these high levels of immigration, until recently.¹¹⁶ Various policies have been implemented that could be viewed as elements of an immigration policy, but these elements were never put into a single piece of legislation or formed into a comprehensive policy regarding immigration.¹¹⁷

Germany invited guest workers to come and work within its borders, but guest workers were not invited to stay permanently or even for a long term.¹¹⁸ Germany experienced a shortage of workers in 1960 when there were more jobs

108. *Id.*

109. Martin, *supra* note 56, at 3.

110. Schily, *supra* note 12.

111. *Id.*

112. *See id.*

113. *See id.*

114. Werner Sollors, *Good-bye, Germany!*, TRANSIT: Vol. 1: No. 1, Article 50902.

115. Hönekopp, *supra* note 19 at 69.

116. *Id.* at 69.

117. *See id.* at 69-70.

118. Alisa Roth, *Immigrant Workers Fuel the Economy, But Still There're Treated With Suspicion, Germany's Cold Shoulder*, THE NATION, May 27, 2002, at 21.

available than unemployed workers.¹¹⁹ To address this problem, German industry leaders began to ask for authorization to seek additional labor from foreign sources.¹²⁰ The idea to recruit guest workers, or *Gastarbeiters*, was the only program given any serious consideration to deal with the labor shortages.¹²¹ The reasons for this were varied, but focused mainly on the fact that the economic recovery in Germany after World War II seemed to depend on the recruitment of cheap foreign labor.¹²²

Seven countries, Turkey, Morocco, Spain, Tunisia, Yugoslavia, Greece, and Portugal, signed agreements to allow former West Germany to recruit workers.¹²³ Workers were sent from these countries to Germany, and after one year the worker would be sent home and replaced by a fresh recruit.¹²⁴ The recruitment policy, as well as the recruiting process, was fraught with problems. As a result, thirty percent of the thirty million workers who sought work in Germany on a so-called temporary basis wound up staying long term.¹²⁵ One recent report stated that “[o]f the 7.3 million foreigners in Germany in 2000, 40 percent had been there fifteen years or more.”¹²⁶

It is clear that guest worker programs are not an attempt to add permanent settlers to the population.¹²⁷ The guest worker programs in place were simply a means to provide the inexpensive labor the German industry required during desperate times.¹²⁸ The reason these guest workers stayed for an extended period of time varied. Many workers needed to reach goals they had set for savings, and German employers reluctantly turned loose workers whom they had spent time and money training, only to have to repeat the process on a yearly basis.¹²⁹ The employer’s hesitation to enforce time limits led to a very lax system which made German immigration policies difficult to enforce.¹³⁰

Germany was traditionally a country that exported people, rather than imported them, but this reality has undergone a steady change for a number of years.¹³¹ Since 1820, Germany provided seven million documented immigrants

119. CONTROLLING IMMIGRATION, *supra* note 23, at 225.

120. *Id.*

121. *Id.*

122. *See id.* at 226.

123. *Id.* at 226-27.

124. *Id.* at 228.

125. *See* CONTROLLING IMMIGRATION, *supra* note 23, at 228.

126. *Id.*

127. *Id.*

128. *See id.* at 225.

129. *Id.* at 228.

130. *See id.*

131. Martin, *supra* note 56, at 3.

to the U.S.,¹³² in comparison to six million documented immigrants who came to the U.S. from Mexico.¹³³ The trend of Germany exporting workers changed after World War II; by the 1960s, German employers were seeking workers from foreign countries to fill what was viewed as a temporary need.¹³⁴ During the period from 1956-1966, the number of foreign workers in West Germany rose from 95,000 to 1.3 million.¹³⁵ By 1970, the number of foreign workers in Germany had reached two million, and was increasing at the rate of half a million a year.¹³⁶ Both, the German government and the industry viewed these workers as a temporary commodity that could be used and sent home when they were no longer needed, which the attitude of the immigration policies reflected.¹³⁷ This attitude was officially expressed by the government in the 1980s when German Chancellor Helmut Kohl stated that Germany was "not a nation of immigrants."¹³⁸ This mindset was prevalent as recent as 2003 when German conservatives argued that Germany was not a classic nation of immigrants and never could be, due to the realities regarding history, geography, and society.¹³⁹

Until the late 1990s, Germany did not have a broad-based strategy to effectively deal with immigration issues. In discussing the lack of a comprehensive strategy, German scholars Klaus Bade and Myron Weiner stated:

[w]ithout a reconceptualization of Germany from an ethno-national society in which citizenship is based on ethnic identity to a society in which membership in the political system is acquired by birth and choice, Germany will not be able to integrate its immigrant population and their children. It is in danger of being a society deeply divided between those who have full membership and those who are excluded.¹⁴⁰

Beginning in the 1990s, changes in German immigration laws were relaxed so that citizenship was granted when a person met the following requirements: "(1) has lived in Germany for eight years; (2) is between the ages of 16 and 23; (3) has attended school in Germany for six years; (4) has no serious criminal

132. *Id.*

133. *Id.*

134. *Id.*

135. Stephen Castles, *The Guest-Worker in Western Europe-An Obituary*, 20 INT'L MIGRATION REV. NO. 4, 761, 768 (1986).

136. *Id.*

137. *Id.* at 769.

138. Roth, *supra* note 118, at 21.

139. Sollors, *supra* note 114, at 2.

140. Boles, *supra* note 5.

record; and (5) gives up his or her former citizenship.”¹⁴¹ After years of debate, Germany instituted a new and comprehensive set of immigration laws, named the New Immigration Act, which went into effect January 1, 2005.¹⁴² These changes are reflective of the principle of *ius solis*, which is a right of residence based upon birth and not blood.¹⁴³ These new laws had clear standards which were lacking when the initial laws were enacted; because the requirements were met did not mean that citizenship would automatically be granted.¹⁴⁴ The new act allows for a legal right to immigration where previous acts did not.¹⁴⁵ Additionally, a number of other changes were made as a result of these reforms to the German immigration system.¹⁴⁶

Sentiments in Germany have changed to acknowledge the importance of immigration and on July 4, 2001, “an immigration commission of political party representatives, employers, unions, and churches . . . declared: ‘Germany is and should be a country of immigration.’”¹⁴⁷ Otto Schily, former German Federal Minister of the Interior, recently spoke to a group at the Carnegie Council in New York where he discussed German Immigration issues.¹⁴⁸ Mr. Schily stated that past German immigration policies echoed the view of Chancellor Kohl and that the immigration policies of the past ignored the fact that Germany has traditionally been a country of immigration, despite what was officially stated by leaders in the past and present.,¹⁴⁹

While many scholars acknowledge improvements in Germany’s immigrant relations, problems such as lack of education, lower language skills, and cultural conflicts between native Germans and immigrants which must be addressed still exist.¹⁵⁰ Some of these cultural conflicts are more subtle, such as discrimination by landlords when an immigrant seeks housing.¹⁵¹ Such discrimination eventually led to immigrants moving to inner cities and concentrating themselves in urban centers.¹⁵² Immigrant populations began to isolate themselves, and associations between immigrants and native Germans became

141. *Id.*

142. Auswärtiges Amt, *The New Immigration Act*, <http://www.auswaertiges-amt.de/diplo/en/WillkommeninD/EinreiseUndAufenthalt/Zuwanderungsrecht.html> (last visited Nov. 3, 2006).

143. Frölich, *supra* note 104, at 476.

144. Boles, *supra* note 5.

145. Auswärtiges Amt, *supra* note 142.

146. *Id.*

147. CONTROLLING IMMIGRATION, *supra* note 23, at 221.

148. Schily, *supra* note 12.

149. *Id.*

150. *Id.*

151. Jacoby, *supra* note 2, at 1591.

152. *See* Schily, *supra* note 12.

uncommon.¹⁵³ Furthermore, guest workers in Germany were not granted the same rights as German citizens.¹⁵⁴ Germans began to feel anger and distrust towards these guest workers, and in some urban centers, the number of guest workers actually exceeded those of German citizens.¹⁵⁵ Anti-immigration groups in Germany began to repeat slogans such as "Ausländer 'raus!" ('Foreigners Out!') and "Deutschland ist für Deutschers" ('Germany is for Germans').¹⁵⁶

In the 1980s, the German government slowly began to formally address the problems faced by immigrants.¹⁵⁷ The German government recently passed the New Immigration Act, which attempts to address the need for integration of immigrants and provides for programs to help immigrants obtain language skills and a basic knowledge of German society, history, and culture.¹⁵⁸ Under the New Immigration Act, new classifications of visas now exist regarding residence titles, and for the first time in German history, there is a distinction between residence permits for temporary stays, and settlement permits for indefinite stays in Germany.¹⁵⁹ The Act also eliminates the distinction between work and residence permits, so residence permits allow workers to apply for work in Germany, removing one layer of bureaucracy.¹⁶⁰ The new legislation has finally allowed Germany to accept and proclaim that it is now truly a country of immigration.¹⁶¹

The failed guest worker program in Germany resulted in the permanent settlement of a number of immigrants within the country.¹⁶² Similar results can be anticipated if the United States implements such a program.¹⁶³ The Bush administration claims that the creation of a temporary guest worker program in the United States would reduce the flow of illegal immigrants to this country.¹⁶⁴ The problem with this claim is that other countries, including Germany, have attempted to put similar guest worker programs in place and have all had comparable results.¹⁶⁵

153. Jacoby, *supra* note 2, at 1592.

154. *Id.* at 1583.

155. CONTROLLING IMMIGRATION, *supra* note 23, at 228-29.

156. *Id.* at 229.

157. Jacoby, *supra* note 2, at 1598-99.

158. Schily, *supra* note 12.

159. Auswärtiges Amt, *supra* note 147.

160. *Id.*

161. Sollors, *supra* note 119, at 1.

162. Jacoby, *supra* note 2, at 1578.

163. *Id.* at 1578-79.

164. *Comprehensive Immigration Reform*, *supra* note 4.

165. Castles, *supra* note 140, at 761.

Countries with temporary guest worker programs have faced the fact that despite their best efforts, these guest worker programs result in the permanent settlement of immigrants.¹⁶⁶ If steps are not taken to address the issue, serious societal problems may arise, such as resentment and distrust of immigrants.¹⁶⁷ Guest worker programs create a cycle in which employers become dependent on a steady supply of cheap labor and immigrant workers become accustomed to earning wages at much higher rates than can be found in their home country.¹⁶⁸ Advocates of guest worker programs argue that there is a mutual benefit to countries that supply guest workers as well as the countries that receive them.¹⁶⁹ The mistake these proponents make when arguing for a guest worker program is that implementing such a program has consequences that are rarely examined.¹⁷⁰ Higher costs of living in the origin countries and higher costs for social services in the host countries are just two examples.¹⁷¹

IV. SECURITY CONCERNS RELATED TO ILLEGAL IMMIGRATION

A. National Security Concerns

A key component of any immigration reform is a secure border.¹⁷² President Bush has spoken extensively regarding immigration reform and acknowledged the need to control the border.¹⁷³ In a recent speech President Bush stated that “[s]ecuring our border is essential to securing the homeland.”¹⁷⁴ These remarks given at Davis-Monthan Air Force base in Tucson, Arizona, illustrate the fact that the President is focused on forming policies to reform the current immigration system.¹⁷⁵ President Bush’s immigration reform speech outlined a three-part plan that would focus on (1) returning every illegal immigrant caught at the border, (2) reforming the existing immigration laws on the books and streamlining these laws to make them more effective, and (3) preventing illegal border crossing.¹⁷⁶ The President’s vision also includes the creation of a temporary worker program designed to relieve current pressure from border towns that are on the forefront of this issue.¹⁷⁷ The reform proposal

166. Jacoby, *supra* note 2, at 1578.

167. *Id.* at 1574-75.

168. Martin & Teitelbaum, *supra* note 18 at 119-20.

169. *Id.* at 118.

170. *Id.* at 118-19.

171. *Id.* at 120-21.

172. *Comprehensive Immigration Reform*, *supra* note 4.

173. *Id.*

174. *Comprehensive Immigration Reform*, *supra* note 4.

175. *Id.*

176. *See id.*

177. *Id.*

has specifically and consistently rejected calls for amnesty of current illegal immigrants already in the United States.¹⁷⁸

The government seeks to tighten security at the borders “to help re-establish the separation between domestic and foreign spheres” in an effort to show the public that efforts are being made to keep terror outside the borders of the United States.¹⁷⁹ Legislation has been signed by the President which has increased the number of border patrol agents, allowed for the deployment of new technology such as unmanned aerial vehicles (UAVs), and provided seventy million dollars in funding to create or upgrade the physical barriers along the border.¹⁸⁰ Improving passport control at various points of entry serves as another method of tightening the security at national borders.¹⁸¹ Border security is essential to a comprehensive national security policy.¹⁸² Historically, the Mexican border has been viewed as an entry point into the United States for those who could not otherwise gain access to the U.S.¹⁸³ Europeans who could not gain access to the United States due to immigration quotas often used the Mexican border to gain illegal entry into the country.¹⁸⁴ Presently, other groups appear to be using the southern border as an access point into the country.¹⁸⁵ Federal agents near Laredo, Texas have reported items such as “[j]uice boxes with Arabic writing on them” and a jacket with “a picture of a plane flying into a tall building on it.”¹⁸⁶ These reports have led Senator John Cornyn (R-Tex.) to propose legislation that would double the number of border patrol agents from the current level of 11,000.¹⁸⁷ Senator Cornyn and others within the government believe that al-Qaeda is attempting to use the Mexican border as access to the country.¹⁸⁸ Securing the border is a key component to preventing criminals such as drug smugglers and terrorists from further activities within the United States.¹⁸⁹

178. *Comprehensive Immigration Reform*, *supra* note 4.

179. Shapiro, *supra* note 90, at 18.

180. *Comprehensive Immigration Reform*, *supra* note 4.

181. See generally U.S. GOV'T ACCOUNTABILITY OFF., STATE DEPT.: IMPROVEMENTS NEEDED TO STRENGTHEN U.S. PASSPORT FRAUD DETECTION EFFORTS, GAO-05-853T (2005) [hereinafter IMPROVEMENTS NEEDED].

182. See *Comprehensive Immigration Reform*, *supra* note 4.

183. MAGAÑA, *supra* note 25, at 16.

184. *Id.*

185. Cornyn: *Our Borders Are the Wild, Wild West*, HUMAN EVENTS, Dec. 5, 2005 at 3 [hereinafter *Cornyn*].

186. *Id.*

187. *Id.*

188. *Id.*

189. *Comprehensive Immigration Reform*, *supra* note 4.

President George W. Bush is not the first U.S. President to declare “war” on an ideology after a national crisis.¹⁹⁰ President Theodore Roosevelt declared a “war on anarchism” after his predecessor, President William McKinley, was assassinated in 1901.¹⁹¹ Further, September 11th, 2001 was not the first instance of terrorism occurring on U.S. interests or on U.S. soil.¹⁹² The World Trade Center was bombed in 1993, domestic terrorists bombed the Alfred P. Murrah federal building in Oklahoma City, Oklahoma, and Al-Qaeda terrorists had attacked U.S. interests abroad before 2001, when terrorists bombed two embassies in Africa in 1998 and attacked the USS Cole in 2000.¹⁹³

According to estimates, before the attacks of September 11th the United States government was spending up to twenty billion dollars per year for the specific purpose of preventing terrorist attacks and addressing the effects of a successful attack.¹⁹⁴ Excessive amounts of money has been spent on the study of preventing a terrorist attack, and many scenarios have been outlined; therefore, it cannot be said that the methods employed during September 11th attacks caught intelligence analysts by surprise.¹⁹⁵ The number of reports generated that examine the possibility of various terrorist attack scenarios are so great that virtually every type of attack has been anticipated by somebody in one of the various government agencies.¹⁹⁶

The problem then becomes how to respond to these types of threats.¹⁹⁷ President Ronald Reagan, in remarks given on the lawn of the White House in 1983, stated, “[l]et terrorists beware that when the rules of international behavior are violated, our policy will be one of swift and effective retribution.”¹⁹⁸ The American view of terrorism held that it originated overseas, and that it was akin to an attack on the United States.¹⁹⁹ This was the traditional view of terrorism, despite the fact that domestic terrorists did exist and had carried out attacks within the United States.²⁰⁰

190. Shapiro, *supra* note 90, at 13.

191. *Id.*

192. *Id.*

193. *Id.*

194. *Id.* at 14.

195. *Id.*

196. Shapiro, *supra* note 90, at 15.

197. *Id.*

198. Laura K. Donohue, *In the Name of National Security: U.S. Counterterrorist Measures, 1960-2000*, ESDP Discussion Paper ESDP-2001-04, 2 John F. Kennedy School of Government, Harvard University, Aug. 2001, available at http://bcsia/ksg.harvard.edu/BCSIA_content/documents/In_the_Name_of_National_Security.pdf (last visited Nov. 4, 2006).

199. *Id.*

200. *Id.*

In the 1990s, anxiety grew concerning terrorist attacks on U.S. soil.²⁰¹ In response, legislative steps were taken to adjust the immigration procedure to combat those accused of participating in terror plots.²⁰² In attempting to address this terrorist activity, “[t]he Immigration and Naturalization Act of 1990 included fundraising, the provision of weapons, training, or other material aid, solicitation for membership, and assistance in preparing for a terrorist attack in its description of terrorist activity.”²⁰³ The 1990 legislation was amended to allow for special hearings to exclude or deport individuals found guilty of participating in terrorist activities.²⁰⁴

Special courts were created and presided over by Federal District Judges.²⁰⁵ These courts were granted authority to streamline the deportation of criminal aliens, to allow “authorized federal law enforcement agencies access to confidential information in immigration files, and designated specific immigration-related offenses as predicate crimes under the Racketeer Influenced and Corrupt Organizations Act [RICO].”²⁰⁶ The RICO act allows the government to take assets from a group defined as a criminal organization upon conviction of a crime.²⁰⁷ RICO is currently being used by the government in “cases involving generic criminal acts that were part of a terrorist agenda” and it appears that this trend will continue.²⁰⁸

When terrorists, criminals, or people who are simply looking for better economic opportunity seek to enter the country, they use any available means.²⁰⁹ Elaborate methods, such as the recently discovered 2,400 ft. long tunnel found running from a warehouse near the Tijuana airport to a warehouse in San Diego, is an example of the extreme methods utilized to bypass border security.²¹⁰ This tunnel was primarily used to smuggle illegal drugs into the United States.²¹¹

201. *Id.* at 26.

202. *Id.*

203. *Id.* at 27.

204. Donohue, *supra* note 198 at 28.

205. *Id.* at 29.

206. *Id.*

207. *Id.*

208. *Id.*

209. Janice L. Kephart, *Immigration and Terrorism: Moving Beyond the 9/11 Staff Report on Terrorist Travel*, CTR. FOR IMMIGR. STUDIES, 7 (2005), available at <http://www.cis.org/articles/2005/kephart.pdf> (examining a number of confirmed terrorists within the United States and the methods they used to gain access, or remain in the country) (last visited Nov. 4, 2006).

210. *Mexican Arrested in Cross-Border Drug Case*, THE ASSOCIATED PRESS, Jan. 30, 2006, available at <http://www.msnbc.msn.com/id/11103324/> (last visited Nov. 4, 2006).

211. *Id.*

Authorities found over a ton of marijuana inside the tunnel and subsequently arrested a Mexican citizen on charges of conspiracy to import the drugs.²¹²

Tunnels are not the only means of getting across the border.²¹³ Travel documents are equally as important as guns and bombs for people who are seeking to undertake a terrorist plot from within the United States.²¹⁴ Passports are an important tool for those who seek to conduct terrorist operations, because once a passport is obtained, travel to and from the United States becomes a relatively simple matter.²¹⁵ Terrorists have used fake passports and other false documents to move with impunity through border security systems currently in place within the United States.²¹⁶ Once criminals have successfully crossed the border, it becomes easy to assimilate into society so as to not draw attention to their efforts to plan and conduct terrorist attacks.²¹⁷

To further secure the border, the government should take necessary steps to improve passport control.²¹⁸ During testimony before the Senate, the United States Government Accountability Office addressed the need to improve passport fraud detection in order to prevent criminals from obtaining official passports so they can travel, to and from the United States, without a great deal of scrutiny.²¹⁹ The government needs to improve coordination of information between agencies so criminals, and possibly terrorists, who are seeking to obtain passports by fraudulent means, are not able to do so.²²⁰ In the fiscal year ending 2004, there were 8.8 million passports issued by the United States government.²²¹ In that same year, only 500 people were arrested for passport fraud, and only 300 of those were convicted.²²²

The problem with current immigration policies is that it is easy for terrorists to stay in the country once they have successfully crossed the border.²²³ Even if a suspected terrorist has committed crimes, current immigration law makes it difficult to remove the terrorist from the country.²²⁴ Removal is further complicated if the terrorist is eligible to become a naturalized citizen.²²⁵ Once

212. *Id.*

213. Kephart, *supra* note 209, at 7.

214. *Id.*

215. *Id.* at 11.

216. *Id.* at 7.

217. *Id.*

218. See IMPROVEMENTS NEEDED, *supra* note 181, at 2.

219. *Id.*

220. *Id.* at 11.

221. *Id.* at 1.

222. *Id.*

223. Kephart, *supra* note 209, at 9.

224. See *id.*

225. *Id.*

terrorists become naturalized citizens, they gain access to legitimate travel documents such as passports issued by the United States government.²²⁶ A study of ninety-four terrorists who completed terrorist attacks within the United States from the early part of the 1990s through 2004, revealed that twenty of twenty-one who applied for naturalization were granted approval.²²⁷ From this group of confirmed terrorists who were granted naturalization, over half of their applications contained some form of fraud.²²⁸

Once a suspected terrorist is naturalized, it becomes difficult for the government to revoke citizenship.²²⁹ There are a number of specific procedural steps required to pursue a claim of denaturalization once it is determined that naturalization was granted based on a fraudulent application for citizenship.²³⁰ These procedural steps are important because granting citizenship is an important act that should not be taken lightly.²³¹ In *Fedorenko v. United States*, the court noted that citizenship is a significant event in the lives of immigrants who are in the United States for legitimate purposes.²³² The Court further states “the right to acquire American citizenship is a precious one and that once citizenship has been acquired, its loss can have severe and unsettling consequences.”²³³

There are two required steps for the government to declare a person’s citizenship invalid and revoke their citizenship.²³⁴ This two-stage process involves proving a violation of 18 U.S.C. § 1425, the statute regarding knowingly obtaining citizenship by unlawful means.²³⁵ 18 U.S.C. § 1425 provides:

- (a) Whoever knowingly procures or attempts to procure, contrary to law, the naturalization of any person, or documentary or other evidence of naturalization or of citizenship; or
- (b) Whoever, whether for himself or another person not entitled thereto, knowingly issues, procures or obtains or applies for or otherwise attempts to procure or obtain naturalization, or citizenship, or a declaration of intention to become a citizen, or a certificate of arrival or any certificate or evidence of

226. *Id.* at 11.

227. *Id.*

228. *Id.*

229. Kephart, *supra* note 209, at 15.

230. *Fedorenko*, 449 U.S. at 505.

231. Kephart, *supra* note 209, at 15.

232. *Id.*

233. *Id.*

234. Kephart, *supra* note 209, at 15.

235. *Id.*

nationalization or citizenship, documentary or otherwise, or duplicates or copies of any of the foregoing—

Shall be fined under this title or imprisoned not more than 25 years (if the offense was committed to facilitate an act of international terrorism (as defined in section 2331 of this title)), 20 years (if the offense was committed to facilitate a drug trafficking crime (as defined in section 929(a) of this title)), 10 years (in the case of the first or second such offense, if the offense was not committed to facilitate such an act of international terrorism or a drug trafficking crime), or 15 years (in the case of any other offense), or both.²³⁶

If a conviction is obtained then denaturalization automatically occurs pursuant to 8 U.S.C. § 1451(e).²³⁷ Section 1451(e) provides:

When a person shall be convicted under section 1425 of Title 18 of knowingly procuring naturalization in violation of law, the court in which such conviction is had shall thereupon revoke, set aside, and declare void the final order admitting such person to citizenship, and shall declare the certificate of naturalization of such person to be canceled. Jurisdiction is conferred on the courts having jurisdiction of the trial of such offense to make such adjudication.²³⁸

When the government prosecutes someone under 18 U.S.C. § 1425, it must meet the burden of proof beyond a reasonable doubt, as set forth under *Fedorenko*.²³⁹

The United States has traditionally used deportation as a means to remove foreign nationals, and border controls to prevent persons from illegally entering the country and confront threats from abroad.²⁴⁰ Another component of the President's reform plan is improving the methods used to process illegal immigrants who are caught within the United States.²⁴¹ The United States government passed legislation, specifically the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct

236. 18 U.S.C. § 1425 (2002).

237. Kephart, *supra* note 209, at 15.

238. 8 U.S.C. § 1451(e) (1994).

239. *Fedorenko*, 449 U.S. at 505-506.

240. Donohue, *supra* note 198, at 27.

241. *Comprehensive Immigration Reform*, *supra* note 4.

Terrorism Act (USA PATRIOT Act),²⁴² which “enshrined the notion that non-citizens had fewer rights under American law to privacy and due process in legal proceedings than US citizens.”²⁴³ Currently, non-citizens are held outside the borders of the United States without access to the U.S. court system and can be held indefinitely without being charged of a specific crime.²⁴⁴ Reasons for the institution of such a system vary, but inefficiency, the speed at which a case moves through the court system, the leaking of vital intelligence, and a perceived unwillingness to respond to emerging threats are reasons often cited by supporters of systems like the one currently established at Guantanamo Bay, Cuba.²⁴⁵

B. Controlling the Movement of Immigrants

With the influx of immigrants, and the passing of legislation related to immigration reform, the United States and Germany have adopted means of enforcing immigration laws currently in place.²⁴⁶ The efforts include all government action to prevent illegal entry into a country and to prevent workers from illegally obtaining employment.²⁴⁷ The German efforts to prohibit illegal immigration have been more successful than U.S. efforts because of Germany's stricter controls and monitoring of housing and labor.²⁴⁸ However, once an immigrant, illegal or otherwise, made it across the United States border, even if the immigrant were detained by the police, the general practice was one of “catch and release.”²⁴⁹ In contrast to the United States, the German government requires residents, citizens, and immigrants alike to register a residency with the local *meldestelle*, or registration office.²⁵⁰ Similar efforts for a national registration system have been successfully opposed by a number of groups in the U.S.²⁵¹

Illegal immigration is difficult to track in Germany and presents a number of challenges because of a lack of information and restrictions preventing access

242. Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001, Pub. L. No. 107-56, 115 Stat. 272 (2001).

243. Bigo, Shapiro & Federov, *supra* note 90, at 18.

244. *Id.*

245. *Id.*

246. Dr. Dita Vogel, *Migration Control in Germany and the United States*, 34 INT'L MIGRATION REV. 390, 392 (2000).

247. *Id.* at 391.

248. *Id.*

249. *Comprehensive Immigration Reform*, *supra* note 4.

250. Vogel, *supra* note 246, at 395.

251. *Id.*

to the information.²⁵² The German government actively seeks public input in reporting people who may be illegal immigrants.²⁵³ A number of other official government measures to tackle immigrants have led to "wide spread discrimination against anybody who looks different than what many Germans think a German should look like."²⁵⁴ In Germany, the number of illegal immigrants is almost impossible to ascertain; news reports have reported anywhere from 500,000 to 1,000,000 depending on the reporting source.²⁵⁵

The responses to border control in Germany and the United States are eerily similar. The United States has taken steps to secure its southern border with Mexico.²⁵⁶ The German government has taken steps to control illegal immigration along the eastern border.²⁵⁷ In Germany, the steps include increasing the number of people patrolling the border and allocating additional money for patrols.²⁵⁸ President Bush has called for the same measures to be implemented within the United States.²⁵⁹ In Germany, the German Bundesgrenzschutz police agency was federalized and officers were granted authority to detain and question anyone in the interior of Germany without cause.²⁶⁰ In 1998, they exercised this authority 80,000 times.²⁶¹ The United States border patrol agents were also granted new limited powers to detain and remove illegal aliens in the United States.²⁶² The German government is also taking steps to create systems of monitoring immigrants, such as new passport designs and biometric visas.²⁶³ The United States Government has also proposed new efforts to improve passport controls.²⁶⁴ To fight the problem of forged papers, or a complete absence of papers, Germany instituted programs

252. Holk Stöbbe, *Undocumented Migration in the USA and Germany: An Analysis of the German Case with Cross-References to the U.S. Situation* (CTR. FOR COMP. IMMIGR. STUD., Working Paper No. 4, 2000) (The Center for Comparative Immigration Studies is an Organized Research Unit of the University of California-San Diego. The Center is an interdisciplinary, multinational research and training program devoted to comparative work on international migration and refugee movements.).

253. *Id.*

254. *Id.*

255. *Id.*

256. *Comprehensive Immigration Reform*, *supra* note 4.

257. Stöbbe, *supra* note 252.

258. *Id.*

259. *Comprehensive Immigration Reform*, *supra* note 4.

260. Stöbbe, *supra* note 252.

261. *Id.*

262. Mark Krikorian, *Playing Games with Security*, NATIONAL REVIEW ONLINE, Aug. 18, 2004, available at <http://www.nationalreview.com/comment/krikorian200408180836.asp> (last visited Nov. 3, 2006).

263. Schily, *supra* note 12.

264. IMPROVEMENTS NEEDED, *supra* note 181.

requiring transportation companies to check travel documents or face fines or penalties for transporting individuals without valid travel documents.²⁶⁵ These similarities are important because it allows the United States to examine the program a country faced with similar issues under similar economic and governmental conditions.

Germany is also developing methods to distinguish between illegal immigrants and those who are seeking political asylum or other legal status.²⁶⁶ In the past, Germany has had very liberal laws regarding individuals who are seeking asylum within the country.²⁶⁷ The existing laws regarding immigrants and asylum seekers also allow for a distinction between students seeking an education and asylum seekers.²⁶⁸

To meet the needs of German industry, green card programs were enhanced to allow skilled communication or technology workers with skills sought by employers to apply for a permanent residence permit upon arrival into the country.²⁶⁹ Visa regulations were also modified for University graduates seeking work in the country, allowing them a one-year period after graduation.²⁷⁰ Germany also seeks to synchronize asylum policies throughout the member states of the European Union, preventing asylum seekers from applying for asylum in multiple states with the hope of being able to choose where to settle from the best offers.²⁷¹

In Germany, the New Immigration Act gives the grounds for deportation which include "a prison sentence or youth custody of at least three years for committing one or more international offences, commit[ing] an intentional offence under the Narcotics law" or breaching the peace or engaging in human smuggling.²⁷² Within the United States, the government is also seeking to improve the enforcement of immigration laws.²⁷³ Deportations of illegal immigrants within the United States have increased, with the majority of those deported arriving from Mexico and subsequently returning.²⁷⁴ Because of current procedural difficulties regarding deportation, the President has been negotiating with other countries to streamline the process of sending illegal

265. Vogel, *supra* note 246, at 399.

266. *Id.* at 396.

267. Schily, *supra* note 12.

268. *Id.*

269. *Id.*

270. *Id.*

271. *Id.*

272. Auswärtiges Amt, *supra* note 142.

273. Castro, *supra* note 28, at 2.

274. *Id.*

immigrants back to their home country and attempting to end the practice of “[c]atch and [r]elease” which has been the norm within the United States.²⁷⁵

President Bush’s proposal for immigration reform, specifically the guest worker program, has faced opposition from both sides of the political spectrum.²⁷⁶ Critics fear that a guest worker program is nothing more than amnesty for illegal immigrants, since the program would allow for current illegal immigrants to apply for the program with the option of applying for citizenship.²⁷⁷ President Bush stated that he would not sign any immigration reform that allowed amnesty for current illegal immigrants within the United States.²⁷⁸

C. Illegal Immigration and Crime

Terrorism is not the only concern when it comes to border security.²⁷⁹ Violent street gangs such as the Latin American gang, Mara Salvatrucha-13 also known as MS-13, enter the United States illegally and develop criminal organizations within the United States.²⁸⁰ The Federal Bureau of Investigation, cooperating with a task force of law enforcement offices from within the United States and officers from foreign countries, recently executed a sting operation that targeted such criminals and involved over “6,400 police officers, federal agents and other officials taking part in twelve states and five countries: the U.S., El Salvador, Honduras, Guatemala and Mexico.”²⁸¹ During the operation, seventy-three criminals were arrested within the United States for a number of crimes including immigration law violations. In Arizona alone, there have been over 2,300 prosecuted for bringing items such as drugs, weapons and people across the border.²⁸²

Since September 11th, 2001 and the creation of the Department of Homeland Security, the government has taken greater steps to combat problems like MS-13 and other criminal enterprises.²⁸³ After the creation of the Department of Homeland Security, 27,000 illegal immigrants have been arrested

275. *Comprehensive Immigration Reform*, *supra* note 4.

276. *Temporary Insanity*, *supra* note 1, at 16.

277. *Id.*

278. *Comprehensive Immigration Reform*, *supra* note 4.

279. *Id.*

280. Press Release, Department of Homeland Security, ICE Arrests 375 Gang Members and Associates in Two-Week Enforcement Action (Mar. 10, 2006), *available at* <http://www.dhs.gov/dhspublic/display?content=5474> (last visited Nov. 3, 2006).

281. *Cracking Down on Violent Gangs*, FED. BUREAU OF INVESTIGATION, Sept. 9, 2005, *available at* <http://www.fbi.gov/page2/sept05/ngtf090905.htm> (last visited Nov. 3, 2006).

282. *Comprehensive Immigration Reform*, *supra* note 4.

283. *Id.*

in the United States.²⁸⁴ The United States government recently signed an agreement with Mexico that will attempt to combat the problem of “[c]riminal networks operating at the border [which] are increasingly emboldened and represent alarming risks to our security and public safety.”²⁸⁵

The United States is not alone in combating criminals exploiting weak enforcement of immigration laws. Germany has also faced problems with terrorists and criminals using fraudulent means to obtain travel documents.²⁸⁶ In October 2005, four terrorists were arrested and convicted in a German court for planning an al-Qaeda associated plot to attack a Jewish-owned bar in Düsseldorf as well as the Jewish museum in Berlin.²⁸⁷ The men were able to obtain German residency permits by giving false information to immigration officials.²⁸⁸ These men were convicted because one of the members of the group testified for the prosecution in the case.²⁸⁹ Further, they were found by the German court to have terrorist ties to al-Qaeda leader Abu Musab al-Zarqawi through a known Palestinian terrorist group.²⁹⁰ While reading the verdict of the case, the judge complained that if current immigration laws had been followed, then the planning of the attacks would have never occurred.²⁹¹

In another instance of accused terrorists using German immigration laws to their favor, Mounir al-Motassadek, a foreign born student, was arrested and tried in Germany for crimes in relation to the September 11th, 2001 attacks.²⁹² Mr. al-Motassadek used the German immigration system’s lack of scrutiny to his advantage²⁹³ when he entered Germany initially to study language, and then enrolled in Electrical Engineering classes.²⁹⁴ While al-Motassadek was in Germany, he was also involved with handling the expenses of three of the September 11th hijackers and helped to operate the al-Quds mosque in Hamburg

284. *Id.*

285. Press Release, Department of Homeland Security, United States and Mexico Commit to Combat Border Violence and Improve Public Safety (Mar. 3, 2006), *available at* <http://www.dhs.gov/dhspublic/display?content=5468> (last visited Nov. 3, 2006).

286. *Terrorists with German Visas*, SPIEGEL ONLINE, Oct. 27, 2005, *available at* <http://service.spiegel.de/cache/international/0,1518,381940,00.html> (last visited Nov. 3, 2006).

287. *Id.*

288. *Id.*

289. *Id.*

290. *Id.*

291. *Id.*

292. *Profile: Mounir al-Motassadek*, BBC NEWS, Aug. 19, 2005, *available at* <http://news.bbc.co.uk/2/hi/europe/2223152.stm> (last visited Sept. 14, 2006) (a profile of Mounir al-Motassadek, a German immigrant who was arrested and tried for connection to the September 11th attack).

293. *Id.*

294. *Id.*

which is accused of supporting the hijackers.²⁹⁵ Al-Motassadek has appealed his conviction and has been released from jail pending his appeal.²⁹⁶ Conservative newspapers in Germany argue that terrorists, and potential terrorists, are using Germany's lax enforcement of the current immigration laws to their advantage.²⁹⁷

D. Enforcement Efforts

Presently, the United States Congress is in the process of attempting to create legislation to reform the current immigration system in the country.²⁹⁸ The House of Representatives has passed legislation that would make it a felony to be in the United States illegally.²⁹⁹ The House has also provided funding for construction of 700 miles of fence along the U.S.-Mexican border.³⁰⁰ The bill passed by the House has faced opposition from a number of Hispanic groups, as well as religious organizations, such as the Catholic Church.³⁰¹ Hundreds of thousands of people protested the measures recently passed by the House of Representatives.³⁰²

In response to the House bill, the Senate Judiciary Committee legislation will achieve a number of goals including: (1) tightening the border, (2) creating the guest worker program asked for by President Bush, and (3) providing means for illegal immigrants already in the United States to become citizens.³⁰³ The Senate bill removed the controversial provision making it a felony to be in the country illegally.³⁰⁴ The methods being proposed in the bills have split supporters of both the Democrats and Republicans.³⁰⁵

The problem with allowing illegal immigrants already in the United States to legally remain is two-fold; not only does it promote illegal immigration, but it also seeks to punish those who desire to enter the country illegally.³⁰⁶ One thing

295. *Id.*

296. *Id.*

297. *Terrorists with German Visas, supra* note 286.

298. *Full Senate Begins Immigration Debate*, CBS NEWS, Mar. 30, 2006, available at <http://www.cbsnews.com/stories/2006/03/29/politics/main1450449.shtml> (last visited Nov. 3, 2006).

299. *Id.*

300. *Id.*

301. *Id.*

302. Robert Jablon, *Protests Over Immigration Bills Continue*, ABC NEWS Mar. 27, 2006, available at <http://abcnews.go.com/US/wireStory?id=1774872> (last visited Nov. 3, 2006).

303. *Full Senate Begins Immigration Debate, supra* note 298.

304. Jablon, *supra* note 302.

305. *Full Senate Begins Immigration Debate, supra* note 298.

306. Steven Camarota, *Use Enforcement to Ease Situation*, THE ARIZONA REPUBLIC, Oct. 23, 2005, <http://www.azcentral.com/arizonarepublic/viewpoints/articles/1023camarota23.html> (last visited Nov. 3, 2006).

is certain: illegal immigrants already in the United States will not be deported in mass numbers.³⁰⁷ One idea to curb the problem of illegal immigration is to simply enforce current laws.³⁰⁸

If the United States government would use means already in place to ensure employers do not hire illegal immigrants, then a large part of the problem would be addressed.³⁰⁹ The problem arises from the inability of the U.S. government to enforce the current laws. To illustrate the laxity of government enforcement efforts, one only needs to realize that “[i]n 2004, only three employers were fined for hiring illegals.”³¹⁰ The ease at which illegal immigrants are able to obtain drivers licenses, bank accounts, resident college tuition, and loans from banks also makes illegal border crossings more enticing.³¹¹ Enforcement of current laws would not only slow the pace of immigrants entering the country, but it would also motivate current illegal immigrants to leave on their own, or “self-deport.”³¹²

Germany has also faced resistance in its efforts to strengthen the border.³¹³ Critics argue that increased enforcement of current immigration laws is merely a symbolic effort and does not prevent illegal immigration from occurring.³¹⁴ On the other hand, opponents argue that current efforts merely force individuals seeking to cross the border illegally to move to less densely populated, and more dangerous, areas.³¹⁵ Others complain that when border controls are reinstated, citizens get upset and protest the decision because of the fluidity of European borders and the inconvenience that these checks cause.³¹⁶

German enforcement efforts have proven more successful than those of the United States, as a result of the German government’s effective monitoring of employers who hire and employ undocumented workers.³¹⁷ Both the United States and Germany have policies in place to sanction employers who hire illegal immigrants.³¹⁸ The major difference between the United States and Germany is found in the verification methods used by employers to determine if a potential

307. *Id.*

308. *Id.*

309. *Id.*

310. *Id.*

311. *Id.*

312. Camarota, *supra* note 306.

313. Stöbbe, *supra* note 252.

314. *Id.*

315. *Id.*

316. Kees Groenendijk, *Reinstatement of Controls at the Internal Borders of Europe: Why and Against Whom?*, 10 EUR. L. J. 150, 170 (2004) (examining the effectiveness of the reinstatement of border control efforts in European Union Countries).

317. Vogel, *supra* note 246, at 391.

318. *See id.* at 407.

employee is in the country legally.³¹⁹ In the United States, the task of verification belongs to the employer doing the hiring.³²⁰ In Germany, unlike in the United States, employers are required to submit potential employees' information to the social security administration, and the government then verifies the information with central governmental databases.³²¹ Every three months, employment data and labor permit databases are compared, and irregularities are identified.³²² German employers are required to initially verify work authorization, but the real enforcement work occurs at the federal level.³²³ This process discourages both employers and employees from engaging in unauthorized labor practices because the work will not go undetected.³²⁴ The processes in Germany starkly contrast to the methods employed by the United States.³²⁵ It has been estimated that over half of the illegal workers in the United States actually pay taxes.³²⁶ Employer sanctions are ineffective in reducing illegal immigration because such an approach would make employers self-regulate the monitoring of documentation.³²⁷ If an employer in the United States accepts forged papers, it actually reduces the chances that an employer will face sanctions by the IRS.³²⁸ This process rewards employers who accept forged or invalid documentation since the IRS merely focuses only on the payment of taxes, but not the methods used to verify that an employee is authorized to work.

V. CONCLUSION

A recent article suggested that guest worker programs result in the permanent settlement of temporary workers under such programs.³²⁹ The United States seems to be ignoring the fact that “[i]n many countries, under many types of governments, and in many time periods, the guest-worker experience has led to the conclusion that there is nothing more permanent than temporary workers.”³³⁰ Employers become dependent on the low-cost labor that guest

319. *Id.*

320. *Id.*

321. *Id.* at 408.

322. *Id.*

323. Vogel, *supra* note 246, at 408.

324. *Id.*

325. *Id.*

326. *Id.*

327. *See id.*

328. *Id.*

329. Martin, *supra* note 56, at 5.

330. *Id.*

workers provide, and the workers do not want to return to a country that will not provide the same wages they have grown accustomed to in the host country.³³¹

Without enforcement of current laws the problem of illegal immigration will only continue to worsen. The United States should follow the German model of employer enforcement and utilize methods already in place to verify an immigrant's status in the country.³³² A rigorous enforcement of employer sanctions would alleviate the cost of mass deportations of illegal immigrants, because they would simply choose to go home on their own once employers stopped hiring known illegals.³³³

Law enforcement agencies in the United States need to stop the practice of "catch and release," which will only occur if federal authorities are willing to do the work necessary to pick up and deport people who are in the country illegally.³³⁴ Employer sanctions coupled with more funding for the Border Patrol must be undertaken to reduce the number of people who attempt to cross the border illegally to seek work or commit violence in the United States.³³⁵ People who are attempting to enter the United States legally should not be punished for following the rules, while illegal immigrants are being rewarded with amnesty, in any form, for breaking the law to enter the country.³³⁶

If the United States government is determined to implement a guest worker program, changes must be made. These include effective enforcement of time limits and vigilant monitoring of employers who hire guest workers to ensure compliance with the program regulations, to prevent the mistakes made in the past from being repeated. If laws exist to sanction employers for hiring illegal workers, but there are no methods to implement the enforcement of these sanctions, then no incentive exists for employers to comply with the laws currently in place. The resources are in place within the United States to verify immigrant workers' documentation, but as of yet they have not been utilized. Implementing and enforcing such a policy will control the illegal immigrant population within the United States by reducing the incentive to hire illegal workers. In conclusion, a quote often attributed to Albert Einstein seems appropriate when examining guest worker program proposals in the United States, "[i]nsanity: doing the same thing over and over again and expecting different results."³³⁷

331. Martin & Teitelbaum, *supra* note 18, at 119.

332. See Camarota, *supra* note 306.

333. *Id.*

334. *Id.*

335. *Id.*

336. See *id.*

337. Timeless Quotes, http://www.timelessquotes.com/author/Albert_Einstein.html (last visited Nov. 4, 2006).