Hitting the wall: On immigration, campaign promises clash with policy realities

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INTRODUCTION

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Donald Trump rode to the presidency on immigration issues. During the Republican primaries and then again during the general election campaign, Trump's most loyal followers erupted in frenzied cheers whenever he mentioned getting tough on unauthorized immigration. The list of ways he would "get tough" was long: building a wall between the U.S. and Mexico, ending the "catch and release" program, instituting zero tolerance for criminal aliens, hiring more border agents, ending funding for sanctuary cities, removing people who overstay their visas, instituting "extreme vetting" for refugees and making sure unauthorized immigrants don't get any government benefits. In the general election, only 33 percent of Clinton voters thought immigration was the most important issue facing the country, but 64 percent of Trump voters did. Fully 85 percent of Trump voters supported building a wall and 83 percent of Trump voters were in favor of deporting unauthorized immigrants back to their home countries.[1]

Now, President Trump must deliver on his promises to protect the country from unauthorized immigrants. To accomplish this goal, he will largely have to work through the newest cabinet department, the Department of Homeland Security (DHS). DHS was created in the wake of the 9/11 attacks when 22 different federal agencies were combined into a new Cabinet department with a new mission. Now, DHS is the third largest Cabinet department and is composed of 240,000 employees, the bulk of which are located in two enormous agencies: Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP).[2] These agencies are significant in size and scope. ICE employs over 20,000 individuals and maintains a budget of $6.2 billion; CBP has a staff of just over 60,000 with a budget of $13.5 billion.[3] The fate of President Trump's campaign promises to his base rests largely with these agencies. And, as he discovered in trying to repeal Obamacare, making good on campaign promises can be quite complicated.

Shortly after his inauguration, President Trump rushed to implement changes to immigration policy. He initially issued an executive order that failed to be vetted and reviewed through normal governmental processes, namely an interagency review. Neither the State Department (responsible for, among other things, visa issuance), the Office of Legal Counsel at the Justice Department (which normally reviews all executive orders), nor the Department of Homeland Security (responsible for carrying out the bulk of the order) were consulted. As Benjamin Wittes of the Lawfare blog pointed out at the time, "Moreover, The *New York Times* writes that Customs and Border Protection and U.S. Citizen and Immigration Services, the agencies tasked with carrying out the policy, were only given a briefing call while Trump was actually signing the order itself."[4]

The result was an order that failed to account for policy, personnel, or logistical realities. It immediately caused massive confusion at airports in the United States and around the world. It was so unclear that at one point it looked like legitimate holders of green cards would not be allowed back into the United States, where they had been cleared to work and live. Within days, the order was struck down by multiple federal courts.

THE CHALLENGE

As Elaine Kamarck has argued in her most recent book, "Why Presidents Fail and How They Can Succeed Again*,*" presidential success as opposed to presidential candidate success depends not just on the ability to articulate policy but on the ability to implement policy. [5] The implementation challenges facing the president go far beyond the initial executive order to ban entry; they affect nearly every facet of the president's proposed immigration policy and each promise made on the campaign trail. In seeking to deliver to his base, President Trump faces several big implementation issues that we will focus on in this paper. They are:

1) Can a wall be built on the U.S.-Mexico border? Will it end up being a virtual wall or an actual wall?

2) Can DHS actually hire the number of new agents it needs to do the job the president claims needs to be done?

3) What does "extreme vetting" mean and can DHS design new and more efficient systems? Does it need to?

4) How can we measure success? Coming up with statistics on immigration, especially unauthorized immigration, which by its nature cannot be counted with certainty, will be difficult.

1. THE WALL

"Number one, are you ready? Are you ready? We will build a great wall along the southern border. And Mexico will pay for the wall."[6]

In one form or another, this line was delivered at nearly every single one of Trump's election rallies. Like reducing unauthorized immigration and getting rid of criminal aliens, this will be a promise to which the president is held accountable. Protecting and strengthening the southern border, however, is hardly a new goal. In fact, ironically, the two presidents who increased and maintained a strong presence at the border—George W. Bush and Barack Obama—were those most in favor of immigration reform.

THE CAUTIONARY TALE OF SBINET

Back in 2007, a newly-elected Democratic Congress and a Republican president set out to accomplish bipartisan, comprehensive immigration reform. In order to placate skeptics in his own party who argued that immigration reform was impossible until the border was secured, President Bush moved forward with a comprehensive and very expensive project called the Southern Border Initiative Network (SBINet). The plan called for the construction of a "virtual fence" along America's borders in order to stem the flow of unauthorized immigrants.[7] The $2.5 billion proposal was to build a string of towers, cameras, and sensors linked to sophisticated computers along borders with Mexico and Canada. In theory, this virtual fence would alert border patrol agents to intrusions and allow them to capture and return individuals quickly. It would also serve as a deterrent.

Four years later, under a Democratic president, DHS Secretary Janet Napolitano announced that SBINet would be shelved.[8] The reasons were not political. In fact, as indicated above, the same political calculus that led President Bush to push for a more secure border informed President Obama's actions. Many members of Congress, including Democrats, saw securing the border as a necessary precondition to comprehensive immigration reform, but concluded that SBINet did not achieve that goal.

The lesson here is that the death of SBINet is a harbinger of problems to come for President Trump's wall. That project demonstrated how logistically difficult it is to build barriers through the rugged and unforgiving terrain that constitutes much of the border. Large stretches include a water border; significant stretches of land are privately owned or federally protected. In those places, the difficulty of building an actual fence was to be surmounted by building a "virtual fence." And yet, the string of electronic sensors, radars, and other technologies never really worked. The sensors had trouble distinguishing humans from small animals and they were sensitive to moisture and wind. The daytime cameras didn't identify humans from a distance greater than five kilometers. And "laser range finders" mounted on cameras had only a two kilometer range, not the 10 kilometer range specified. The blurry imagery on computer screens and the time lapses from satellites meant that by the time border patrol agents arrived on scene, the drug smugglers and unauthorized immigrants were gone. And, of course, with any physical or virtual wall, there are tunnels. The United States has found 150 tunnels under the U.S.-Mexico border since the 1990s.[9] Furthermore, a physical barrier solves only part of the problem. Some large portion of unauthorized immigrants are in the United States after entering legally but overstaying their visas, or by entering with fraudulent documents.

SBINet died a relatively quiet death as the number of unauthorized immigrants dropped during the Great Recession. But during the 2016 presidential campaign, Trump revived the issue of unauthorized immigrants and the "build that wall" chant was born. Nonetheless, the challenges today are as daunting as they were more than a decade ago. During the Bush and Obama years, the government was not motionless. GAO reports that between 2007 and 2015, the government spent approximately $2.4 billion on what is called "tactical infrastructure"—fencing, gates, roads, bridges, lighting, and drainage infrastructure—along the nearly 2,000 mile southwest border.[10] As the following graph shows, in those years, the total miles of fencing on the southwest border rose dramatically—from 119 miles of the border to 654 miles. During this time, the government never planned to fence the entire border, only those areas where people needed to be slowed down and vehicles needed to be blocked.

Total miles of Southwest border fencing
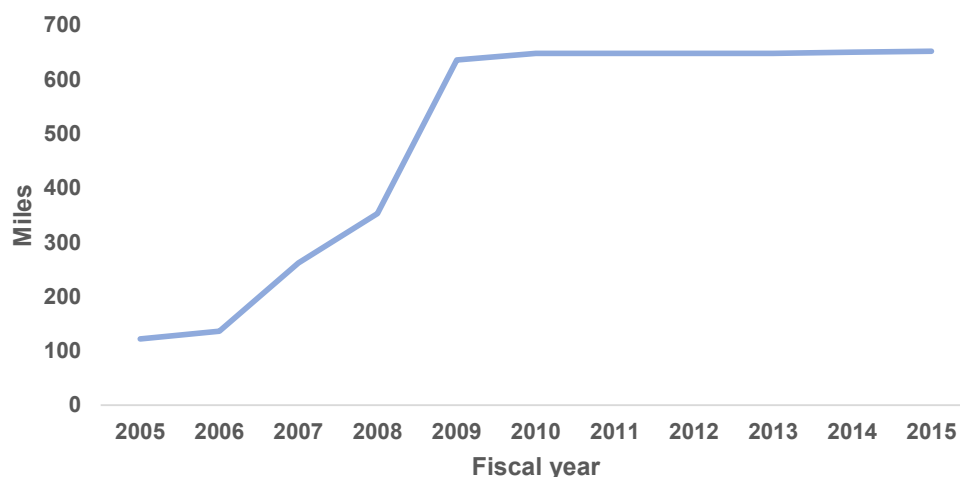
Source: U.S. Customs and Border Protection | GAO-17-331

EXISTING BARRIERS ON THE SOUTHWEST BORDER

There are clearly advantages to physical barriers at the border. For a 2017 report, GAO interviewed border agents who told them that bollard pedestrian fencing in urban areas helps their mission because, without it, unauthorized border crossers in cities like El Paso and San Diego can quickly blend into the urban population. Fencing in these places has diverted those trying to get in to more remote, rural environments where it is easier for border agents to find and apprehend them. In addition, fencing has improved the safety of border agents by reducing the ability of unauthorized immigrants to stage "mass crossings, which can overwhelm agents and jeopardize agent's safety."[11] Fencing can also reduce "drive throughs" on the border—a common tactic of drug smugglers and human traffickers.

While there are advantages to barriers, there are clearly disadvantages as well. Maintenance and repair on existing fences and sensors are very expensive. The harsh climate on much of the border, and frequent attempts to cut holes in or otherwise destroy barriers result in high maintenance costs. For instance, in 2015, DHS spent $373,461,000 on "Border Security Fencing, Infrastructure and Technology."[12] These numbers are not broken out by geography, but they give a sense of how expensive it is to maintain existing border security. Maintaining a wall will create an ongoing expense to the government. It's difficult to balance the benefits against these costs because DHS has never developed metrics to measure the "contributions of pedestrian and vehicular fencing to border security operations," according to GAO.[13]

HIGH COSTS AND UNCLEAR BENEFITS OF A WALL

The cost estimates for a wall on the southwest border are astronomical, ranging from Donald Trump's campaign estimates of $4-7 billion, to government estimates of $21-25 billion, to Democratic congressional estimates of $70 billion. And yet, as most experts inside DHS explain, physical barriers are only one tactic in an overall strategy to secure the border. Without convincing data, it is difficult to argue that a massive amount of money on a wall couldn't be better spent on other parts of the fight against unauthorized immigration. For instance, DHS notes that almost 530,000[14] people overstayed their visas in FY2015—about 200,000 more individuals than were apprehended at the border that same year.[15] Perhaps it would be more cost effective to improve the tracking of those who enter with

time-limited visas? Customs and Border Protection employees were developing metrics that would enable them to judge the contribution of fencing to the overall effort. However, that work was suspended when the 2013 sequestration reduced the DHS budget.[16] Congress would be well-advised to fund a study of the efficacy of physical barriers (and alternative enforcement efforts) before committing so much money to a single effort.

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LABOR SHORTAGES

Even if a border wall proves to be cost-efficient and Congress appropriates sufficient funding, it may be difficult to build without resulting in upward pressure on the demand for unauthorized immigrants.[17] With estimates in the range of $25 billion, construction of a wall would be one of the largest public works projects since the building of the Hoover Dam. For decades, contractors have used unauthorized construction workers in their projects, but after the Great Recession, many workers went home as demand dropped. A Pew study estimates that the number of unauthorized immigrant workers in construction declined 23 percent in 2012.[18] The share of all immigrants working in construction, natural resources, and maintenance is 13.1 percent, compared to only 8.2 percent of native-born workers and some portion of those immigrants are undoubtedly unauthorized.[19] However, by initiating a massive public works project, demand for additional labor may increase the number of unauthorized individuals entering the country.

THE POLITICAL RISKS OF USING EMINENT DOMAIN

Of course, before construction can even begin, the government will have to secure the land on the border needed for the wall. About two-thirds of the land along the border is privately owned.[20] That means that in order to build a border wall, the federal government would have to exercise eminent domain—as was done to construct existing fencing. A 2012 Associated Press review of eminent domain cases at the border found that the cost to the federal government of acquiring 300 properties along the border in Texas was about $15 million.[21] Although legal precedent supports the president's ability to use eminent domain for such a cause, the fact is that exercising eminent domain is always controversial—especially among the conservatives who make up Trump's base—and would come with significant costs. After the 2005 Supreme Court's decision in *Kelo v. New London* reinforced the government's right to eminent domain, Republican members of Congress spoke out against it and introduced legislation to blunt its impact. In 2007, the right-wing Heritage Foundation published a report called "The Decline and Fall of the Right to Property: Government as Universal Landlord." And in the 2016 campaign, Senator Ted Cruz of Texas ran an ad attacking Mr. Trump on his use of eminent domain. Thus, in his desire to fulfill his campaign promise, Trump may end up facing the wrath of fellow conservatives dead-set against the government taking private property.
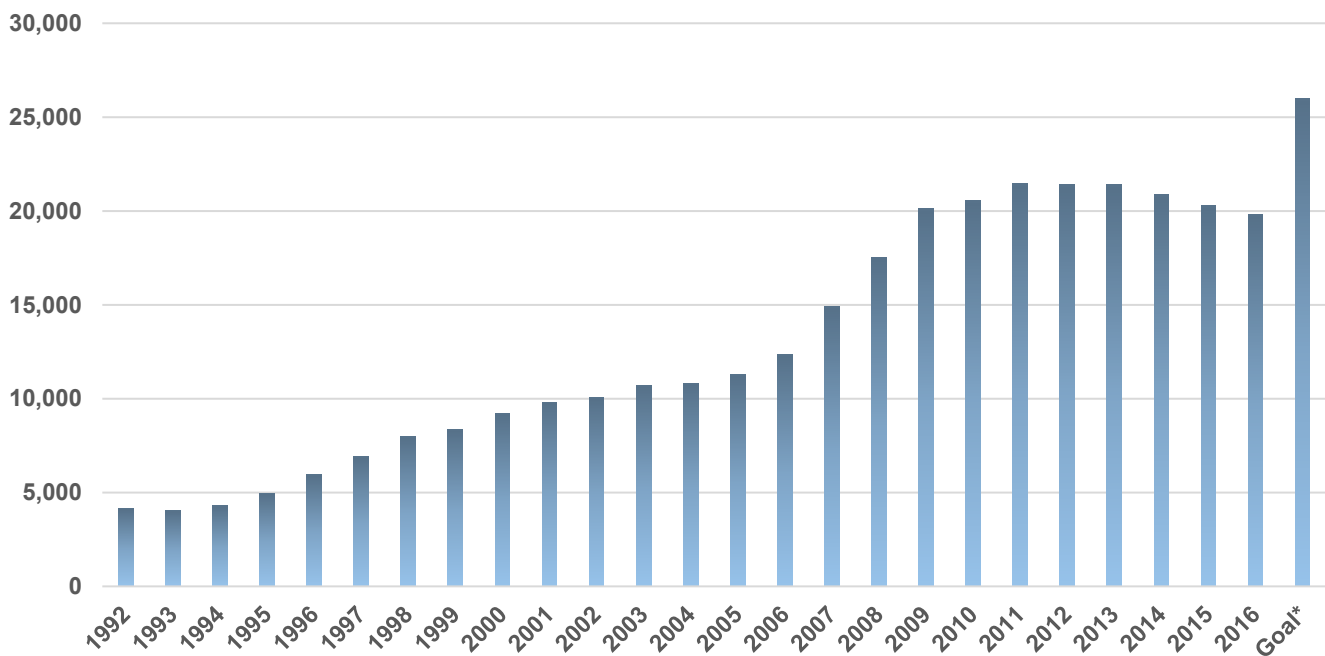
2. BORDER PROTECTION AND IMMIGRATION ENFORCEMENT CAPACITY

"We're going to triple the number of ICE deportation officers. … We're also going to hire 5,000 more Border Patrol agents. Who gave me their endorsement, 16,500 gave me their endorsement. And put more of them on the border instead of behind desks which is good."[22]

Early on in his administration, President Trump signed two executive orders to begin the process of achieving the goals of hiring more ICE and CBP agents. The first, Executive Order 13767, states "Subject to available appropriations, the Secretary, through the Commissioner of U.S. Customs and Border Protection, shall take all appropriate action to hire 5,000 additional Border Patrol agents, and all appropriate action to ensure that such agents enter on duty and are assigned to duty stations as soon as is practicable." A companion Executive Order (13768) signed the same day directs the Secretary and the head of U.S. Immigration and Customs Enforcement (ICE) to add an additional 10,000 immigration officers.

In the previous section, we discussed the challenges the president faces in constructing a physical barrier, including financial and logistical problems. Tunnels will be dug to go under the wall, ladders will be erected to scale the wall, ramps will be constructed to drive over it, and the electronic sensors designed to protect the wall's integrity will be broken by humans or by nature. Thus, a wall needs officers to police it. As the following graph indicates, over the past 24 years, the number of Customs and Border Patrol agents has already grown five-fold.

Size of the Border Patrol force over time

Source: Customs and Border Protection
* 21,000 authorized in FY2016, plus 5,000 announced by President Trump.

Expanding the number of immigration enforcement personnel even further to meet the president's promise—15,000 new agents in CBP and ICE—will require significant effort. We turn now to that challenge in order to assess the merits of such a policy.

BENEFITS OF NEW DHS HIRES

An increase in manpower should enhance the capacity of any agency or set of agencies. The goal of an additional 5,000 Border Patrol agents would increase CBP's overall staff by almost 8.5 percent. That is significant, particularly when you consider what CBP does on a daily basis. According to CBP's publication, Snapshot, in a given day, CBP processes over 1 million entrants into the U.S., nearly 300,000 vehicles, and almost 75,000 shipping containers. It flies hundreds of hours of enforcement missions and identifies about 750 inadmissible individuals at ports of entry.[23] CBP faces tremendous demands and additional personnel will help the agency meet those demands. To achieve the president's objective, Border Patrol itself will need to grow by 25 percent, and that's ignoring their current shortfall of just over a thousand agents. Despite the president's near-absolute focus on the U.S.-Mexico border, the Border Patrol is tasked with patrolling tremendous lengths of geography, including the longest border between two countries in the world (U.S. and Canada) and coastal border patrol posts at Miami, New Orleans, and Ramey (Puerto Rico).

Similarly, the increase among ICE immigration agents will help the agency with its myriad tasks including seizures of currency, drugs, and human traffickers, the detention and removal of unauthorized aliens, the prevention of malware attacks, and more.[24] The additional 10,000 agents would be a significant increase for the agency, which currently employs fewer than 20,000 people. Although the executive order is unclear, one would assume the additional 10,000 agents would be spread throughout ICE and not simply in Enforcement and Removal Operations, which currently employs fewer than 8,000 personnel.

Second, it is important to remember that CBP and ICE deal with both legal entrance and illegal actions at ports of entry into the U.S. Whether you are returning from a trip abroad or are a narco-trafficker trying to enter the country in the dark of night, you fall under ICE authority, CBP authority, or some combination of the two. Often, agencies seek to move employees around to address increased or decreased needs in a given time. Increases in the size of the Border Patrol and the corps of immigration agents could take some demands off staff, funding, or administrative time being detailed or re-directed from other parts of their respective agencies.

Third, Border Patrol and ICE are responsible for dealing with the critical issues of human trafficking and the trafficking of drugs, animals, and other illegally transported products into the country. Even though evidence shows that the net flow of individuals across our borders is decreasing, we do know that the flow of dangerous drugs, especially opioids like fentanyl and heroin, is increasing. Additional Border Patrol and ICE agents will also help address the opioid crisis that is exploding across the entire country.

THE CHALLENGES OF MASS HIRING

The president's proposal to add 15,000 new agents to CBP and ICE assumes that additional personnel is the best and only way for those agencies to meet their needs. However, additional personnel is not the only answer to every extant policy problem, and the administration should think more carefully about steps forward. Studying the issue—something the president has charged other agencies to do on a variety of topics since taking office—may be the best first step. It seems unlikely that round numbers like 5,000 to CBP and 10,000 to ICE are truly what each

agency needs. Perhaps the agencies can do well with fewer new hires. Perhaps the agencies need even more new hires. Engaging with the agencies to understand their resource needs, which include not simply personnel but also technological, managerial, organizational, and other needs would be a prudent next step. Manpower has diminishing returns after a certain point, and funds may be better spent in other ways in each (or both) agency.

Even if it is determined that more manpower is essential, both agencies already have difficulty hiring individuals and meeting these hiring targets, especially at CBP, would face significant hurdles. A recent memo from the Acting Commissioner of CBP to the DHS Deputy Secretary details the struggles CBP has not only in hiring new agents, but even covering attrition from its ranks.[25] The Commissioner notes that the CBP requirement for a polygraph, undesirable duty locations, lower compensation relative to ICE, a drawn-out hiring process, inefficiencies in the background check process, and competition for employees among law enforcement entities across the country have all made it challenging for CBP to staff the agency. In some cases, the challenges CBP faces come as a result of direct competition with ICE (i.e., the polygraph requirement, the desirability of the duty locations, and pay differentials), but they also face common difficulties.

In both agencies, the applicant pool poses a challenge.[26] Most people who apply for jobs at CBP fail to meet qualifications.[27] Hiring an additional 5,000 agents at CBP and 10,000 at ICE would require a tremendous pool of applicants, and agencies have difficulty even luring people to take the first step in the application process.

Additionally, at most agencies in the federal government, especially those with law enforcement and/or intelligence responsibilities, hiring is a slow and bureaucratic process. That is not entirely a criticism, as there are, of course, important reasons to be careful and deliberative in selecting those who will have some of the most dangerous, sensitive, and important jobs in government. CBP has faced long-documented challenges in its speed of hiring. A series of IG reports from DHS show that although CBP has made significant progress in hiring speed (reducing the average time from 505 days in FY2012 to 221 days in FY2015), it still takes significant time to onboard someone. Similarly, ICE has reduced its hiring time from 1,161 days to 212 days between 2012 and 2015. Still, each agency takes about seven months to hire new agents.

> The requirement for a polygraph, undesirable duty locations, lower compensation relative to ICE, a drawn-out hiring process, inefficiencies in the background check process, and competition for employees among law enforcement entities across the country have all made it challenging for CBP to staff the agency.

The president's executive order has asked that hiring processes be streamlined as much as is possible and the memo from CBP asks for the authority to loosen polygraph requirements and to set or change qualifications for positions. However, recent comments from DHS Secretary John Kelly have made clear that the department has no intention of reducing requirements in order to bring on staff. That tension—between qualifications and the ability to hire—will plague agencies struggling to staff up.

Of course, CBP's 221 days to hire and ICE's 212 days to hire reflect current hiring efforts. Even if agency hiring processes are streamlined and hiring times are reduced, the hiring process will slow again if suddenly those agencies are forced to evaluate thousands or tens of thousands of new applicants.

Further, the costs of adding new personnel would be significant. Agencies would incur additional costs for recruiting, interviewing, screening, and onboarding candidates. In the memo from the CBP Acting Commissioner, he notes "CBP has determined the costs of executing this hiring plan and recruiting, hiring, supporting, and retaining the agents necessary to implement the Executive Order is $328 million in Fiscal Year 2017 and $1.884 billion in Fiscal Year 2018."[28]

The cost of such an endeavor goes beyond hiring. It includes retaining and paying those agents moving forward. A 2013 CBO report noted the cost of hiring an additional 3,500 CBP agents "would exceed $600 million annually by 2017 and would total nearly $6 billion over the 10-year period."[29] The cost of 5,000 new agents (in current dollars) would be significantly higher. Those costs don't even account for ICE, which is charged to add twice as many additional personnel, and on average, its agents have higher salaries than CBP agents. Such huge increases to agency-level funding would be controversial and would struggle to find sufficient support in Congress and necessary offsets.

If the Acting Commissioner's estimate of $1.884 billion in FY 2018 is correct and you double it for the 10,000 additional ICE agents ($3.768 billion),[30] that would amount to a 14.7 percent increase in the CBP budget and an astonishing 60.8 percent increase in the ICE budget. Given competition among priorities in the congressional budget as well as in the president's budget, it is not a given that such requests for additional funding would be acceptable to Congress. The omnibus spending bill passed by the House in May allocated $65.4 million to "improving hiring processes" for CBP.[31]

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There are other, indirect budgetary impacts of the president's policy proposals as well. There is early evidence that his rhetoric and actions on immigration have had effects on travel bookings to the United States from abroad.[32] There is also evidence of other nations' tourism authorities seeking to highlight that behavior in their own competitive marketing campaigns. If travel is affected, it will not only impact private sector revenue, but also the DHS budget. Travelers to the United States pay processing fees as part of their entry into the U.S. Significant reductions in travel would mean reductions in fees that would have to be offset by other revenue sources for the department and its agencies (i.e., congressional appropriations).

The total price tag of the president's immigration policy also includes the costs associated with his plan to deport those individuals in the U.S. illegally. This population is estimated to be about 11 million. How much would deporting 11 million people cost? There are both direct and indirect costs of such activity. In 2011, the Deputy Director of ICE estimated that from arrest to removal, deportation costs an average of $12,500 per person. Thus, removing 11 million people would cost $138 billion—more than twice the FY15 budget for the entire Department of Homeland Security. Of course, the government would be incapable of deporting every undocumented individual, but at a price of $12,500 per person, the costs add up quickly.

Those deportation cost estimates do not factor in losses to GDP, government revenue, and employment nor do they factor in possible inflation. Contrary to public opinion, while unauthorized immigrants do not pay income taxes, they do pay a variety of other taxes such as sales taxes.[33] A 2016 Center for American Progress report estimated the contribution of unauthorized workers to GDP to be $464 billion.[34]

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Both the costs as well as the bureaucratic and functional hurdles mean that the president's plan for border protection and immigration enforcement—as made explicit in two executive orders from January 2017—will face extraordinary challenges. They may lack support within the American public that prefers to spend money on other priorities. Such plans will likely also face opposition among Congressional Democrats who are unwilling to spend massive sums on border security without other immigration reform concessions and among Congressional Republicans who are deficit hawks.

3. REFUGEES

"We have to stop the tremendous flow of Syrian refugees into the United States – we don't know who they are, they have no documentation, and we don't know what they're planning."[35]

The U.S. policy to admit refugees from a variety of countries, especially from Syria, became a hallmark issue for Donald Trump during the presidential campaign. As Europe began admitting hundreds of thousands of refugees and the Hillary Clinton campaign called for the U.S. to expand the number of Syrian refugees being admitted annually, candidate Trump went on the attack.

Trump declared that he wanted to suspend the flow of immigrants from countries with known ties to terrorism. In an August 2016 speech, he described the conditions of his plan:

"As soon as I enter office I am going to ask the Department of State…Homeland Security and the Department of Justice to begin a comprehensive review of these [terror] cases in order to develop a list of regions and countries from which immigration must be suspended until proven and effective vetting mechanisms can be put in place. I call it extreme vetting right? Extreme vetting. I want extreme. It's going to be so tough, and if somebody comes in that's fine but they're going to be good. It's extreme."[36]

In a nutshell, Trump argued that we were admitting hordes of refugees, who the U.S. government knew nothing about, and he planned to put into place a program by which the government would begin vetting individuals before they could enter. To understand the policy reality and the president's plan, it is important to dissect exactly what the Syrian refugee situation looks like, what the pre-Trump administration policy was, and how the new president may be able to enact changes to meet his policy goals.

A SNAPSHOT OF THE SYRIAN REFUGEE CRISIS

According to the United Nations High Commission on Refugees (UNHCR), as of February 2016, there were more than 5 million Syrian refugees[37] in addition to the more than 6 million Syrians who are internally displaced.[38] Half of those refugees are at camps in Turkey, and the vast majority of the others are in North Africa, Lebanon, Iraq, Jordan, and Egypt.

Despite millions of refugees from Syria in need of assistance, a very small percentage have petitioned the UN for resettlement and far fewer have been resettled. During calendar year 2016, the U.S. saw the arrival of 15,479 refugees from Syria, according to the State Department.[39] While that number is significantly higher than in previous years, it reflects both the Obama administration's commitment to admitting more Syrian refugees and the reality on the ground in Syria that the humanitarian crisis is worsening. During the first quarter of calendar year 2017, the U.S. admitted 2,273 refugees from Syria.

A theme that Donald Trump discussed on the campaign trail was the threat of immigrants, especially from the Middle East, entering the United States and committing terror attacks. In that same August 2016 speech, Trump noted that "[a]ccording to data provided by the Senate Subcommittee on Immigration…between 9/11 and the end of 2014, at least 380 foreign-born individuals were convicted in terror cases inside the United States." By embedding that line in the speech near a discussion of Syrian refugees, and with Mr. Trump's frequent warnings about the threat of refugees, some could interpret it as conflating the two—that refugees are responsible for terror attacks in the U.S.

However, a Cato Institute report from September 2016 shines light on foreign-born terrorists attacking within the United States. It states that from 1975 to 2015, 3,423 people were killed by foreign-born terrorists within the United States. The report also notes who was responsible, according to visa type, and the timing of those attacks. Most (88 percent) of those individuals killed by foreign-born terrorists died in the 9/11 attacks—killed by 19 terrorists who came to the U.S. as visitors and not as refugees.[40]

> Cato estimates that an individual in the U.S. has a 1 in over 3.6 billion chance of being killed by a refugee in a terror incident.

The Cato report goes on to explain that in the 40-year period studied, only 20 refugees had been convicted of terrorism and they were responsible for three deaths in the United States. Cato estimates that an individual in the U.S. has a 1 in over 3.6 billion chance of being killed by a refugee in a terror incident.

Data on previous threats posed by refugees are an important part of any discussion of reforming, freezing, or otherwise changing the refugee program in the United States. However, potential risk is important to understand as well. The majority staff of the House Homeland Security Committee published a report in late 2015 that sought to examine how the Syrian refugee crisis, terrorist attacks in Europe, and Obama-era proposals to expand refugee admission into the U.S. could pose risks for the homeland.

Much of the report details the serious challenges that Europe has faced and how European vetting systems have failed to prevent some terrorists from slipping in through in refugee flows. In many ways, the report uses the European case to explain why America is at risk. However, the European case differs dramatically. First, the American vetting process, particularly for Iraqi and Syrian refugees is more rigorous than it is in Europe. Second, the geographic proximity of Europe to Syria means there are greater opportunities for undetected entry into Europe compared to

the U.S. Finally, the report notes that more open borders in the EU introduce significant challenges for the continent, while failing to note that that same porousness does not extend to the United States.[41]

Despite the weaknesses in the report, it does point to a few areas that should be considered in evaluating the refugee resettlement policy in the U.S. First, the report notes weaknesses in Middle Eastern and European databases that are or could be used to identify potential terrorists and recommends working with our allies to strengthen those data sources. Second, the report notes that the refugee resettlement program has not been perfect, pointing to two Iraqi refugees arrested in Kentucky for trying to ship arms to al-Qaida. The men were surveilled by the FBI and caught before any arms were shipped.

THE STATE OF REFUGEE POLICY IN THE UNITED STATES

Despite Mr. Trump's claims that refugees stream into the United States without the government knowing anything about them, the truth is very different. The U.S. refugee admission process is a long, complex, multi-agency process that admits only a small percentage of the world's refugees. Iraqis and Syrians face an even more intense evaluation process than those from other countries. Most of the refugees who apply for resettlement in the United States begin the application through the UNHCR. The UNHCR collects initial data and documentation on all refugees and conducts initial interviews. As a 2015 White House infographic explains, after the UNHCR review is complete, "only applicants who are strong candidates for resettlement move forward (less than one percent of global refugee population)." For those who move forward, the second stage of the process involves a "Resettlement Support Center" that collects additional information and continues the interview process. The U.S. government then conducts rigorous security checks that involve the FBI, Homeland Security, the State Department, and the intelligence community. The UNHCR, in describing this process, details the "8-6-5-4-3-2" chain of U.S. government involvement. That is, each refugee deals with "eight U.S. federal government agencies, six different security databases, five separate background checks, four biometric security checks, three separate in-person interviews, two inter-agency security checks" and "the entire process is conducted abroad [and] can take up to two years."[42]

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Throughout the process, data from applicants are constantly rechecked through the databases that the government relies on to see if anything is "flagged" as associated with terrorism, or in conjunction with other crimes or suspicious behaviors. This is a process called "recurrent vetting" and helps ensure the most up-to-date data are being used to assess an individual file. If an individual is able to clear all of those hurdles, the applicant is moved to the next stages of the process: travel, entry, and placement in the United States.

Refugees come to the U.S. from all over the world, most times hailing from its most dangerous, unstable, conflict-ridden areas. Many of the world's countries with refugee outflows, regardless of religious demographics, have terrorist organizations or other sinister groups within their borders. In a recent Washington Post article, a former

DHS immigration officer who interviewed many refugees displaced by the Syrian civil war noted, "Ironically, Iraqis, Syrians, and Iranians, who are all now barred from entering the United States, are far and away the most well-documented refugees we interview.[43] I typically had to review a raft of high school degrees, baptismal certificates, marriage and birth certificates, honors and awards, photos with U.S. service personnel, recommendations from American military members, and conscription booklets or cards which every man in those countries has to carry." [44]

The reality is that the refugee vetting process is already extreme—and is made even more extreme for Syrians and Iraqis. This is a fact that most Americans, and even many presidential candidates, do not seem to fully understand or appreciate.

THE PATH FORWARD FOR "EXTREME VETTING"

Mr. Trump's reliance on campaign rhetoric based in hyperbole rather than a comprehensive understanding of current policy processes creates two serious problems both for him and the rest of society. First, that rhetoric sets voter expectations about drastic policy changes that may not be achievable or necessary. Second, rhetoric that departs from reality provides citizens with a total misunderstanding of U.S. policy . Telling voters that Syrian terrorists, anonymous to the U.S. government, could be streaming into their country will arouse fear in society. If that statement were true, the public would be right to be fearful. The problem, however, is that the situation does not exist.

President Trump considers it essential to reform the vetting process in some way, as that's what he promised and that's what his voters expect. The president took an initial step in this direction by issuing two executive orders that banned individuals from six Muslim-majority countries from entering the U.S. and also halted the refugee resettlement program. However, this policy faces two major limitations. For one, the order is only meant to be temporary, while the government works to improve vetting—not just of refugees, but across the board. Also, significantly, federal courts have enjoined the order(s).

The administration is left feeling as if it must do something to meet the president's campaign promises and to meet voters' expectations about the "problem" of refugees streaming into the United States. Some appropriate opportunities do exist. As we noted above, the facts illustrate that: the different visa programs in the U.S. have presented opportunities for terrorists to enter the U.S. to commit crimes; many other groups of individuals have presented far more risk than refugees; and terrorists can come from a variety of countries, not simply majority-Muslim ones. The president should review the vetting processes used for a variety of visas and perhaps enhance vetting for visitor and student visas, while abstaining from using refugees as a scapegoat for larger policy concerns. The president should have a more honest conversation about how terror threats present in the United States, using hard data on visa types, individuals' status, and their connection to criminal acts. That conversation should also extend to homegrown terror—individuals who are permanent residents, naturalized citizens, and natural-born citizens who become radicalized in the United States, rather than arriving in the country as a terrorist or terrorist sympathizer.

Each of these is a critical challenge that the administration must address comprehensively, rather than rhetorically. To the president's credit, his travel ban executive order does ask the administration to consider how to change policies to protect the homeland. However, that assessment must be based in facts, data, and reality and not campaign rhetoric. The president must then use those recommendations in a meaningful and responsible way, even if those recommendations depart from his previous comments and expectations.

While it is unclear exactly what more President Trump could do to make the refugee vetting system more "extreme," enhancing data capacity is a more achievable goal. The House Homeland Security Committee report recommended that the U.S. government work with partners around the world to improve data systems that help identify individuals and flag those who are associated with criminal enterprises and/or terrorism. The U.S. government can lead the way to ensure that domestic data systems are able to interface with peer data systems in other nations so that the free flow of information will streamline each government's vetting process for refugees and other visa applicants. Such an approach would be a meaningful improvement that helps protect the homeland from a variety of threats and problems.

4. MEASURING SUCCESS

"The truth is, the central issue is not the needs of the 11 million illegal immigrants or however many there may be – and honestly we've been hearing that number for years. It's always 11 million. Our government has no idea. It could be 3 million. It could be 30 million. They have no idea what the number is." [45]

Regardless of your personal opinion of President Trump's policy, you have to admit that he's right on one point: no one knows exactly how many unauthorized immigrants there are in the U.S. People who are here illegally have a powerful incentive to stay anonymous. Nonetheless, DHS's Office of Immigration Statistics has developed what is known as "the residual" method of estimating the number of unauthorized immigrants in the country. The residual method utilizes the American Community Survey (ACS), a survey of the total population in the United States conducted regularly by the Census Bureau. ACS questionnaires are sent to addresses, not to individuals, and there are no names attached to the responses. Census employees take an oath not to disclose any information collected. Doing so is punishable by imprisonment and/or a $250,000 fine.[46] Nonetheless, it is assumed that some unauthorized immigrants don't believe that the answers they give to the Census Bureau will be kept private, and therefore, they refuse to answer the question on the survey about being "foreign-born." Allowing for this, DHS adds 10 percent to the survey's foreign-born population figure. Then DHS subtracts from that new figure of all foreign-born residents the number of legal permanent residents, refugees, and those granted asylum.[47]

Obviously, there is some controversy over these numbers. The Federation for American Immigration Reform (FAIR) is one of the oldest anti-immigrant interest groups in the country. In 2007, they estimated that the illegal immigrant population was 13 million; 2 million more than the estimates of the Pew Hispanic Center and more than the DHS estimates. They argue that "…the official estimate of the illegal alien population is understated because it excludes recently arrived illegal aliens and illegal aliens that have been given a temporary reprieve from deportation in the Temporary Protected Status (TPS) program." [48]

Although there are methodological squabbles over how to estimate this population, there is a consensus among serious immigration scholars and analysts that unauthorized immigration peaked in the early part of the 2000s and then fell off in 2008 and 2009 as the effects of the great recession reduced job opportunities in the United States. According to DHS "It is unlikely that the unauthorized immigrant population increased thereafter given relatively high U.S. unemployment, improved economic conditions in Mexico, record low numbers of apprehensions of unauthorized immigrants at U.S. borders, and greater levels of border enforcement."[49] Pew Research Center estimates that from 2009 to 2014 at least a year before Trump became a nationally-known candidate—more Mexicans left the

United States than entered it, citing the desire to be reunited with their families as the chief reason.[50] By 2015, Pew estimated that the number of unauthorized immigrants had fallen to its lowest level since the recession and that Mexicans were a shrinking proportion of the total illegal immigrant population.[51]

With downward trends already well established, how will the Trump administration measure its success on immigration policy? The overt hostility of this administration will likely put further downward pressure on the number of unauthorized immigrants, especially Mexicans living in the United States.[52] So, when the president and others assess whether the size of the unauthorized immigrant population has decreased during his presidency, they may well find something to brag about.

> There is a consensus among serious immigration scholars and analysts that unauthorized immigration peaked in the early part of the 2000s and then fell off in 2008 and 2009 as the effects of the great recession reduced job opportunities in the United States.

However, with that decline will come declines in other, less speculative statistics. DHS keeps careful records on "removals" and "returns." Removals are people who have been sent back to their country as the result of a legal action. These include the criminal aliens that Trump discusses so often. Returns are simply those who are confirmed as leaving the United States but without a legal action forcing them out. As the following graph illustrates, "removals" increased steadily throughout the George W. Bush administration and the first five years of Barack Obama's presidency—peaking in 2013 when a total of 434,015 immigrants were removed.

This presents a problem for President Trump. He campaigned on the theme that President Obama had been soft on immigration enforcement and that Hillary Clinton would follow in his footsteps. And yet, compared to the Bush Administration before him, Obama deported many more unauthorized immigrants. With the overall level of unauthorized immigrants dropping, President Trump will likely have to increase the number of deportations dramatically in order to have more deportations than President Obama. Otherwise, he will have to confront the fact that there were many deportations and removals before he became president. Another alternative for President Trump is to focus on the Obama administration's final two years of removal data, a period during which removals dropped off precipitously. If President Trump compares his administration's removals data solely to 2015 and 2016, he could appear "stronger" on immigration than his predecessor, without telling the full story.

Immigrants removed from the U.S.
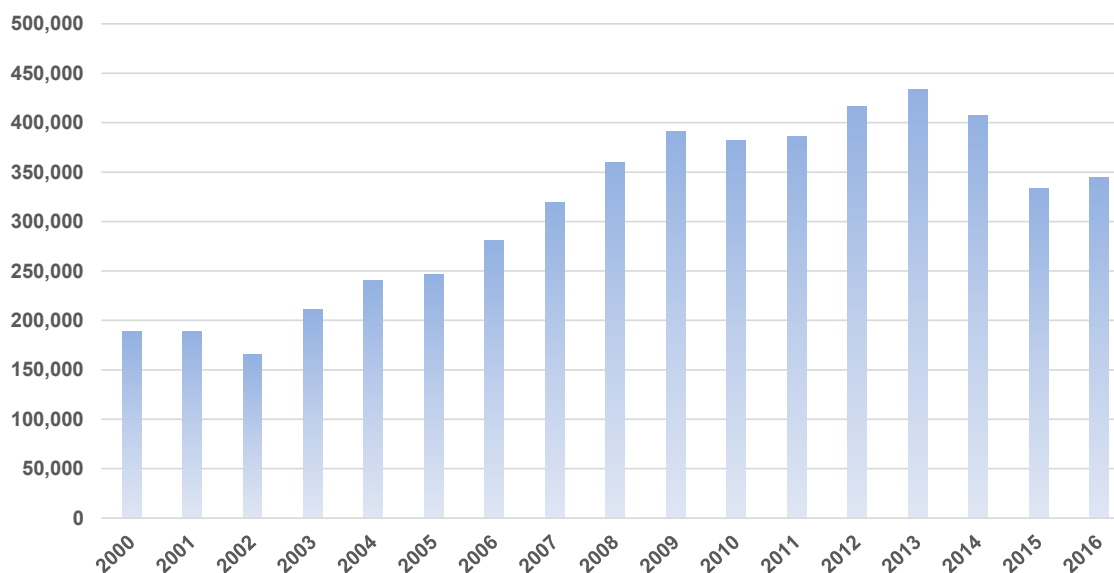
Source: Department of Homeland Security

The other prevalent theme in President Trump's campaign was his assertion that unauthorized immigrants committed so many crimes that they posed a public safety threat. He often held campaign events showcasing the families of people who had been murdered by unauthorized immigrants and asserted that criminals here illegally were regularly released back into their communities to commit crimes. The reality of immigration enforcement is quite different. In the year 2016, of the approximately 117,000 immigrants who went through deportation proceedings in immigration courts and were permitted to stay in the U.S., only 6,640 had a criminal charge—about 5.6 percent.[53] Across all the immigration proceedings conducted last year, only 1.97 percent of the defendants were charged with an aggravated felony.[54] Furthermore, according to DHS statistics, a very large portion of those removed were, in fact, removed for criminal activity, as the table below shows. More than half of those deported in every year from 2010 forward had committed some sort of crime.

> Unauthorized immigrants have a very powerful incentive not to commit crimes. In fact, criminologists have studied communities that are the destinations of new immigrants. Findings indicate that in new destinations, more immigration in fact meant less crime over the period.

Think about it for a moment and these numbers make sense. Unauthorized immigrants are hard to find. They do not advertise their immigration status, but once they enter the criminal justice system, their status is discovered and their deportation follows. Unauthorized immigrants have a very powerful incentive *not* to commit crimes. In fact, criminologists have studied communities that are the destinations of new immigrants. "Findings indicate that in new destinations, more immigration in fact meant less crime over the period."[55]

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Ironically, just two years before candidate Donald Trump charged the Obama administration with allowing millions of criminals to stay in the United States, the Obama Administration faced protests at the White House from members of the Hispanic community who felt that the administration's removal policy was too aggressive. This quote from The New York Times is representative of the anger on Obama's left flank over his deportation policies:

"'For years, the Obama administration's spin has been that they are simply deporting so-called 'criminal aliens,' but the numbers speak for themselves,' said Marielena Hincapié, executive director of the National Immigration Law Center. 'In truth, this administration—more than any other—has devastated immigrant communities across the country, tearing families away from loved ones, simply because they drove without a license, or re-entered the country desperately trying to be reunited with their family members.'"[56]

Immigrants removed by Immigration and Customs Enforcement (ICE)

Fiscal year	Total removals	Criminal removals	Percentage with conviction
2003	159,331	84,357	52.94
2004	177,427	93,065	52.45
2005	183,263	90,957	49.63
2006	211,925	96,729	45.64
2007	300,140	112,097	37.35
2008	385,711	132,369	34.32
2009	401,501	162,598	40.50
2010	383,847	201,229	52.42
2011	391,166	220,960	56.49
2012	407,821	231,833	56.85
2013	368,809	218,019	59.11
2014	319,266	179,756	56.30
2015	235,551	140,191	59.52

Source: Transactional Records Access Clearinghouse (TRAC). To see all removals by month, type of crime, location, and other data see http://trac.syr.edu/phptools/immigration/remove/

By placing the immigration question front and center in the national debate, Trump was able to tap into a deep reservoir of fear and resentment—and a desire for scapegoats to blame for much of what ails the American economy and society. Soon, however, he will have to show that he can make good on those promises. He will have to exceed the Obama administration's record on two measures of success—deportations and deportations of criminals—and this may be difficult to do. Because his campaign assertions were not firmly grounded in facts, he may have trouble showing success toward his most important promise—at least without a creative use of data.

PUBLIC SUPPORT FOR TRUMP'S "GET TOUGH" PLANS ON IMMIGRATION

During the campaign, Donald Trump painted a dire portrait of a nation overrun by "illegal immigrants" (especially Mexicans and Muslims) who move easily across an unprotected border, while refugees commit murder and acts of terrorism. In contrast, well-documented trends explained in this paper paint a different portrait.

- The number of unauthorized immigrants in the United States has not been increasing, it has been decreasing since the Great Recession and has not rebounded.

- The number of Mexicans has been decreasing as a proportion of the total population of unauthorized immigrants in the U.S.

- More than half of all deportations in recent years have been of people with criminal convictions.

- The number of miles of the southwest border that have some sort of barrier has risen in recent years, as has the number of Customs and Border Patrol agents.

- The number of immigration enforcement officers has increased significantly in recent years.

- As for public safety, in the past 40 years, the number of people killed by foreign-born terrorists in the United States was 3,423 – most of whom (88 percent) were killed in the 9/11 attacks.

In spite of Trump's emphasis on unauthorized immigration during the campaign, the issue seems to have decreased in importance since then. Right after the election, 42 percent of Americans supported a border wall and 55 percent opposed it. By April 2017, when President Trump withdrew his insistence on money for a border wall as part of the budget talks, support had dropped 11 points to 31 percent and opposition had risen 11 points to 66 percent.[57] This pattern is repeated on other issues related to President Trump's immigration promises. For instance, since the election, the Quinnipiac polls asked "Do you support or oppose suspending immigration from 'terror prone' regions, even it if means turning away refugees from those regions?" In November, 50 percent expressed support, but by March 2017, only 42 percent expressed support. Alternatively, in March of 2017, fully 63 percent of Americans expressed support for allowing unauthorized immigrants to stay in the country and apply for citizenship.[58]

> During the campaign, Donald Trump painted a dire portrait of a nation overrun by "illegal immigrants" (especially Mexicans and Muslims) who move easily across an unprotected border, while refugees commit murder and acts of terrorism.

Of course, there are big differences between the two parties, with Democrats more supportive of immigration reform than Republicans. And within the Republican Party, Donald Trump's base was, and remains, virulently anti-immigrant. But one faction of a political party, no matter how vocal, is often not sufficient for the passage of major legislation and/or major appropriations. Thus far, courts have struck down President Trump's attempts to ban immigrants from majority-Muslim countries, and Congress has rebuffed his attempt to get funding for construction of a border wall; the omnibus spending bill approved by the House in May 2017 made no mention of, or provision for, a border wall. Furthermore, the president has filled few of the political posts throughout government that deal with immigration policy, without which he will struggle to implement much of his proposed program.

It turns out that the actual implementation of President Trump's campaign promises will be quite difficult. Who would've thought?

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