



IMMIGRATION POLICY CENTER

...providing factual information about immigration and immigrants in America

**Response from Benjamin Johnson
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**To Written Questions by United States Senate
Committee on the Judiciary**

Question #1

Question: As you know, Congress has spent millions tripling the number of border patrol agents as well as increasing the number of immigration and customs enforcement agents. On the services side of immigration, do you believe we should also increase the number of immigration benefits adjudicators? Shouldn't better-trained, well-funded immigration adjudicators also be part of comprehensive immigration reform? How do you think that will help in stemming the tide of illegal immigration?

Response: The enforcement and adjudication functions of the U.S. immigration system are inextricably linked. Yet for the last decade and a half, Congress has poured billions of dollars into hiring new Border Patrol agents, building new border fences, and implementing other enforcement-driven programs, while largely ignoring the service side of the immigration agency. A secure, effective immigration system requires more than "boots and guns." Equally important to the goal of reforming our immigration system are the adjudicators who review the millions of applications submitted by prospective immigrants and visitors every year. For reasons of national security, as well as economic security, who we let into the country is as important as who we keep out.

A truly comprehensive immigration reform package must include the funding and resources necessary for the timely and effective review of applications from those seeking to enter the country legally. Most immigrants come to the United States to find jobs or to reunify with family members. But their ability to do so through legal channels is hampered by two serious flaws in the U.S. immigration system: arbitrary numerical caps on family-based and employment-based immigration, and enormous backlogs of immigration-benefit applications that can delay consideration of a case for months or years. These lengthy delays make it more likely that families and businesses will look for avenues of immigration outside of our inefficient and overly bureaucratic system.

Reducing these backlogs by providing more resources and staffing to the service side of the immigration agency would therefore lessen some of the pressures which drive undocumented immigration. Would-be immigrants would not face the agonizing choice between coming to the United States without authorization or not seeing their families for months or even years as they wait for their immigration petitions to be processed. Similarly, businesses would not have to wait years for legal channels of immigration to provide them with workers they need now to fill available jobs for which native-born workers are not available in sufficient numbers. In addition, a more effective and efficient immigration agency also is less likely to deny legitimate applications or to approve fraudulent ones, which is crucial to national security. Adjudicators who are not burdened by massive backlogs and the

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political pressure to eliminate them are less likely to make a mistake and let in the next Mohammed Atta or refuse entry to the next Albert Einstein.

It also is important to recognize that the agencies performing security checks are an intrinsic part of the adjudications process. Many of the most egregious delays in the processing of immigration applications occur when an applicant's name comes up as a "hit" against a government watch list. Most of the time, the hit is due to a similarity in names between the applicant and someone on the watch list, but the innocent applicant must wait months and sometimes years for this to be established. This not only contributes to bureaucratic delays, but also raises serious security issues in cases where the subject of the hit is actually on a watch list and yet his or her application is not followed up on for months or years. The FBI and other agencies performing these checks must be adequately funded to do the job expeditiously, and must recognize that immigration checks are a core part of their mission.

Creating a more effective and secure system of adjudicating applications will require more than simply hiring more adjudicators. Congress must also change the way that immigration services in general are funded. Under the current system, the filing fees paid by applicants and petitioners are supposed to pay for all adjudications functions. But Congress has diverted a significant portion of these fees to other functions. In addition, under the existing fee structure, budget estimates for future years are based on previous years' filings. Unforeseeable changes in receipts (often from changes in law) and new, unfunded mandates from Congress have helped create severe budget shortfalls for the adjudications division. Moreover, filing fees do not cover the costs of updating and maintaining computer, filing, and other infrastructure systems, nor do they cover necessary overtime costs for backlog reduction.

Fee-based funding is little more than a giant, government-endorsed pyramid scheme, always on the brink of collapsing under its own weight. Because of the backlogs, new filing fees must be used to pay for adjudication of applications filed in previous years. Essentially, new sales are being used to purchase old inventory, with no visible means to pay for the new inventory that continues to come in. Paying overhead out of the fee account is a particularly dangerous action and could be the factor that finally causes the pyramid to fall. Overhead does not rise and fall with the number of applications: it remains fixed whether the agency gets one application or one million. But if the volume of applications decreases, so does the income generated from fees. And there is no reliable stream of income to continue to maintain the fixed expenses. Overhead expenses and backlog-reduction funds must be appropriated by Congress.

Question #2

Question: I would like you to comment on the so-called attrition theory (immigrants self-deporting after enforcing harsh immigration rules). As you know, seventy percent of the undocumented have been here five years or longer. Over half of all undocumented immigrants have families in the United States, and three million US citizen children have one or more undocumented parents. Many have purchased homes or started their own small businesses. Their employers depend on them to remain in business in tight labor markets throughout the country. In sum, most of the undocumented have extensive ties to the U.S.

Advocates of the attrition theory believe that many of the families will choose to voluntarily comply and self-deport. Do you think that these families will choose to self-deport? What's to prevent them from responding to enhanced enforcement by moving deeper underground, including by moving from the formal to the informal economy?

Response: Recognizing that mass deportations are as impractical as they are untenable, many opponents of immigration have argued for slowly driving undocumented immigrants out of the country by systematically making their lives more and more difficult here in the United States. This “attrition” plan, however, is fundamentally flawed.

Putting aside the moral implications of inflicting even more hardship on undocumented workers and their families than they suffer already, and rendering them even more vulnerable to exploitation than they are now, the attrition proposal rests on the flawed assumption that these workers will simply abandon their lives here. The attrition theory fails to recognize the extent to which many undocumented immigrants have put down roots in the United States. Nearly 4 million have lived here for ten years or longer. More than 3 million U.S.-citizen children live in families headed by undocumented immigrants. In addition, there are nearly 2 million undocumented children, many of whom have grown up in this country and are as culturally “American” as the native-born. As a result, the question confronting many of the undocumented is not simply whether to “voluntarily self-deport,” but whether to tear apart their families and force their children—including U.S. citizens—to move to countries they may not even know, and where they most likely will not have the same educational and economic opportunities they would have here. Needless to say, many undocumented parents will be reluctant to deny their children the chance for a better life.

Beyond the humanitarian considerations, the attrition theory does not account for the vital role that undocumented workers play in filling less-skilled jobs for which well-matched native-born workers are in short supply. Putting a stranglehold on these workers will also put a stranglehold on our economy. Undocumented immigrants now account for roughly a quarter of all workers in farming, 17 percent in building and grounds cleaning and maintenance, 14 percent in construction, and 12 percent in food preparation and serving. The labor needs of U.S. businesses that depend on these workers would not magically disappear if undocumented immigrants were somehow removed from the job market. Rather, many employers would face the same quandary that they do today: in need of workers who cannot be found in sufficient numbers in either the native-born labor force or among those immigrants allowed to enter the country under current legal limits.

In response to the pull of family ties and available jobs, it is likely that many undocumented immigrants, particularly those with children who have grown up in the United States, would respond to an increasingly hostile environment by moving further “underground.” In the process, they would become even more marginalized and vulnerable to exploitation than they already are. And lawmakers would again find themselves facing the question that lies at the heart of the current debate over immigration reform: do we try to round up and deport millions of hard-working, law-abiding men and women (and their U.S.-citizen children)—or do we acknowledge the value of their economic contributions and the depth of their family and community ties by creating an immigration system that actually meets the labor needs of the U.S. economy and promotes family reunification.