

The Real Immigration Crisis
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The Census Bureau's much-heralded announcement in October that the United States has reached the population milestone of 300 million is another scene in a great charade. The Census Bureau (CB), it appears, is massaging statistics, possibly in the service of policy rather than accuracy.

The CB also claims there are roughly 9 million illegal aliens in the United States, and that the U.S. population will reach 600 million by the year 2100. But can we believe these statistics? Many estimates, along with some conservative mathematical calculations, suggest that the U.S. population is already nearing 330 million, and that we could have a billion people in America by the year 2076.

Illegal Calculations

In February 2002, a Border Patrol supervisor of 27 years service testified before Congress that the number of illegal aliens was several times the Census Bureau (CB) estimate. He stated, "According to various Mexican media and official Mexican government sources, the country of Mexico has 18 million of its citizens residing illegally in the United States at this very minute."

That is not to mention other illegals: Filipinos, Indians, Chinese, Koreans, Vietnamese, Eastern Europeans, Irish, Brazilians, Guatemalans, Hondurans, and Haitians.

Using financial and employment data, analysts for Bear Stearns Asset Management also put forth a number much higher than anything considered by the CB. They concluded in early 2004 that, "The number of illegal immigrants in the United States may be as high as 20 million people, more than double the official 9 million people estimated by the Census Bureau."

Time magazine asserted, also in 2004, that more than 4,000 illegal aliens walk across just the Mexico/Arizona border each day. Nationwide, an estimated 3 million enter annually, and as many as "15 million" are thought to remain in the United States.

Department of Education reports are also suggestive. Comparing projected and actual enrollments for the latest years the data were compiled yields this: The projected K-12 increase in public school enrollments from 2002 to 2003 was 11,000 pupils. But "actual 2003 enrollments came in 339,000 above 2002's level — more than 30 times the projected rise." Where did these children come from, if not illegal immigration?

Patrick Buchanan's 2006 book, "State of Emergency: Third World Invasion and Conquest of America," states that the Border Patrol apprehends 150,000 illegal aliens breaking into the United States each month, amounting to 1.8 million apprehensions annually.

Some illegal border crossers may be apprehended more than once, although most — 70 percent — make it in a first or second attempt, and 92 percent make it eventually according to the Center for Comparative Immigration Studies at the University of California at San Diego. In recent testimony before the House Judiciary Committee, Wayne Cornelius, director of the Center, stated that 92 percent to 97 percent succeed on two tries or less.

The Border Patrol, now formally called the U.S. Customs and Border Protection (CBP) estimates that, for each illegal alien apprehended, three to five succeed in entering. Taking the middle figure of four, then four multiplied by 1.8 million annual apprehensions equals 7.2 million aliens who enter illegally each year.

Moreover, many foreigners enter supposedly for a visit but never leave. In 1992, approximately 150,000 more foreign passengers arrived in U.S. airports than left. USA Today reports that "at least 3.8 million" illegal aliens arrived legally but remained after visas expired. This could be, in part, workers who stayed — contrary to the terms of their visa — after termination of their job.

Conservatively, assume that just 5 million — rather than 7.2 million plus visa over-stayers — actually enter the United States each year. Of these 5 million, assume that 40 percent remain indefinitely. This calculation suggests that 2 million illegal aliens melt permanently into the U.S. population annually. If 60 percent stay, then approximately 3 million new illegal aliens remain in the United States annually. Compare that to the Census Bureau's puny estimate of 500,000 illegal aliens staying annually.

Once here, illegal aliens seemingly wish to stay: According to the U.S., Mexico will take in a record \$24 billion in remittances this year. Transients do not earn that kind of spare change, particularly in the low skill jobs available to most Mexican and Central American **workers**.

Real Population Numbers

In reality, the U.S. population passed 300 million in year 2000. The current U.S population is approximately 327 million.

According to statistics for which the latest year was reported, 2004, there were approximately 1.7 million more total births than deaths. This indicates a faster rate of population growth and a shorter doubling time than the CB rate reported for the 1990s (1.2 percent annual growth, projecting 58 years to double).

Summing annual growth figures (1.7 million natural increase, 1 million legal immigrants, and 2 million or 3 million illegal aliens who stay), one sees that, each year, the population grows by 4.7 million to 5.7 million. The annual growth rate is between 1.4 percent and 1.7 percent. If 1.4 percent, the population doubling time is 50 years.

The rate of growth has itself been growing. If acceleration of the growth rate continues, we are on trend to pass the 1 billion mark in **approximately 70 years**.

What's Wrong With Rapid U.S. Population Growth?

Some ecologists, labor economists, and conservationists say that rapid population growth, regardless of its source, is a danger. This concern departs from the United Nations and The Wall Street Journal view, which decries European and Japanese economic and social health because these countries' populations are on the verge of stabilizing.

So what, if anything, is wrong with an exploding U.S. population?

First, native-born Americans spontaneously chose small family size starting in approximately 1970. The majority would probably be better off economically and ecologically today if, congruent with the recommendations of the 1972 Rockefeller Report, the U.S. population had begun to stabilize 30 years ago.

Second, current population growth is being forced on native-born Americans by immigration. Approximately 90 percent of growth results from the annual immigration flow and the descendants of post-1970 immigrants.

Third, current immigration comes overwhelmingly from Third World countries that have cultures vastly different from ours. These immigrants may not wish to assimilate and, indeed, may have difficulty adjusting.

The territorial integrity of the United States may develop into a further contentious issue that divides citizens from Mexican immigrants. A June 2002 Zogby poll reveals that a "substantial majority of Mexican citizens believe that Southwestern America properly belongs to Mexico."

Fourth, rapid increases in the labor force have resulted in a 30-year trend toward lower real, inflation-adjusted income for the 80 percent of Americans who depend on wages and salaries. Immigration drives most of labor force growth and thus accounts for virtually all of the recent income depression.

Economist George Borjas observes that immigration depresses wages and displaces Americans from jobs, costing native-born American workers \$195 billion annually. In 2000, the wages of native-born American workers were reduced by **an average 3.2 percent**.

Not Just 'Jobs Americans Don't Want'

The impact is not even. Citing a current Northeastern University study, The New York Times states that "illegal immigrants contributed to a sharp decline in employment of teenage and young adult Americans." The effect on young and less-educated workers is not new news. Most recently, however, Borjas reported that the wage impact is "most intense at the two ends of the native-born education range."

In addition to depressing wages, immigrant workers displace Americans. Steven Camarota analyzes CB data, finding that "between March 2000 and March 2004, the number of adults working actually increased, but all of the net change went to immigrant workers."

Andrew Sum and his colleagues at Northeastern University concur. Since 2000, immigrants have taken more than 100 percent of net new jobs, that is, both capturing new jobs and displacing Americans from existing jobs.

Another fiscal problem: Many Third World immigrants are very low skilled. Consequently, they do not pay taxes commensurate with the costs they **impose on communities** and States.

High Public Costs

Professor Donald Huddle estimates that between 1996 and 2006, immigrants cost taxpayers an average of \$93 billion annually, net of any taxes immigrants pay. In view of the unexpectedly high flow of immigrants, Huddle's numbers would, today, be adjusted higher.

The National Research Council's well-received report, *The New Americans*, estimates that each legal or illegal immigrant without a high school education imposes a net (that is, after subtracting all taxes the immigrant pays) lifetime cost on taxpayers of \$89,000 in direct services. With a high-school education, the average fiscal impact per immigrant is still negative, \$31,000. The figures are significant insofar as the average Mexican and Central American has less than an eighth-grade education.

Economist Lester Thurow's 1990s analysis of the cost of population growth — without reference to whether the growth is organic or from immigration — concludes that maintaining the quality of infrastructure requires a nation to commit 12.5 percent of its GDP for each 1 percent of population growth.

A community study on infrastructure costs associated with population growth is congruent. Eben Fodor calculated in the 1990s that each new three-person residential unit burdened taxpayers with an average of more than \$15,000 in new requirements for capital improvements, **not counting annual** operating costs.

Diminished Resources

Less immediately evident but powerfully important in the long run, population growth harms the nation through depleting its natural wealth — as documented by Carrying Capacity Network, a non-profit grass-roots organization that advocates an immigration moratorium. One acre of land is lost to highways and urbanization for each person added to the U.S. population; each person uses 2,800 gallons of oil equivalents and 530,000 gallons of water per year.

Such ecological losses and challenges are separate from the loss of community public spiritedness that follows rapid growth and multiplying languages and cultures. Immigration advocates are challenged to show one fast-growing, multicultural society that is cohesive, democratic, and smoothly functioning.

The tally of losses from mass immigration suggests that a large price is paid for so-called cheap labor and

for advancing the financial and political elite's agenda of erasing borders and integrating Canada, Mexico, and the United States into the Partnership for Prosperity and Security, aka the North American Union. Middle-class Americans, possibly to be joined by Canadians, would pay the greater part of the bill.

A healthy respect for probable errors in Census Bureau data advances the case for putting enforcement with the purpose of stopping illegal immigration and dramatically reducing legal immigration at the top of the legislative and executive branch agenda.

A catch-our-breath moratorium on all immigration should be a further goal of domestic policy. Immigration legislation should be debated on the basis of accurate demography, as well as economic and social data, that recognize both the costs **and the benefits of additional immigration.**

Unrealistic Estimates

The Census Bureau's misinformation appears consistent with intent to soothe a public that is becoming alarmed at the scale of immigration and the rapidity of population growth.

"Underestimates" also go far to discredit those who call for a moratorium on both legal and illegal immigration, and for ending automatic citizenship awarded to children born in the United States to illegal alien parents. Accurate reporting of numbers would make ending birth-right citizenship politically compelling and would strengthen the argument for a catch-our-breath moratorium on legal immigration.

One may fairly conclude that the Census Bureau is a willing participant to misinforming the public on the state of the nation. Perhaps this is a strategy designed to redirect and lull voters into complacency so that they forgive their representatives and senators who legislate in favor of illegal aliens and massive legal immigration, rather than in the *interest of citizens of the United States.*

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OFFICIAL ENGLISH ORDINANCE

BE IT ORDAINED BY THE HENDERSON COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:

SECTION 1. TITLE

This chapter shall be known and may be cited as the “Henderson County Official English Ordinance.”

SECTION 2. FINDINGS AND DECLARATION OF PURPOSE

The People of Henderson County find and declare:

- A. That the English language is the common language of Henderson County, of the State of North Carolina and of the United States.*
- B. That the use of a common language removes barriers of misunderstanding and helps to unify the people of Henderson County, of the State of North Carolina and of the United States, and helps to enable the full economic and civic participation of all its citizens, regardless of national origin, creed, race or other characteristics, and thus a compelling governmental interest exists in promoting, preserving, and strengthening the use of the English language.*
- C. That proficiency in the English language, as well as in languages other than the English language, benefits Henderson County both economically and culturally and should be encouraged.*
- D. That, in addition to any other ways to promote proficiency in the English language, the government of Henderson County can promote proficiency in English by using the English language in its official actions and activities.*
- E. That in today’s modern society, Henderson County may also need to protect and preserve the rights of those who speak only the English language to use or obtain governmental programs and benefits.*
- F. That the government of Henderson County can reduce costs and promote efficiency in its roles as employer and as a government of the people, by using the English language in its official actions and activities.*

SECTION 3. OFFICIAL ENGLISH DECLARATION

- A. *The English language is the official language of Henderson County.*
- B. *The Board of Commissioners, and officials of Henderson County shall take all steps necessary to insure that the role of English as the common language of the Henderson County is preserved and enhanced.*
- C. *The government of Henderson County shall make no policy that diminishes or ignores the role of English as the common language of Henderson County.*
- D. *Official actions of Henderson County that bind or commit Henderson County or that give the appearance of presenting the official views or position of Henderson County shall be taken in the English language, and in no other language. Unofficial or nonbinding translations or explanations of official actions may be provided separately in languages other than English, if they are appropriately labeled as such and reference is made to a method to obtain the official action; unless otherwise required by federal law or the law of the State of North Carolina, no person has a right to such an unofficial or non-binding translation or explanation, and no liability or commitment of Henderson County shall be based on such a translation or explanation.*
- E. *No ordinance, decree, program, or policy of Henderson County or any of its subdivisions shall require the use of any language other than English for any documents, regulations, orders, transactions, proceedings, meetings, programs, or publications, except as provided in Section 4.*
- F. *A person who speaks only the English language shall be eligible to participate in all programs, benefits and opportunities, including employment, provided by Henderson County and its subdivisions, except when required to speak another language as provided in Section 4.*
- G. *No law, ordinance, decree, program, or policy of Henderson County or any of its subdivisions shall penalize or impair the rights, obligations or opportunities available to any person solely because a person speaks only the English language.*

SECTION 4. EXCEPTIONS

Henderson County and its subdivisions may use a language other than English for any of the following purposes, whether or not the use would be considered part of an official action:

- A. *To teach or encourage the learning of languages other than English.*
- B. *To protect the public health or safety.*
- C. *To teach English to those who are not fluent in the language.*
- D. *To comply with the Native American Languages Act, the Individuals with Disabilities*

Education Act, the Voting Rights Act, or any other federal law or law of the State of North Carolina.

- E. To protect the rights of criminal defendants and victims of crime.*
- F. To promote trade, commerce, and tourism.*
- G. To create or promote mottos or designations, inscribe public monuments, and perform other acts involving the customary use of a language other than English.*
- H. To utilize terms of art or terms or phrases from other languages which are commonly used in communications otherwise in English.*

SECTION 5. PRIVATE USE PROTECTED

The declaration and use of English as the official language of Henderson County should not be construed as infringing upon the rights of any person to use a language other than English in private communications or actions, including the right of government officials (including elected officials) to communicate with others while not performing official actions of Henderson County.

SECTION 6. INTERPRETATION

Nothing in this ordinance shall be interpreted as conflicting with the statutes of the United States, or the laws of the State of North Carolina.

SECTION 7. SEVERABILITY

If any part or provision of this Chapter, or the applicability of any provision to any person or circumstance, is held to be invalid by a court of competent jurisdiction, the remainder of this Chapter shall not be affected thereby and shall be given effect to the fullest extent practicable.

ORDAINED by the Henderson County Board of Commissioners, this the 6th day of November, 2006.

ILLEGAL IMMIGRATION RELIEF ACT ORDINANCE

BE IT ORDAINED BY THE HENDERSON COUNTY BOARD OF COMMISSIONERS AS FOLLOWS:

SECTION 1. TITLE

This chapter shall be known and may be cited as the “Henderson County Illegal Immigration Relief Act Ordinance.”

SECTION 2. FINDINGS AND DECLARATION OF PURPOSE

The People of Henderson County find and declare:

- A. That state and federal law require that certain conditions be met before a person may be authorized to work or reside in this country.*
- B. That unlawful workers and illegal aliens, as defined by this ordinance and state and federal law, do not normally meet such conditions as a matter of law when present in Henderson County.*
- C. That unlawful employment, the harboring of illegal aliens in dwelling units in Henderson County, and crime committed by illegal aliens harm the health, safety and welfare of authorized US workers and legal residents in Henderson County. Illegal immigration leads to higher crime rates, subjects our hospitals to fiscal hardship and legal residents to substandard quality of care, contributes to other burdens on public services, increasing their cost and diminishing their availability to legal residents, and diminishes our overall quality of life.*
- D. That Henderson County is authorized to abate public nuisances and empowered and mandated by the people of Henderson County to abate the nuisance of illegal immigration by diligently prohibiting the acts and policies that facilitate illegal immigration in a manner consistent with federal law and the objectives of Congress.*
- E. That United States Code Title 8, subsection 1324(a)(1)(A) prohibits the harboring of illegal aliens. The provision of housing to illegal aliens is a fundamental component of harboring.*
- F. This ordinance seeks to secure to those lawfully present in the United States and this County, whether or not they are citizens of the United States, the right to live in peace free of the threat crime, to enjoy the public services provided by this County without being burdened by the cost of providing goods, support and services to aliens unlawfully present in the United States, and to be free of the debilitating*

effects on their economic and social well being imposed by the influx of illegal aliens to the fullest extent that these goals can be achieved consistent with the Constitution and Laws of the United States and the State of North Carolina.

- G. *The County shall not construe this ordinance to prohibit the rendering of emergency medical care, emergency assistance, or legal assistance to any person.*

SECTION 3. DEFINITIONS

When used in this chapter, the following words, terms and phrases shall have the meanings ascribed to them herein, and shall be construed so as to be consistent with state and federal law, including federal immigration law:

- A. *“Business entity” means any person or group of persons performing or engaging in any activity, enterprise, profession, or occupation for gain, benefit, advantage, or livelihood, whether for profit or not for profit.*
- (1) *The term business entity shall include but not be limited to self-employed individuals, partnerships, corporations, contractors, and subcontractors.*
- (2) *The term business entity shall include any business entity that possesses a business permit, any business entity that is exempt by law from obtaining such a business permit, and any business entity that is operating unlawfully without such a business permit.*
- B. *“County” means Henderson County.*
- C. *“Contractor” means a person, employer, subcontractor or business entity that enters into an agreement to perform any service or work or to provide a certain product in exchange for valuable consideration. This definition shall include but not be limited to a subcontractor, contract employee, or a recruiting or staffing entity.*
- D. *“Illegal Alien” means an alien who is not lawfully present in the United States, according to the terms of United States Code Title 8, section 1101 et seq. The County shall not conclude that a person is an illegal alien unless and until an authorized representative of the County has verified with the federal government, pursuant to United States Code Title 8, subsection 1373(c), that the person is an alien who is not lawfully present in the United States.*
- E. *“Unlawful worker” means a person who does not have the legal right or authorization to work due to an impediment in any provision of federal, state or local law, including but not limited to a minor disqualified by nonage, or an unauthorized alien as defined by United States Code Title 8, subsection 1324a(h)(3).*
- F. *“Work” means any job, task, employment, labor, personal services, or any other*

activity for which compensation is provided, expected, or due, including but not limited to all activities conducted by business entities.

- G. *“Basic Pilot Program” means the electronic verification of work authorization program of the Illegal Immigration Reform and Immigration Responsibility Act of 1996, P.L. 104-208, Division C, Section 403(a); United States Code Title 8, subsection 1324a, and operated by the United States Department of Homeland Security (or a successor program established by the federal government.)*

SECTION 4. BUSINESS PERMITS, CONTRACTS, OR GRANTS

- A. *It is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or part within the County. Every business entity that applies for a business permit to engage in any type of work in the County shall sign an affidavit, prepared by the County Solicitor, affirming that they do not knowingly utilize the services or hire any person who is an unlawful worker.*
- B. *Enforcement: The Henderson County Sheriff’s Department shall enforce the requirements of this section.*
- (1) *An enforcement action shall be initiated by means of a written signed complaint to the Henderson County Sheriff’s Department submitted by any County official, business entity, or County resident. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.*
- (2) *A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.*
- (3) *Upon receipt of a valid complaint, the Henderson County Sheriff’s Department shall, within three business days, request identity information from the business entity regarding any persons alleged to be unlawful workers. The Henderson County Sheriff’s Department shall suspend the business permit of any business entity which fails, within three business days after receipt of the request, to provide such information. In instances where an unlawful worker is alleged to be an unauthorized alien, as defined in United States Code Title 8, subsection 1324a(h)(3), the Henderson County Sheriff’s Department shall submit identity data required by the federal government to verify, pursuant to United States Code Title 8, section 1373, the immigration status of such person(s), and shall provide the business entity with written confirmation of that verification.*
- (4) *The Henderson County Sheriff’s Department shall suspend the business permit of any business entity which fails correct a violation of this section within three business days after notification of the violation by the Henderson County Sheriff’s Department.*
- (5) *The Henderson County Sheriff’s Department shall not suspend the business permit of a business entity if, prior to the date of the violation, the business entity had verified the work authorization of the alleged unlawful worker(s) using the Basic Pilot Program.*
- (6) *The suspension shall terminate one business day after a legal representative of the business entity submits, at a County office designated by the County Solicitor, a sworn affidavit stating that the violation has ended.*
- (a) *The affidavit shall include a description of the specific measures and actions taken by*

the business entity to end the violation, and shall include the name, address and other adequate identifying information of the unlawful workers related to the complaint.

(b) Where two or more of the unlawful workers were verified by the federal government to be unauthorized aliens, the legal representative of the business entity shall submit to the Henderson County Sheriff's Department, in addition to the prescribed affidavit, documentation acceptable to the County Solicitor which confirms that the business entity has enrolled in and will participate in the Basic Pilot Program for the duration of the validity of the business permit granted to the business entity.

(7) For a second or subsequent violation, the Henderson County Sheriff's Department shall suspend the business permit of a business entity for a period of twenty days. After the end of the suspension period, and upon receipt of the prescribed affidavit, the Henderson County Sheriff's Department shall reinstate the business permit. The Henderson County Sheriff's Department shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373. In the case of an unlawful worker disqualified by state law not related to immigration, the Henderson County Sheriff's Department shall forward the affidavit, complaint, and associated documents to the appropriate state enforcement agency.

C. All agencies of the County shall enroll and participate in the Basic Pilot Program.

D. As a condition for the award of any County contract or grant to a business entity for which the value of employment, labor or, personal services shall exceed \$10,000, the business entity shall provide documentation confirming its enrollment and participation in the Basic Pilot Program.

E. Private Cause of Action for Unfairly Discharged Employees

(1) The discharge of any employee who is not an unlawful worker by a business entity in the County is an unfair business practice if, on the date of the discharge, the business entity was not participating in the Basic Pilot program and the business entity was employing an unlawful worker.

(2) The discharged worker shall have a private cause of action in the Municipal Court of Henderson County against the business entity for the unfair business practice. The business entity found to have violated this subsection shall be liable to the aggrieved employee for:

(a) three times the actual damages sustained by the employee, including but not limited to lost wages or compensation from the date of the discharge until the date the employee has procured new employment at an equivalent rate of compensation, up to a period of one hundred and twenty days; and

(b) reasonable attorney's fees and costs.

SECTION 5. HARBORING ILLEGAL ALIENS

A. It is unlawful for any person or business entity that owns a dwelling unit in the County to harbor an illegal alien in the dwelling unit, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, unless such harboring is otherwise expressly permitted by federal law.

(1) For the purposes of this section, to let, lease, or rent a dwelling unit to an illegal

alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall be deemed to constitute harboring. To suffer or permit the occupancy of the dwelling unit by an illegal alien, knowing or in reckless disregard of the fact that an alien has come to, entered, or remains in the United States in violation of law, shall also be deemed to constitute harboring.

(2) A separate violation shall be deemed to have been committed on each day that such harboring occurs, and for each adult illegal alien harbored in the dwelling unit, beginning one business day after receipt of a notice of violation from the Henderson County Sheriff's Department.

(3) A separate violation of this section shall be deemed to have been committed for each business day on which the owner fails to provide the Henderson County Sheriff's Department with identity data needed to obtain a federal verification of immigration status, beginning three days after the owner receives written notice from the Henderson County Sheriff's Department.

B. Enforcement: The Henderson County Sheriff's Department shall enforce the requirements of this section.

(1) An enforcement action shall be initiated by means of a written signed complaint to the Henderson County Sheriff's Department submitted by any official, business entity, or resident of the County. A valid complaint shall include an allegation which describes the alleged violator(s) as well as the actions constituting the violation, and the date and location where such actions occurred.

(2) A complaint which alleges a violation solely or primarily on the basis of national origin, ethnicity, or race shall be deemed invalid and shall not be enforced.

(3) Upon receipt of a valid written complaint, the Henderson County Sheriff's Department shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the County. The Henderson County Sheriff's Department shall submit identity data required by the federal government to verify immigration status. The County shall forward identity data provided by the owner to the federal government, and shall provide the property owner with written confirmation of that verification.

(4) If after five business days following receipt of written notice from the County that a violation has occurred and that the immigration status of any alleged illegal alien has been verified, pursuant to United States Code Title 8, section 1373(c), the owner of the dwelling unit fails to correct a violation of this section, the Henderson County Sheriff's Department shall deny or suspend the rental license of the dwelling unit.

(5) For the period of suspension, the owner of the dwelling unit shall not be permitted to collect any rent, payment, fee, or any other form of compensation from, or on behalf of, any tenant or occupant in the dwelling unit.

(6) The denial or suspension shall terminate one business day after a legal representative of the dwelling unit owner submits to the Henderson County Sheriff's Department a sworn affidavit stating that each and every violation has ended. The affidavit shall include a description of the specific measures and actions taken by the business entity to end the violation, and shall include the name, address and other adequate identifying information for the illegal aliens who were the subject of the complaint.

(7) The Henderson County Sheriff's Department shall forward the affidavit, complaint, and associated documents to the appropriate federal enforcement agency, pursuant to United States Code Title 8, section 1373.

(8) Any dwelling unit owner who commits a second or subsequent violation of this section shall be subject to a fine of two hundred and fifty dollars (\$250) for each separate violation. The

suspension provisions of this section applicable to a first violation shall also apply.

(9) Upon the request of a dwelling unit owner, the Henderson County Sheriff's Department shall, pursuant to United States Code Title 8, section 1373(c), verify with the federal government the lawful immigration status of a person seeking to use, occupy, lease, or rent a dwelling unit in the County. The penalties in this section shall not apply in the case of dwelling unit occupants whose status as an alien lawfully present in the United States has been verified.

SECTION 6. CONSTRUCTION AND SEVERABILITY

- A. The requirements and obligations of this section shall be implemented in a manner fully consistent with federal law regulating immigration and protecting the civil rights of all citizens and aliens.*

- B. If any part of provision of this Chapter is in conflict or inconsistent with applicable provisions of federal or state statutes, or is otherwise held to be invalid or unenforceable by any court of competent jurisdiction, such part of provision shall be suspended and superseded by such applicable laws or regulations, and the remainder of this Chapter shall not be affected thereby.*

ESTABLISHING A REGISTRATION PROGRAM FOR RESIDENTIAL RENTAL PROPERTIES; REQUIRING ALL OWNERS OF RESIDENTIAL RENTAL PROPERTIES TO DESIGNATE AN AGENT FOR SERVICE OF PROCESS; AND PRESCRIBING DUTIES OF OWNERS, AGENTS AND OCCUPANTS; DIRECTING THE DESIGNATION OF AGENTS; ESTABLISHING FEES FOR THE COSTS ASSOCIATED WITH THE REGISTRATION OF RENTAL PROPERTY; AND PRESCRIBING PENALTIES FOR VIOLATIONS

BE IT ORDAINED BY THE GOVERNING BODY OF HENDERSON COUNTY and it is hereby ordained and with the authority of the same as follows:

SECTION 1. DEFINITIONS AND INTERPRETATION. The following words, when used in this ordinance, shall have the meanings ascribed to them in this section, except in those instances where the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future; words in the plural number include the singular number; words in the singular shall include the plural, and words in the masculine shall include the feminine and the neuter.

a. **AGENT** -Individual of legal majority who has been designated by the Owner as the agent of the Owner or manager of the Property under the provisions of this ordinance.

b. **COUNTY** - Henderson County

c. **COUNTY CODE** – the building code officially adopted by the governing body of the County, or other such codes officially designated by the governing body of the County for the regulation of construction, alteration, addition, repair, removal, demolition, location, occupancy and maintenance of buildings and structures.

d. **ZONING ORDINANCE** – Zoning ordinance as officially adopted by Henderson County.

e. **OFFICE** – The Office of Code Enforcement for Henderson County.

f. **DWELLING UNIT** – a single habitable unit, providing living facilities for one or more persons, including permanent space for living, sleeping, eating, cooking and bathing and sanitation, whether furnished or unfurnished. There may be more than one Dwelling Unit on a Premises.

g. **DORMITORY** -a residence hall offered as student or faculty housing to accommodate a college or university, providing living or sleeping rooms for individuals or groups of individuals, with or without cooking facilities and with or without private baths

h. **INSPECTOR** -any person authorized by Law or Ordinance to inspect buildings or systems, e.g. zoning, housing, plumbing, electrical systems, heat systems, mechanical systems and health necessary to operate or use buildings within Henderson County. An Inspector would include those identified in Section 8 – Enforcement.

i. **FIRE DEPARTMENT** – the Fire Department of Henderson County or any member thereof, and includes the Chief of Fire or his designee.

j. **HOTEL** – a building or part of a building in which living and sleeping accommodations are used primarily for transient occupancy, may be rented on a daily basis, and desk service is provided, in addition to one or more of the following services: maid, telephone, bellhop service, or the furnishing or laundering of linens.

k. **LET FOR OCCUPANCY** – to permit, provide or offer, for consideration, possession or occupancy of a building, dwelling unit, rooming unit, premise or structure by a person who is not the legal owner of record thereof, pursuant to a written or unwritten lease, agreement or license, or pursuant to a recorded or unrecorded agreement or contract for the sale of land.

l. **MOTEL** – a building or group of buildings which contain living and sleeping accommodations used primarily for transient occupancy, may be rented on a daily basis, and desk service is provided, and has individual entrances from outside the building to serve each such living or sleeping unit.

m. **OCCUPANT** – a person age 18 or older who resides at a premises.

n. **OPERATOR** – any person who has charge, care or control of a premises which is offered or let for occupancy.

o. **OWNER** – any Person, Agent, or Operator having a legal or equitable interest in the property; or recorded in the official records of the state, county, or municipality as holding title to the property; or otherwise having control of the property, including the guardian of the estate of any such person, and the executor or administrator of the estate of such person if ordered to take possession of real property by a Court of competent jurisdiction.

p. **OWNER – OCCUPANT**-an owner who resides in a Dwelling Unit on a regular permanent basis, or who otherwise occupies a non-residential portion of the Premises on a regular permanent basis.

q. **PERSON** – any person, partnership, firm, association, corporation, or municipal authority or any other group acting as a single unit.

r. **SHERIFF’S DEPARTMENT** – the Sheriff’s Department of Henderson County or any member thereof sworn to enforce laws and ordinances in the County, and includes the Sheriff or his designee.

s. **PREMISES** – any parcel of real property in the County, including the land and all buildings and structures in which one or more Rental Units are located.

t. **RENTAL UNIT** – means a Dwelling Unit or Rooming Unit which is Let for Occupancy and is occupied by one or more Tenants.

u. **ROOMING UNIT** – any room or groups of rooms forming a single habitable unit occupied or intended to be occupied for sleeping or living, but not for cooking purposes.

v. **TENANT** – any Person authorized by the Owner or Agent who occupies a Rental Unit within a Premises regardless of whether such Person has executed a lease for said Premises.

SECTION 2. APPOINTMENT OF AN AGENT AND/OR MANAGER

Each Owner who is not an Owner-occupant, or who does not reside in Henderson County or within a ten (10) mile air radius of the County limits, shall appoint an Agent who shall reside in the County or within a ten (10) mile air radius of the County limits.

SECTION 3. DUTIES OF THE OWNER AND/OR AGENT

a. The Owner has the duty to maintain the Premises in good repair, clean and sanitary condition, and to maintain the Premises in compliance with the current Codes, Building Codes and Zoning Ordinance of Henderson County. The Owner may delegate implementation of these responsibilities to an Agent.

b. The duties of the Owner and/or Agent shall be to receive notices and correspondence, including service of process, from Henderson County; to arrange for the inspection of the Rental Units; do or arrange for the performance of maintenance, cleaning, repair, pest control, snow and ice removal, and ensure continued compliance of the Premises with the current Codes, Building Codes and Zoning Ordinance in effect in Henderson County, as well as arrange for garbage removal.

c. The name, address and telephone number of the Owner and Agent, if applicable, shall be reported to the Code Enforcement Office in writing upon registering the Rental Units.

d. No Dwelling Unit shall be occupied, knowingly by the Owner or Agent, by a number of persons that is in excess of the requirements outlined in 2003 International Property Maintenance Code, Chapter 4, Light, Ventilation, and Occupancy Limits, Section PM-404.5, Overcrowding, or any update thereof, a copy of which is appended hereto and made a part hereof.

SECTION 4. NOTICES

a. Whenever an Inspector or Code Enforcement Officer determines that any Rental Unit or Premises fails to meet the requirements set forth in the applicable Codes, the Inspector or Code Enforcement Officer shall issue a correction notice setting forth the violations and

ordering the Occupant, Owner or Agent, as appropriate, to correct such violations. The notice shall:

- 1) Be in writing;
- 2) Describe the location and nature of the violation;
- 3) Establish a reasonable time for the correction of the violation.

b. All notices shall be served upon the Occupant, Owner or Agent, as applicable, personally or by certified mail, return receipt requested. A copy of any notices served solely on an Occupant shall also be provided to the Owner or Agent. In the event service is first attempted by mail and the notice is returned by the postal authorities marked "unclaimed" or "refused", then the Code Enforcement Office or Sheriff's Department shall attempt delivery by personal service on the Occupant, Owner or Agent, as applicable. The Code Enforcement Office shall also post the notice at a conspicuous place on the Premises. If personal service directed to the Owner or Agent cannot be accomplished after a reasonable attempt to do so, then the notice may be sent to the Owner or Agent, as applicable, at the address stated on the most current registration application for the Premises in question, by regular first class mail, postage prepaid. If such notice is not returned by the postal authorities within five (5) days of its deposit in the U.S. Mail, then it shall be deemed to have been delivered to and received by the addressee on the fifth day following its deposit in the United States Mail.

c. For purposes of this Ordinance, any notice hereunder that is given to the Agent shall be deemed as notice given to the Owner.

d. There shall be a rebuttable presumption that any notice that is given to the Occupant, Owner or Agent under this ordinance shall have been received by such Occupant, Owner or Agent if the notice was served in the manner provided by this ordinance.

e. Subject to paragraph 4.d above, a claimed lack of knowledge by the Owner or Agent, if applicable, of any violation hereunder cited shall be no defense to closure of rental units pursuant to Section 9, as long as all notices prerequisite to such proceedings have been given and deemed received in accordance with the provisions of this ordinance.

f. All notices shall contain a reasonable time to correct, or take steps to correct, violations of the above. The Occupant, Owner or Agent to whom the notice was addressed may request additional time to correct violations. Requests for additional time must be in writing and either deposited in the U.S. Mail (post-marked) or hand-delivered to the Code Enforcement Office within five (5) days of receipt of the notice by the Occupant, Owner or Agent. The County retains the right to deny or modify time extension requests. If the Occupant, Owner or Agent is attempting in good faith to correct violations but is unable to do so within the time specified in the notice, the Occupant, Owner or Agent shall have the right to request such additional time as may be needed to complete the correction work, which request shall not be unreasonably withheld.

g. Failure to correct violations within the time period stated in the notice of violation shall result in such actions or penalties as are set forth in Section 10 of this ordinance. If the notice of violation relates to actions or omissions of the Occupant, and the Occupant fails to make the necessary correction, the Owner or Agent may be required to remedy the condition. No adverse action shall be taken against an Owner or Agent for failure to remedy a condition so long as the Owner or Agent is acting with due diligence and taking bona fide steps to correct the violation, including but not limited to pursuing remedies under a lease agreement with an Occupant or Tenant. The County shall not be precluded from pursuing an enforcement action against any Occupant or Tenant who is deemed to be in violation.

SECTION 5. INSURANCE

In order to protect the health, safety and welfare of the residents of the County, it is hereby declared that the County shall require hazard and general liability insurance for all property owners letting property for occupancy in the County.

a. Minimum coverage; use of insurance proceeds. All Owners shall be required to obtain a minimum of fifty thousand (\$50,000.00) dollars in general liability insurance, and hazard and casualty insurance in an amount sufficient to either restore or remove the building in the event of a fire or other casualty. Further, in the event of any fire or loss covered by such insurance, it shall be the obligation of the Owner to use such insurance proceeds to cause the restoration or demolition or other repair of the property in adherence to the County Code and all applicable ordinances.

b. Property owners to provide County with insurance information. Owners shall be required to place their insurance company name, policy number and policy expiration date on their Rental Property Registration form, or in the alternative, to provide the Code Enforcement Office with a copy of a certificate of insurance. A registration Certificate (see Section 6 below) shall not be issued to any Owner or Agent unless the aforementioned information has been provided to the Code Enforcement Office. The Code Enforcement Office shall be informed of any change in policies for a particular rental property or cancellation of a policy for said property within thirty (30) days of said change or cancellation.

SECTION 6. RENTAL REGISTRATION AND LICENSE REQUIREMENTS

a. No Person shall hereafter occupy, allow to be occupied, advertise for occupancy, solicit occupants for, or let to another person for occupancy any Rental Unit within the County for which an application for license has not been made and filed with the Code Enforcement Office and for which there is not an effective license. Initial application and renewal shall be made upon forms furnished by the Code Enforcement Office for such purpose and shall specifically require the following minimum information:

- 1) Name, mailing address, street address and phone number of the Owner, and if the Owner is not a natural person, the name, address and phone number of a designated representative of the Owner.
- 2) Name, mailing address, street address and phone number of the Agent of the Owner, if applicable.
- 3) The street address of the Premises being registered.
- 4) The number and types of units within the Premises (Dwelling Units or Rooming Units)

The Owner or Agent shall notify the Code Enforcement Office of any changes of the above information within thirty (30) days of such change.

b. The initial application for registration and licensing shall be made by personally filing an application with the Code Enforcement Office by November 1, 2007. Thereafter, any new applicant shall file an application before the Premises is let for occupancy, or within thirty (30) days of becoming an Owner of a currently registered Premises. One application per property is required, as each property will receive its own license.

c. Upon receipt of the initial application or any renewal thereof and the payment of applicable fees as set forth in Section 7 below, the Code Enforcement Office shall issue a Rental Registration License to the Owner within thirty (30) days of receipt of payment.

d. Each new license issued hereunder, and each renewal license, shall expire on October 31 of each year. The Code Enforcement Office shall mail license renewal applications to the Owner or designated Agent on or before September 1 of each year. Renewal applications and fees may be returned by mail or in person to the Code Enforcement Office. A renewal license will not be issued unless the application and appropriate fee has been remitted.

SECTION 7. FEES.

a. Annual License Fee. There shall be a license fee for the initial license and an

annual renewal fee thereafter. Fees shall be assessed against and payable by the Owner in the amount of \$5.00 per Rental Unit, payable at the time of initial registration and annual renewal, as more specifically set forth in Section 6 above.

b. Occupancy Permit Fee. There shall be a one-time occupancy permit fee of \$10.00 for every new Occupant, which is payable by the Occupant. For purposes of initial registration under this ordinance, this fee shall be paid for all current Occupants by November 1, 2006. Thereafter, prior to occupying any Rental Unit, all Occupants shall obtain an occupancy permit. It shall be the Occupant's responsibility to submit an occupancy permit application to the Code Enforcement Office, pay the fee and obtain the occupancy permit. If there are multiple Occupants in a single Rental Unit, each Occupant shall obtain his or her own permit. Owner or Agent shall notify all prospective Occupants of this requirement and shall not permit occupancy of a Rental Unit unless the Occupant first obtains an occupancy permit. Each occupancy permit issued is valid only for the Occupant for as long as the Occupant continues to occupy the Rental Unit for which such permit was applied. Any relocation to a different Rental Unit requires a new occupancy permit. All Occupants age 65 and older, with adequate proof of age, shall be exempt from paying the permit fee, but shall be otherwise required to comply with this section and the rest of the Ordinance.

1. Application for occupancy permits shall be made upon forms furnished by the Code Enforcement Office for such purpose and shall specifically require the following minimum information:

- a) Name of Occupant
- b) Mailing address of Occupant
- c) Street address of Rental Unit for which Occupant is applying, if different from mailing address
- d) Name of Landlord
- e) Date of lease commencement
- f) Proof of age if claiming exemption from the permit fee
- g) Proper identification showing proof of legal citizenship and/or residency

2. Upon receipt of the application and the payment of applicable fees as set forth above, the Code Enforcement Office shall issue an Occupancy Permit to the Occupant immediately.

SECTION 8. ENFORCEMENT

a. The following persons are hereby authorized to enforce this Ordinance:

- 1 The Chief of the Sheriff's Department
- 1 Any Sheriff's Officer
- 1 Code Enforcement Officer
- 1 The Fire Chief
- 1 Deputy Fire Chief of Henderson County.
- 1 Health Officer
- 1 Director of Public Works

b. The designation of any person to enforce this Ordinance or authorization of an Inspector, when in writing, and signed by a person authorized by Section 8.a to designate or authorize an Inspector to enforce this Ordinance, shall be prima facie evidence of such authority before the Magisterial District Judge, Court of Common Pleas, or any other Court, administrative body of the County, or of this Commonwealth, and the designating Director or Supervisor need not be called as a witness thereto.

SECTION 9. FAILURE TO CORRECT VIOLATIONS.

If any Person shall fail, refuse or neglect to comply with a notice of violation as set forth in Section 4 above, the County shall have the right to file an enforcement action with the Magisterial District Judge against any Person the County deems to be in violation. If, after hearing, the Magisterial District Judge determines that such Person or Persons are in violation, the Magisterial District Judge may, at the County's request, order the closure of the Rental Unit(s), or assess fines in accordance with Section 10 below, until such violations are corrected. Such order shall be stayed pending any appeal to the Court of Common Pleas of Luzerne County.

SECTION 10. FAILURE TO COMPLY WITH THIS ORDINANCE; PENALTIES

a. Except as provided in subsections 10.b and 10.c below, any Person who shall violate any provision of the Ordinance shall, upon conviction thereof after notice and a hearing before the Magisterial District Judge, be sentenced to pay a fine of not less than \$100.00 and not more than \$300.00 plus costs, or imprisonment for a term not to exceed ninety (90) days in default of payment. Every day that a violation of this Ordinance continues shall constitute a separate offense, provided, however, that failure to register or renew or pay appropriate fees in a timely manner shall not constitute a continuing offense but shall be a single offense not subject to daily fines.

b. Any Owner or Agent who shall allow any Occupant to occupy a Rental Unit without first obtaining an occupancy permit is in violation of Section 7.b and shall, upon conviction thereof after notice and a hearing before the Magisterial District Judge, be sentenced to pay a fine of \$1,000 for each Occupant that does not have an occupancy permit and \$100 per Occupant per day for each day that Owner or Agent continues to allow each such Occupant to occupy the Rental Unit without an occupancy permit after Owner or Agent is given notice of such violation pursuant to Section 4 above. Owner or Agent shall not be held liable for the actions of Occupants who allow additional occupancy in any Rental Unit without the Owner or Agent's written permission, provided that Owner or Agent takes reasonable steps to remove or register such unauthorized Occupant(s) within ten (10) days of learning of their unauthorized occupancy in the Rental Unit.

c. Any Occupant having an occupancy permit but who allows additional occupancy in a Rental Unit without first obtaining the written permission of the Owner or Agent and without requiring each such additional Occupant to obtain his or her own occupancy permit is in violation of Section 7.b of this ordinance and shall, upon conviction thereof after notice and a hearing before the Magisterial District Judge, be sentenced to pay a fine of \$1,000 for each additional Occupant permitted by Occupant that does not have an occupancy permit and \$100 per additional Occupant per day for each day that Occupant continues to allow each such additional Occupant to occupy the Rental Unit without an occupancy permit after Occupant is given written notice of such violation by Owner or Agent or pursuant to Section 4 above.

SECTION 11. APPLICABILITY AND EXEMPTIONS TO THE ORDINANCE

The provisions of the ordinance shall not apply to the following properties, which are exempt from registration and license requirements:

- a. Hotels, Motels and Dormitories.
- b. Rental Units owned by Public Authorities as defined under the Pennsylvania Municipal Authorities Act, and Dwelling Units that are part of an elderly housing multi-unit building which is 75% occupied by individuals over the age of sixty-five.
- c. Multi-dwelling units that operate under Internal Revenue Service Code Section 42 concerning entities that operate with an elderly component.

- d. Properties which consist of a double home, half of which is let for occupancy and half of which is Owner-occupied as the Owner's residence.

SECTION 12. CONFIDENTIALITY OF INFORMATION

All registration information collected by the County under this Ordinance shall be maintained as confidential and shall not be disseminated or released to any individual, group or organization for any purpose except as provided herein or required by law. Information may be released only to authorized individuals when required during the course of an official County, state or federal investigation or inquiry.

SECTION 13. SAVING CLAUSE

This ordinance shall not affect violations of any other ordinance, code or regulation existing prior to the effective date thereof and any such violations shall be governed and shall continue to be punishable to the full extent of the law under the provisions of those ordinances, codes or regulations in effect at the time the violation was committed.

SECTION 14. SEVERABILITY

If any section, clause, provision or portion of this Ordinance shall be held invalid or unconstitutional by any Court of competent jurisdiction, such decision shall not affect any other section, clause, provision or portion of this Ordinance so long as it remains legally enforceable without the invalid portion. The County reserves the right to amend this Ordinance or any portion thereof from time to time as it shall deem advisable in the best interest of the promotion of the purposes and intent of this Ordinance, and the effective administration thereof.

SECTION 15. EFFECTIVE DATE

This Ordinance shall become effective immediately upon approval.

**BOARD OF COUNTY COMMISSIONERS
HENDERSON COUNTY, NORTH CAROLINA**

**RESOLUTION REGARDING COUNTY BUSINESS PRACTICES
WITH RESPECT TO CONTRACTS AND VENDORS**

WHEREAS, State and Federal law requires that certain conditions be met before a person may be authorized to work or reside in this country; and,

WHEREAS, unlawful workers and illegal aliens, as defined by state and federal law, do not normally meet such conditions as a matter of law; and,

WHEREAS, it is unlawful for any business entity to recruit, hire for employment, or continue to employ, or to permit, dispatch, or instruct any person who is an unlawful worker to perform work in whole or part within the County; and,

WHEREAS, the Henderson County Board of Commissioners has called upon all immigrants in Henderson County to secure and maintain legal status, regardless of ethnicity; and,

WHEREAS, the Henderson County Board of Commissioners seeks to ensure that any contractor or vendor doing business with the County is in compliance with the laws of North Carolina and the United States of America;

NOW, THEREFORE, BE IT RESOLVED that the Henderson County Board of Commissioners, at its meeting on November 6, 2006 does hereby require that any party contracting with the County certify that it is in compliance with Federal laws concerning hiring of undocumented workers, and shall (1) refuse to contract with any entity refusing to so certify, and (2) penalize any entity making a false certification or certifying to a violation of Federal law by disqualifying that entity from contracting with the County for a period of five years.

In witness whereof I have hereunto set my hand and caused the seal of the County of Henderson to be affixed.

William L. Moyer, Chairman

Elizabeth W. Corn, Clerk to the Board

**BOARD OF COUNTY COMMISSIONERS
HENDERSON COUNTY, NORTH CAROLINA**

**RESOLUTION REQUESTING THE FEDERAL GOVERNMENT EMPOWER
THE AGENCIES OF LOCAL GOVERNMENT TO ENFORCE THE NATION'S
IMMIGRATION LAWS**

WHEREAS, Henderson County is proud of its long and distinguished tradition of protecting the citizens of the county; and,

WHEREAS, local law enforcement has a responsibility to cooperate with the federal government to apprehend specific persons identified as having committed a crime and violated US immigration laws; and,

WHEREAS, local law enforcement officials routinely assist the federal government by apprehending, housing and feeding non-documented criminal suspects in local jails until federal agents are dispatched to retrieve the individuals; and,

WHEREAS, the Immigration Reform Law Institute, in a document entitled "Planning State Immigration Enforcement Legislation" herein attached as Exhibit A, states that local governments have more extensive authority than is generally recognized to enforce federal immigration law and to enact statutes and ordinances that sanction immigration-related activities which are also unlawful under federal immigration law; and,

NOW, THEREFORE, BE IT RESOLVED that the Henderson County Board of Commissioners, at its meeting on November 6, 2006 does hereby request that the federal government of the United States of America explicitly grant authority empowering local government agencies to enforce immigration laws.

In witness whereof I have hereunto set my hand and caused the seal of the County of Henderson to be affixed.

William L. Moyer, Chairman

Elizabeth W. Corn, Clerk to the Board

IMMIGRATION REFORM LAW INSTITUTE
1666 Connecticut Ave. N.W. Suite 402
Washington, DC 20009

Planning State Immigration Enforcement Legislation

Permissible Scope of State and Local Legislative Authority over Immigration:

State and local governments have more extensive authority than is generally recognized to enforce federal immigration law and to enact statutes and ordinances that sanction immigration-related activities which are also unlawful under federal immigration law.

The two key constitutional limits to state and local legislative authority are:

(1) State legislation cannot contradict or contravene the terms under which a non-citizen has been admitted to the United States by the federal government, and

(2) State government agencies and courts cannot directly admit, remove or deport a noncitizen to or from the United States, a power which is exclusively the function of the federal government.

Any deviation from these principles, either direct or indirect, can be interpreted by the judiciary as either a "regulation of immigration," a violation of the Supremacy Clause of the U.S. Constitution, or a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Practical Considerations:

The primary incentive for illegal immigration is economic – access to employment and, to a lesser extent public benefits and services. The primary goal for successful state or local immigration control legislation is to remove or reduce the economic incentives for unlawful presence by use of (1) the states' inherent police powers to protect the health, safety and welfare of its citizens and legal residents, and (2) specific powers delegated by Congress to the states and local governments.

Insure that each draft bill includes a definitional and a construction provision requiring that the terms, requirements, and obligations of the bill be construed so as to be consistent with federal immigration law.

Recommended Measures:

Following are general IRLI recommendations on various legislative measures that -in combination- will have a powerful and practical deterrent effect on the entry and continued presence of legal aliens at the local, regional, or state levels.

A. Unauthorized Employment:

Note: *Current federal law (8 USC 1324a(h)(2)) expressly preempts any non-federal law,*

"imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

In practice, this means that draft legislation should avoid direct fines or criminal convictions against employers.

1. Prohibition of performance of unauthorized employment by aliens.

Make the performance in the jurisdiction for more 80 hours in any 12-month period of work of any type for compensation, whether in cash, benefits or other valuable consideration, by any person who is an unauthorized alien as defined in federal law (8 USC 1324a(h)(3)), a felony punishable by at least one year imprisonment and a fine equivalent to the value of any compensation received by the alien. Note that this criminal sanction is applied to the alien, not the employer, and thus is not preempted.

2. Unfair discharge of a United States worker.

Make the discharge of any United States worker (as defined in federal law) by an employer, if the employer on the date of discharge retained as an employee any unauthorized worker, an unlawful discharge. Aggrieved discharged US workers may initiate a civil action in state court for recovery and damages. Provide employers who have used the electronic verification system (e.g. Basic Pilot) to verify the worker's employment eligibility (even if later found to be in error) immunity/safe harbor from suit.

3. Disallowance of business expenses deductions from state taxes.

Disallow the deduction from state income, corporate, or other business taxes of the expense of compensation provided to an unauthorized worker within the fiscal year in question. Disallowance of a tax deduction is not a civil fine.

4. Restriction of payment of invoices for government contracts.

Require government contracts to contain a clause allowing the government to disallow payment of any portion of an invoice submitted to a government agency for contracted services of any nature, where the services were performed by unauthorized workers. Provide employers who have used the electronic verification system (e.g. Basic Pilot) to verify the worker's employment eligibility (even if later found to be in error) immunity/safe harbor from enforcement of this contract clause.

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5. Private cause of action to revoke corporate charter.

Permit a private cause of action by any aggrieved corporate entity or legal resident of the state to compel the state agency regulating corporations to revoke the corporate charter of any for-profit or non-profit corporation registered in the state which violates the alien smuggling provisions of 8 USC 1324 or employs an unauthorized worker in violation of 8 USC 1324a. Statutes creating private causes of action are not preempted civil sanctions.

6. Workers Compensation Reform.

Require employers to pay workers compensation claims approved for claims filed by employees regardless of unauthorized worker status. Require payment of claims only to a bank in the alien's country of nationality, or another foreign country where the alien has been lawfully admitted. Note: This requires the disable illegal alien to depart the US before receiving compensation payments. Waive the immunity from suit for employers in such cases, allowing the Workers Compensation Commission to recover the amount of claims actually paid, if the employer is found to have failed to comply with federal employment authorization verification (I-9) procedures. This ensures that the employer, not the injured alien or the taxpayer, is responsible for the financial injuries incurred caused by failure to comply with federal law.

7. License suspension.

Upon confirmation of the validity a written complaint, filed by any state or local government agency or by an aggrieved legal resident of the jurisdiction, of the employment of an unauthorized alien by any entity holding a business, professional, or occupational license issued by the jurisdiction, require the issuance by the state department of labor of a cease and desist order to the license-holder, suspending the license(s) at issue until lawful presence of all employees or independent contractors of the license holder is confirmed. Require the extended suspension of the license in case of continued non-compliance pursuant to regulations. Note: Fines would be preempted by federal law, but not a temporary closure of the business due to failure to maintain a business license.

B. Citizen Identification and Citizenship Status Protection

1. Lawful presence test.

Require the state motor vehicle department, after consultation with the US Department of Homeland Security, to issue a list of documents which may be presented to a state or local government agency to establish legal presence in the United States. Require public notice and hearings on development of the list. Require other government agencies to adopt the approved list. Allow US citizens (only) without documents (e.g.

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homeless or disaster victims) to sign an affidavit of US citizenship under perjury, which may be accepted by the agency for immediate use, but must be verified within a reasonable time (30-60days) by the agency. Provide criminal and civil penalties for false statements or use of forged or misappropriated documents to meet the lawful presence test.

2. Limitation on use of insecure foreign identification documents.

Prohibit use of documents issued by foreign governments to establish identity for any official purpose, or for any private transaction whose value is greater than \$100, unless the alien also presents a US government-issued document from the approved list establishing lawful presence in the United States.

3. Lawful presence test for drivers licenses.

Add the lawful presence test to the requirements for eligibility for a driver's license or state or local government identification cards.

4. Criminalize false claims of US citizenship or legal permanent residence.

Make a false claim of US citizenship or legal permanent resident alien status to obtain any official public service or valuable consideration of \$100 or greater from a business a felony (parallel to the federal statute).

5. Define domicile or legal residence in the state.

By statute, restrict the right to establish legal domicile in the state to U.S. citizens and nationals, legal permanent resident aliens, and other aliens admitted or paroled into the U.S. for an indefinite or limited period whose terms of admission under federal immigration law permit establishment of residence in the United States. Allow for exceptions for limited purposes (e.g. marriage or standing to maintain a civil suit) where expressly authorized by statute.

C. Local Law Enforcement of Immigration Law

1. Criminalize willful violation of alien registration laws.

Enact the federal misdemeanors of willful failure to complete alien registration or to carry an alien registration document or notarized copy on the person as parallel state misdemeanors. Note: All legally present aliens, whether in permanent or temporary status, possess this document. Enforcement of registration laws, as opposed to federal "illegal presence" laws, is entirely document-based, and thus less vulnerable to impermissible profiling and related civil rights abuses.

2. Clarify peace officer arrest authority for immigration crimes.

Amend and clarify the state statute regulating peace officer arrest power to include misdemeanor violations of US Code Title 8 (INA).

3. Allow temporary detention of illegal aliens charged with misdemeanors or infractions.

Allow state and local law enforcement agencies to temporarily detain aliens charged with a misdemeanor or traffic violation, or similar infractions, for whom probable cause to believe the alien is inadmissible under federal immigration law (8 USC 1182) been confirmed with US DHS, until US ICE personnel are available to take transfer of the alien into federal custody. Also permit state and local police agencies to transport detained aliens across state lines to facilitate transfer into federal custody.

4. Federal-local cooperation agreement.

Require an appropriate state official or agency (e.g. state police) to negotiate and execute a cooperative agreement with US DHS, as authorized by 8 USC 1357(g), to train and designate state or local law enforcement officers as immigration enforcement officers, to perform specified immigration enforcement functions, which could include all of the functions in #1-3 above. Note: State must pay for the cost of training, which can be limited version of federal officer training, but officers obtain federal qualified immunity while performing enforcement functions per the agreement.

5. Private right of action to challenge local government restriction on immigration law compliance.

Grant any aggrieved legal resident of a local jurisdiction a private right of action to file a civil suit for injunctive relief and legal costs to restrain the municipality from implementing or enforcing any restriction on the authority of any official or personnel to cooperate with federal immigration enforcement authorities as provided by 8 USC 1373 and 1644 (anti-"sanctuary" measure).

5. State alien smuggling conspiracy statute.

Make alien smuggling (as defined by 8 USC 1324(a)(1), including conspiracy) within the state for financial gain a state statutory felony, with penalties equivalent to the federal statute. Note: Builds on successful Arizona model of charging illegal alien border crossers (nearly all currently use the services of a smuggler) as well as their smugglers under state law.

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6. Collect and report data on illegal alien arrests.

Require local and state law enforcement agencies to verify the lawful presence of any person arrested by the agency on a criminal charge. Agencies must report the presence of a verified illegal alien to the federal immigration enforcement agency, and to a state police database that state and local agencies can query. Note: will help identify and facilitate the removal of illegal alien recidivists.

7. Add alien-smuggling crimes to state racketeering statutes.

In states with companion racketeering statutes to the federal RICO laws, add the alien smuggling felonies described in 8 USC 1324 as predicate crimes under the state statute, allowing private lawsuits against alien smugglers and large-scale employers.

D. **Public Benefits.**

1. SAVE System.

Require all state and local government agencies to use the SAVE online system to verify eligibility for all State and Local Public Benefits, as defined in 8 USC 1621. Note: All States are currently required to use the SAVE system to verify federal public benefits administered by the states.

2. Access to Higher Education.

Bar enrollment or eligibility for financial aid at any public or private institute of higher education chartered or licensed by the state to an illegal alien.

E. **Control of Financial Transactions Involving Illegal Aliens.**

1. Withholding on certain remittance payments.

Require the withholding of income tax at 10 per cent for any electronic funds wire transfer to an overseas party or the purchase of any negotiable bank draft or international money order for any person who does not provide a valid social security number.

2. Campaign Contributions.

Make it unlawful for any person who is not a citizen of the United States to contribute funding, goods or services to any candidate for elected office, political party or political action committee.

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3. Civil and criminal penalties for accommodating illegal aliens in rental or hotel facilities.

Make it unlawful to rent, lease, or sublease residential property or hotel rooms to any person for use as accommodation for an illegal alien. Allow landlords to request documentation of lawful presence before renting or leasing accommodation to any person. Grant a private right of action to an aggrieved legal resident of the state to file a civil suit for injunctive relief and legal costs to restrain landlords from renting or leasing property to an illegal alien. Make it a felony to engage in a pattern or practice of providing rental accommodation to 24 or more illegal aliens for more than two weeks within any 12-month period.

4. Restrict use of ITINs by illegal aliens.

Make it unlawful for any person or entity to accept from any person an individual taxpayer identification number (ITIN) for identification or any other purpose not authorized by the US Internal Revenue Service, without concurrent presentment of a document establishing lawful presence in the United States.

**BOARD OF COUNTY COMMISSIONERS
HENDERSON COUNTY, NORTH CAROLINA**

**RESOLUTION REQUESTING THE STATE OF NORTH CAROLINA DEVELOP A
SYSTEM TO ENSURE THAT DRIVER'S LICENSES ARE NOT ISSUED TO ILLEGAL
ALIENS**

WHEREAS, Driver's licenses are issued by states under the Constitutional authority of the Tenth Amendment; and,

WHEREAS, a driver's license represents a tool that affords its holder vastly increased mobility to move within a state and among states; and,

WHEREAS, a driver's license is one form of identification that can be used to determine employment eligibility on Federal Form I-9; and,

WHEREAS, the Immigration Reform Law Institute, in a document entitled "Planning State Immigration Enforcement Legislation" herein attached as Exhibit A, has called for a lawful presence test to be passed prior to issuance of a drivers license; and,

WHEREAS, the Henderson County Board of Commissioners has called upon all immigrants in Henderson County to secure and maintain legal status, regardless of ethnicity which would afford them the ability to apply for a North Carolina driver's license;

NOW, THEREFORE, BE IT RESOLVED that the Henderson County Board of Commissioners, at its meeting on November 6, 2006 does hereby request that the State of North Carolina develop a system to ensure that, before issuing a drivers' license or identification card to a person, the State verify that the applicant is:

1. A citizen of the United States;
2. is an alien lawfully admitted for permanent or temporary residence in the United States;
3. has conditional permanent resident status in the United States;
4. has an approved application for asylum in the United States or has entered into the United States in refugee status;
5. has a valid, unexpired nonimmigrant visa or nonimmigrant visa status for entry into the United States;
6. has a pending application for adjustment of status to that of an alien lawfully admitted for permanent residence in the United States or conditional permanent resident status in the United States.

In witness whereof I have hereunto set my hand and caused the seal of the County of Henderson to be affixed.

William L. Moyer, Chairman

Elizabeth W. Corn, Clerk to the Board

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Planning State Immigration Enforcement Legislation

Permissible Scope of State and Local Legislative Authority over Immigration:

State and local governments have more extensive authority than is generally recognized to enforce federal immigration law and to enact statutes and ordinances that sanction immigration-related activities which are also unlawful under federal immigration law.

The two key constitutional limits to state and local legislative authority are:

(1) State legislation cannot contradict or contravene the terms under which a non-citizen has been admitted to the United States by the federal government, and

(2) State government agencies and courts cannot directly admit, remove or deport a noncitizen to or from the United States, a power which is exclusively the function of the federal government.

Any deviation from these principles, either direct or indirect, can be interpreted by the judiciary as either a "regulation of immigration," a violation of the Supremacy Clause of the U.S. Constitution, or a violation of the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.

Practical Considerations:

The primary incentive for illegal immigration is economic – access to employment and, to a lesser extent public benefits and services. The primary goal for successful state or local immigration control legislation is to remove or reduce the economic incentives for unlawful presence by use of (1) the states' inherent police powers to protect the health, safety and welfare of its citizens and legal residents, and (2) specific powers delegated by Congress to the states and local governments.

Insure that each draft bill includes a definitional and a construction provision requiring that the terms, requirements, and obligations of the bill be construed so as to be consistent with federal immigration law.

Recommended Measures:

Following are general IRLI recommendations on various legislative measures that -in combination- will have a powerful and practical deterrent effect on the entry and continued presence of legal aliens at the local, regional, or state levels.

A. Unauthorized Employment:

Note: *Current federal law (8 USC 1324a(h)(2)) expressly preempts any non-federal law,*

"imposing civil or criminal sanctions (other than through licensing and similar laws) upon those who employ, or recruit or refer for a fee for employment, unauthorized aliens."

In practice, this means that draft legislation should avoid direct fines or criminal convictions against employers.

1. Prohibition of performance of unauthorized employment by aliens.

Make the performance in the jurisdiction for more 80 hours in any 12-month period of work of any type for compensation, whether in cash, benefits or other valuable consideration, by any person who is an unauthorized alien as defined in federal law (8 USC 1324a(h)(3)), a felony punishable by at least one year imprisonment and a fine equivalent to the value of any compensation received by the alien. Note that this criminal sanction is applied to the alien, not the employer, and thus is not preempted.

2. Unfair discharge of a United States worker.

Make the discharge of any United States worker (as defined in federal law) by an employer, if the employer on the date of discharge retained as an employee any unauthorized worker, an unlawful discharge. Aggrieved discharged US workers may initiate a civil action in state court for recovery and damages. Provide employers who have used the electronic verification system (e.g. Basic Pilot) to verify the worker's employment eligibility (even if later found to be in error) immunity/safe harbor from suit.

3. Disallowance of business expenses deductions from state taxes.

Disallow the deduction from state income, corporate, or other business taxes of the expense of compensation provided to an unauthorized worker within the fiscal year in question. Disallowance of a tax deduction is not a civil fine.

4. Restriction of payment of invoices for government contracts.

Require government contracts to contain a clause allowing the government to disallow payment of any portion of an invoice submitted to a government agency for contracted services of any nature, where the services were performed by unauthorized workers. Provide employers who have used the electronic verification system (e.g. Basic Pilot) to verify the worker's employment eligibility (even if later found to be in error) immunity/safe harbor from enforcement of this contract clause.

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5. Private cause of action to revoke corporate charter.

Permit a private cause of action by any aggrieved corporate entity or legal resident of the state to compel the state agency regulating corporations to revoke the corporate charter of any for-profit or non-profit corporation registered in the state which violates the alien smuggling provisions of 8 USC 1324 or employs an unauthorized worker in violation of 8 USC 1324a. Statutes creating private causes of action are not preempted civil sanctions.

6. Workers Compensation Reform.

Require employers to pay workers compensation claims approved for claims filed by employees regardless of unauthorized worker status. Require payment of claims only to a bank in the alien's country of nationality, or another foreign country where the alien has been lawfully admitted. Note: This requires the disable illegal alien to depart the US before receiving compensation payments. Waive the immunity from suit for employers in such cases, allowing the Workers Compensation Commission to recover the amount of claims actually paid, if the employer is found to have failed to comply with federal employment authorization verification (I-9) procedures. This ensures that the employer, not the injured alien or the taxpayer, is responsible for the financial injuries incurred caused by failure to comply with federal law.

7. License suspension.

Upon confirmation of the validity a written complaint, filed by any state or local government agency or by an aggrieved legal resident of the jurisdiction, of the employment of an unauthorized alien by any entity holding a business, professional, or occupational license issued by the jurisdiction, require the issuance by the state department of labor of a cease and desist order to the license-holder, suspending the license(s) at issue until lawful presence of all employees or independent contractors of the license holder is confirmed. Require the extended suspension of the license in case of continued non-compliance pursuant to regulations. Note: Fines would be preempted by federal law, but not a temporary closure of the business due to failure to maintain a business license.

B. Citizen Identification and Citizenship Status Protection

1. Lawful presence test.

Require the state motor vehicle department, after consultation with the US Department of Homeland Security, to issue a list of documents which may be presented to a state or local government agency to establish legal presence in the United States. Require public notice and hearings on development of the list. Require other government agencies to adopt the approved list. Allow US citizens (only) without documents (e.g.

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homeless or disaster victims) to sign an affidavit of US citizenship under perjury, which may be accepted by the agency for immediate use, but must be verified within a reasonable time (30-60days) by the agency. Provide criminal and civil penalties for false statements or use of forged or misappropriated documents to meet the lawful presence test.

2. Limitation on use of insecure foreign identification documents.

Prohibit use of documents issued by foreign governments to establish identity for any official purpose, or for any private transaction whose value is greater than \$100, unless the alien also presents a US government-issued document from the approved list establishing lawful presence in the United States.

3. Lawful presence test for drivers licenses.

Add the lawful presence test to the requirements for eligibility for a driver's license or state or local government identification cards.

4. Criminalize false claims of US citizenship or legal permanent residence.

Make a false claim of US citizenship or legal permanent resident alien status to obtain any official public service or valuable consideration of \$100 or greater from a business a felony (parallel to the federal statute).

5. Define domicile or legal residence in the state.

By statute, restrict the right to establish legal domicile in the state to U.S. citizens and nationals, legal permanent resident aliens, and other aliens admitted or paroled into the U.S. for an indefinite or limited period whose terms of admission under federal immigration law permit establishment of residence in the United States. Allow for exceptions for limited purposes (e.g. marriage or standing to maintain a civil suit) where expressly authorized by statute.

C. Local Law Enforcement of Immigration Law

1. Criminalize willful violation of alien registration laws.

Enact the federal misdemeanors of willful failure to complete alien registration or to carry an alien registration document or notarized copy on the person as parallel state misdemeanors. Note: All legally present aliens, whether in permanent or temporary status, possess this document. Enforcement of registration laws, as opposed to federal "illegal presence" laws, is entirely document-based, and thus less vulnerable to impermissible profiling and related civil rights abuses.

2. Clarify peace officer arrest authority for immigration crimes.

Amend and clarify the state statute regulating peace officer arrest power to include misdemeanor violations of US Code Title 8 (INA).

3. Allow temporary detention of illegal aliens charged with misdemeanors or infractions.

Allow state and local law enforcement agencies to temporarily detain aliens charged with a misdemeanor or traffic violation, or similar infractions, for whom probable cause to believe the alien is inadmissible under federal immigration law (8 USC 1182) been confirmed with US DHS, until US ICE personnel are available to take transfer of the alien into federal custody. Also permit state and local police agencies to transport detained aliens across state lines to facilitate transfer into federal custody.

4. Federal-local cooperation agreement.

Require an appropriate state official or agency (e.g. state police) to negotiate and execute a cooperative agreement with US DHS, as authorized by 8 USC 1357(g), to train and designate state or local law enforcement officers as immigration enforcement officers, to perform specified immigration enforcement functions, which could include all of the functions in #1-3 above. Note: State must pay for the cost of training, which can be limited version of federal officer training, but officers obtain federal qualified immunity while performing enforcement functions per the agreement.

5. Private right of action to challenge local government restriction on immigration law compliance.

Grant any aggrieved legal resident of a local jurisdiction a private right of action to file a civil suit for injunctive relief and legal costs to restrain the municipality from implementing or enforcing any restriction on the authority of any official or personnel to cooperate with federal immigration enforcement authorities as provided by 8 USC 1373 and 1644 (anti-"sanctuary" measure).

5. State alien smuggling conspiracy statute.

Make alien smuggling (as defined by 8 USC 1324(a)(1), including conspiracy) within the state for financial gain a state statutory felony, with penalties equivalent to the federal statute. Note: Builds on successful Arizona model of charging illegal alien border crossers (nearly all currently use the services of a smuggler) as well as their smugglers under state law.

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6. Collect and report data on illegal alien arrests.

Require local and state law enforcement agencies to verify the lawful presence of any person arrested by the agency on a criminal charge. Agencies must report the presence of a verified illegal alien to the federal immigration enforcement agency, and to a state police database that state and local agencies can query. Note: will help identify and facilitate the removal of illegal alien recidivists.

7. Add alien-smuggling crimes to state racketeering statutes.

In states with companion racketeering statutes to the federal RICO laws, add the alien smuggling felonies described in 8 USC 1324 as predicate crimes under the state statute, allowing private lawsuits against alien smugglers and large-scale employers.

D. **Public Benefits.**

1. SAVE System.

Require all state and local government agencies to use the SAVE online system to verify eligibility for all State and Local Public Benefits, as defined in 8 USC 1621. Note: All States are currently required to use the SAVE system to verify federal public benefits administered by the states.

2. Access to Higher Education.

Bar enrollment or eligibility for financial aid at any public or private institute of higher education chartered or licensed by the state to an illegal alien.

E. **Control of Financial Transactions Involving Illegal Aliens.**

1. Withholding on certain remittance payments.

Require the withholding of income tax at 10 per cent for any electronic funds wire transfer to an overseas party or the purchase of any negotiable bank draft or international money order for any person who does not provide a valid social security number.

2. Campaign Contributions.

Make it unlawful for any person who is not a citizen of the United States to contribute funding, goods or services to any candidate for elected office, political party or political action committee.

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3. Civil and criminal penalties for accommodating illegal aliens in rental or hotel facilities.

Make it unlawful to rent, lease, or sublease residential property or hotel rooms to any person for use as accommodation for an illegal alien. Allow landlords to request documentation of lawful presence before renting or leasing accommodation to any person. Grant a private right of action to an aggrieved legal resident of the state to file a civil suit for injunctive relief and legal costs to restrain landlords from renting or leasing property to an illegal alien. Make it a felony to engage in a pattern or practice of providing rental accommodation to 24 or more illegal aliens for more than two weeks within any 12-month period.

4. Restrict use of ITINs by illegal aliens.

Make it unlawful for any person or entity to accept from any person an individual taxpayer identification number (ITIN) for identification or any other purpose not authorized by the US Internal Revenue Service, without concurrent presentment of a document establishing lawful presence in the United States.