

*Offices of Research and Education Accountability*

Comptroller of the Treasury  
**JOHN G. MORGAN**

**OREA**

**IMMIGRATION ISSUES  
IN TENNESSEE**



August 2007

**STATE OF TENNESSEE**  
**COMPTROLLER OF THE TREASURY**

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August 1, 2007

The Honorable Ron Ramsey  
Speaker of the Senate  
The Honorable Jimmy Naifeh  
Speaker of the House of Representatives  
And  
Members of the General Assembly  
State Capitol  
Nashville, Tennessee 37243

Ladies and Gentlemen:

Transmitted herewith is a special study prepared by the Offices of Research and Education Accountability concerning immigration issues in Tennessee. The report provides more specific data and information on the impact of unauthorized aliens on Tennessee state public policy and services to help guide policy discussions.

Sincerely,

John G. Morgan  
Comptroller of the Treasury

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# IMMIGRATION ISSUES IN TENNESSEE



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## EXECUTIVE SUMMARY

Unauthorized aliens' impact and related issues have recently received considerable attention nationally and in Tennessee. Concerns voiced include the impact of unauthorized aliens on the availability of jobs and level of wages of native workers; on tax revenue and costs of state and local government services such as education, health care and other public benefits; and on the safety of communities. Frustration over federal inaction and lack of enforcement to curb the number of unauthorized aliens has resulted in state and local government attempts to enact laws to increase control and enforcement. Numerous bills were filed in the Tennessee General Assembly in 2006 and 2007 to try to further limit unauthorized aliens' access to employment, as well as public benefits and services. Complete and accurate information appears to be missing from many discussions of these issues.

This briefing paper seeks to provide more specific Tennessee unauthorized alien data and information to guide policy discussions. In particular:

- Tennessee's undocumented alien population size and characteristics
- Federal precedence over state law in this area
- Unauthorized aliens' potential economic impact on jobs and wages
- Unauthorized aliens' eligibility for, and use of, public benefits and services and their cost

**The Pew Hispanic Center estimates 100,000 to 150,000 unauthorized aliens resided in Tennessee in 2005, only about two percent of the state's population.** The total foreign-born population in Tennessee, both authorized and unauthorized aliens, has increased significantly in recent years and in 2005 was 3.8 percent of the population. About 58 percent of the foreign-born population was concentrated in the Nashville and Memphis metropolitan areas in 2005. (See pages 1-2.)

**The state is limited in its power to control immigration. The power to regulate immigration is exclusively federal.** The U.S.

Constitution gives the federal government primary jurisdiction over immigration issues. Federal law determines the number of immigrants allowed to enter per year and controls the immigrant citizenship process. The federal government also restricts public benefits for immigrants and prohibits unauthorized alien employment. The federal government has border protection and immigration law enforcement responsibilities. Federal law specifically limits state and local efforts to establish more stringent requirements regarding immigrants' employment and immigration law enforcement. (See pages 2-3.)

**The lack of enforcement of federal immigration laws is driving much of the concern over immigration issues.** (See page 4.)

**Representatives of Tennessee trade associations interviewed by the Comptroller's Office of Research stated that most of their businesses want to follow the federal laws to verify immigration status for employees hired, but it is not always easy to detect false documents.** A 2005 Government Accountability Office (GAO) report confirms that document and identity fraud make it difficult for employers to comply with federal employment verification process to hire only authorized workers. (See pages 4-5.)

**Many economists nationwide agree that immigrant workers are beneficial to national and state economic growth, and that unauthorized aliens are not taking jobs or significantly affecting native workers' wages.** Immigrants, including unauthorized aliens, are filling a demand for labor, especially in low skilled jobs, which lowers prices and modestly raises natives' per capita income. Immigrants also boost the economy through their purchasing power for food, housing, transportation services, and consumer goods. Several studies indicate that wages are not reduced by the presence of immigrant workers because immigrants stimulate investment, have different skill sets that complement those of natives, and do not compete for the same jobs of most natives. Other studies have found a slight decrease of wages for natives in jobs competing with low-skilled immigrant workers. (See pages 5-7.)

**The 2005 Economic Report to the President concluded that unauthorized aliens do not impose a net cost at the federal level, but notes that most of the costs are at the state and local level.** This briefing paper describes some of the costs to state government from unauthorized aliens, but does not provide a specific estimate of the overall impact of unauthorized aliens on Tennessee's economy or state budget. Recent studies in Texas and Arkansas found a small positive benefit of unauthorized aliens on the state budget. Other studies that focus more on direct government costs, not economic impact, and include more local government costs found costs greater than revenues generated. (See pages 7-8.)

**Unauthorized aliens are not eligible for most public benefits.** The cost of public benefits provided to unauthorized aliens are primarily restricted to elementary and secondary education and emergency and public health care as required by federal law. State and local governments have some increased costs from the incarceration of unauthorized aliens for criminal behavior. However, unauthorized aliens contribute to state and local revenues as all residents in Tennessee through sales taxes on goods purchased, property tax through the payment of rent, as well as other user taxes such as those on gasoline. They are not able to access public services such as TennCare, housing, food stamps, welfare, and lower cost higher education. (See pages 8-14.)

**Only U.S. citizens or lawful permanent residents who are Tennessee residents are eligible for a driver's license or photo identification only license.** Non-immigrants with documents evidencing temporary legal presence in the U.S. may receive a Certificate for Driving (a temporary license after October 2007) for up to five years or to the expiration of their temporary immigration status. Since 2006, unauthorized aliens are not eligible to drive in Tennessee. (See pages 12-13.)

**The law does not distinguish between unauthorized aliens and U.S. citizens who commit crimes in Tennessee.** However, after serving their sentences, the federal government may deport any foreign-born convicts including authorized or unauthorized aliens. National studies do not indicate a much higher crime rate for unauthorized aliens. State and local criminal justice agencies pay most of the cost for criminal undocumented aliens. Local law enforcement and corrections agencies have indicated frustration at the lack of response from the federal government in picking up criminal unauthorized aliens for possible deportation when eligible for release. (See pages 13-14.)

### **Recommendations**

The General Assembly may wish to consider encouraging the federal government to take a stronger role in controlling and funding required services for unauthorized aliens in Tennessee. (See page 14.)

State agencies, such as the Departments of Safety and Health, should continue to assist the federal government to provide fair and timely mechanisms of worker verification. The federal government is developing regulations to require a verified and more secure identification in the U.S., "Real I.D." Support for such a system could make it easier to identify unauthorized aliens and exclude them from jobs and services as currently required by federal law. (See page 14.)

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## PURPOSE AND METHODOLOGY

This briefing paper seeks to provide factual information on immigration in Tennessee. The study considers the scope and degree of the impact of unauthorized aliens on Tennessee state public policy and services and what the state's role can or should be.

Research for this briefing paper included and is limited to:

- Internet search and review of information and studies related to immigration issues;
- Review of federal and state statutes dealing with immigrants;
- Interviews with state departments and agencies that provide public benefits including the following:
  - Department of Human Services
  - Department of Health
  - Department of Mental Health and Developmental Disabilities
  - Department of Children's Services
  - Department of Correction
  - Bureau of TennCare
  - Department of Labor and Workforce Development
  - Tennessee Housing Development Agency
  - Tennessee Higher Education Commission
  - Department of Education
  - Department of Safety
  - Tennessee Foreign Language Institute
- Interviews with Tennessee trade association directors in industries with a high percentage of foreign-born workers including:
  - Tennessee Restaurant Association
  - Tennessee Homebuilders Association
  - Tennessee Hotel and Lodging Association
  - Tennessee Road Builders Association
  - Associated Builders and Contractors, Middle Tennessee Chapter

## IMPACT ON POPULATION

State-specific data on unauthorized aliens is limited. The Census Bureau collects information on the foreign-born population. The Census Bureau defines the foreign-born population as "immigrants (legal permanent residents), temporary migrants (e.g., students), humanitarian migrants (e.g.,

refugees), and unauthorized immigrants (people illegally residing in the United States).<sup>1</sup> The number of unauthorized immigrants is uncertain because illegal aliens do not want to be counted. Estimates of unauthorized aliens are based on a "residual methodology," which takes the Census figures for foreign born and subtracts counts for those with a legal status from the Department of Homeland Security with some adjustments for an expected undercounting.

This briefing paper uses 2000 Census and 2005 Census American Community Survey data to show general trends and characteristics of the foreign-born population in Tennessee as an indicator of trends in unauthorized aliens. The limited information on the number of unauthorized aliens in Tennessee is included. National estimates on characteristics of unauthorized aliens are included to provide more detailed information on the population, which should reflect the unauthorized aliens in Tennessee.

### *Foreign-Born Population*

The foreign-born population in the U.S. and Tennessee, as measured by the U.S. Census,<sup>2,3</sup> has increased significantly in numbers and percent of the population. Foreign-born persons in the U.S. increased from 19.8 million in 1990 to 35.7 million in 2005, or 80 percent. Total U.S. population grew only 16 percent from 1990 to 2005. The foreign-born population increased from 7.9 percent of the population in 1990 to 12.4 percent in 2005.

In Tennessee, the number of foreign-born persons increased from 59,114 to 223,118 from 1990 to 2005, a 277 percent increase compared to a 19 percent increase in the total population. The foreign-born population increased from 1.2 percent of the population in 1990 to 3.8 percent in 2005. (See Exhibit 1.) Less than one percent of the U.S. foreign-born population lived in Tennessee in 2005.

About 45 percent of the 2005 foreign-born population in Tennessee was from Latin America including 29 percent from Mexico. About 29 percent were from Asia and 13 percent from Europe.

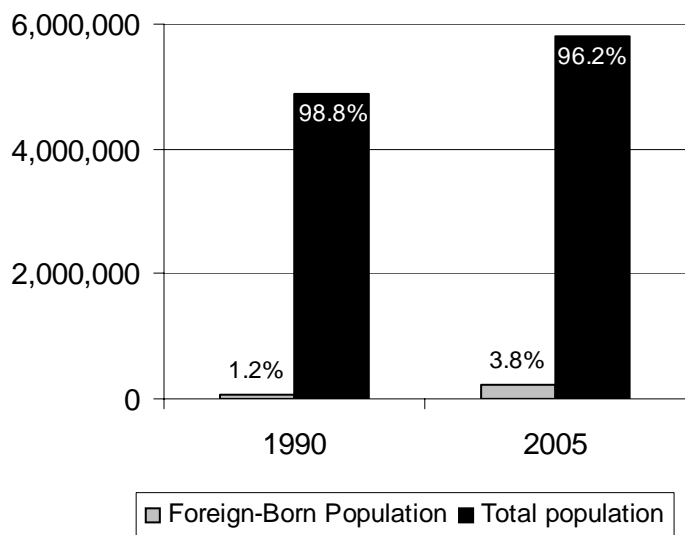
About 70 percent of Tennessee's foreign-born population lived in Tennessee metropolitan (MSA)<sup>4</sup> counties in 2000. The Nashville MSA included 36 percent and Memphis MSA had 22 percent. (See Exhibit 2.)

### Unauthorized Alien Population

This report uses the term “unauthorized aliens” to refer to foreign-born individuals who reside in the United States, who are not U.S. citizens, or do not possess permanent or temporary resident status. Unauthorized aliens include foreign-born individuals who entered the U.S. illegally as well as foreign-born individuals who entered the U.S. legally on a temporary visa, but overstayed the authorized time period. The term “unauthorized aliens” is interchangeable with “illegal immigrants,” “undocumented migrants,” “illegal aliens,” or other combinations of these terms.

**The Pew Hispanic Center<sup>5</sup> estimates 100,000 to 150,000 unauthorized aliens resided in Tennessee in 2005,<sup>6</sup> only about two percent of the state’s population.** The U.S. had 11.1 million unauthorized aliens in 2005, about one percent lived in Tennessee. The Center estimates that about 30 percent of the foreign-born population is unauthorized. Another 28 percent were legal permanent residents and 31 percent were U.S. citizens by naturalization. (See Exhibit 3.)<sup>7</sup> An estimated 25 to 40 percent of unauthorized aliens entered the U.S. at a border crossing with a legal visa or a Border Crossing Card but overstayed their time allotted. The others entered illegally without inspection.

**Exhibit 1: Comparison of Tennessee’s Total Population and Foreign Born Population, 1990 and 2005**



Source: U.S. Census Bureau

Recent research by the Pew Hispanic Center on the demographic characteristics of unauthorized aliens report U.S. totals, not state-specific characteristics.<sup>8</sup> The estimates are based on the March 2005 Current Population Survey. Relevant statistics from the Pew report include:

- About two-thirds (66 percent) of the unauthorized aliens had been in the country for ten years or less, and the largest share, 40 percent, had been in the country for five years or less.
- Most of the unauthorized aliens came from Mexico (56 percent). An additional 22 percent have come from the rest of Latin America, primarily Central America.
- Adult men (5.4 million) accounted for 49 percent of the unauthorized aliens in 2005, adult women (3.9 million) were 35 percent of the population, and children (1.8 million) were 16 percent. An additional 3.1 million children living in undocumented families are U.S. citizens by birth.
- Unauthorized aliens accounted for about 4.9 percent of the civilian labor force in 2005, or about 7.2 million workers out of a labor force of 148 million.
- Unauthorized aliens are more likely to work in low-wage occupations that do not require a high level of education. The largest number of unauthorized aliens (31 percent) works in service occupations, followed by construction (19 percent), and production, installation, and repair (15 percent). Although only four percent of unauthorized aliens work in farming, a relatively small occupation in general, 24 percent of all farm workers are unauthorized aliens.
- Occupations with large concentrations of unauthorized aliens include cleaning (17 percent of all workers), construction (14 percent), and food preparation (12 percent).

## IMPACT OF FEDERAL LAW

### ***Precedence of Federal Immigration Law over State Law***

***The state is limited in its power to control immigration. The power to regulate immigration is exclusively federal.***<sup>9</sup> The power stems from the U.S. Constitution, which expressly and inherently grants this authority to Congress.<sup>10</sup>

Two categories of federal laws address immigration: those that deal with immigration itself, and those that deal with immigrant-related issues. Immigration laws are divided into three areas: arrival, detention, and removal. First, a quota system determines the diversity of the flow of immigrants into the country. This system is an inherent part of the naturalization process that the federal government operates. Second, federal law sets detention and removal procedures for persons whose presence in this country is either questionable or unwelcome. The Immigration and Customs Enforcement Agency of the Department of Homeland Security carries out removal, when appropriate.

Federal laws that deal with immigrant-related issues are intended to affect immigration, but do not focus exclusively on the immigration process itself. For example, the Immigration Reform and Control Act of 1986 (IRCA) prohibits employers from hiring illegal immigrants. IRCA increased funds for border protection and granted amnesty for illegal immigrants who could document their presence in the U.S. for a certain period of time.

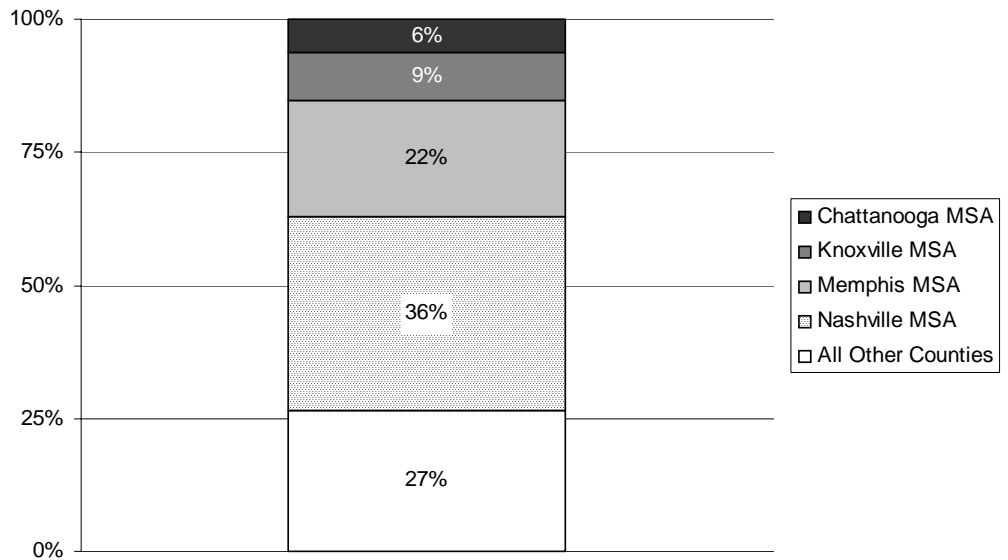
States are restricted from acting when federal law has preempted such action in several different ways. For instance, IRCA specifically “preempts any state and local law imposing civil or criminal sanctions (other than through licensing and similar law) upon those

who employ, or recruit or refer for a fee for employment, unauthorized aliens.” (8 U.S.C. § 1324a(h)(2))

States are preempted from enforcing immigration laws. However, the fact that aliens are the subject of a statute does not render it a regulation of immigration. In such cases where states are enacting immigrant-related legislation, the legislation must not conflict with federal law, otherwise the state law will be null and void.

Tennessee Attorney General Opinion No. 07-79 (May 23, 2007) concluded that while 8 U.S.C. § 1324a(h)(2) preempts criminal penalties for knowingly hiring an illegal alien, license revocation is exempted. The Tennessee General Assembly passed legislation in 2007 (HB 279 and SB 202) that restates current state criminal and civil penalties under T.C.A. §50-1-103 for employing illegal aliens, which the Department of Labor and Workforce Development has not enforced because of federal preemption. Under the new law, effective in January 2008, after investigation and hearing, the department can issue an order to deny, suspend, or revoke any professional or business licenses of any person knowingly employing, recruiting, or referring for a fee for employment, an illegal alien. The first violation suspends the license(s) until the person is in compliance; a second or subsequent violation within three years suspends a license for one year.

**Exhibit 2: Tennessee’s Foreign Born Population by Area of State, 2000**



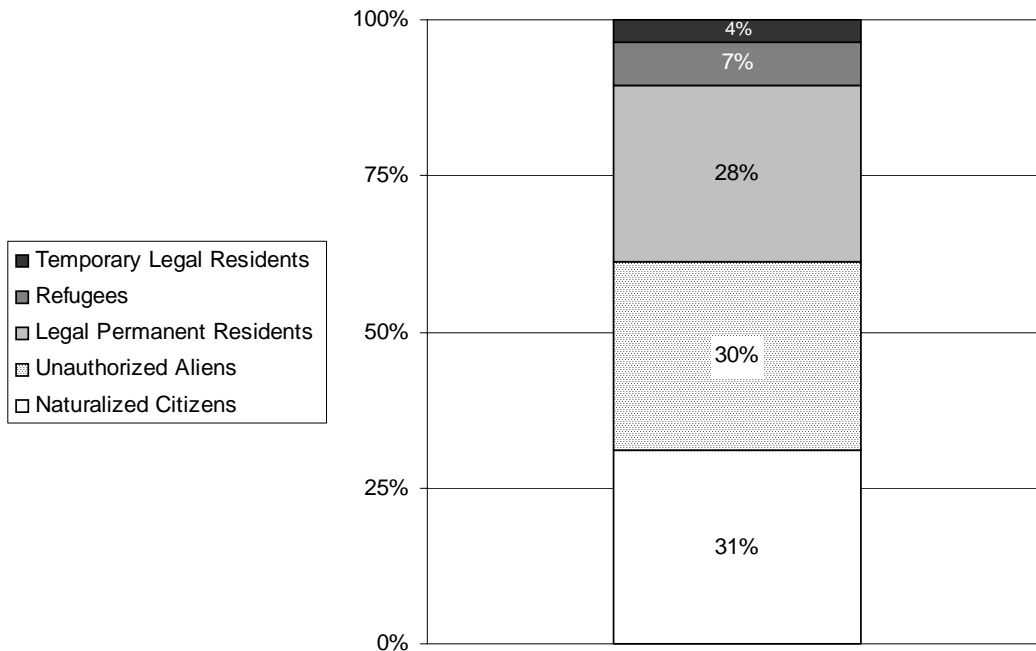
Total Foreign-Born = 159,004

Notes: (a) MSA = Metropolitan Statistical Area

(b) The 2000 Census is the latest data on the foreign-born population by county. County level data on unauthorized aliens is not available.

Source: U.S. Census Bureau

**Exhibit 3: Legal Status of U.S. Foreign-Born Population, 2005**



Total U.S. Foreign-Born = 37 million  
 Source: U.S. Bureau of the Census.

**Federal Enforcement of Immigration Laws**

**The lack of enforcement of federal immigration laws is driving much of the concern over immigration issues.**

The U.S. Department of Homeland Security is responsible for enforcing the immigration laws. The Bureau of Customs and Border Protection (CBP) “handles the inspections of foreign nationals at ports of entry and the deterrence or apprehension of illegal immigrants at the borders.”<sup>11</sup> The Bureau of Immigration and Customs Enforcement (ICE) is responsible for enforcing immigration laws within the U.S., including investigations of immigration laws and aliens involved in criminal activities. “In addition, agents monitor and inspect worksites to apprehend unauthorized alien workers and to impose sanctions against employers who knowingly employ them.”<sup>12</sup>

During 2004, of the estimated 10 million undocumented immigrants in the U.S, ICE initiated only 58,727 immigration investigation cases that focused on enforcement of immigration laws within the interior of the U.S. There were only 4,007 criminal convictions in 2004, and only 46 employers of unauthorized aliens were convicted for the illegal employment of undocumented immigrants.<sup>12,13</sup>

**Worker Verification Problems of Federal Law**

**Representatives of Tennessee trade associations interviewed by the Comptroller’s Office of Research stated that most of their businesses want to follow the federal laws to verify immigration status for employees hired, but it is not always easy to detect false documents.** The federal Immigration Reform and Control Act of 1986 puts the burden on employers to review documents presented by new employees after they are hired to prove their identity and work eligibility. On Form I-9, employers certify that they have reviewed employees’ documents and that the documents appear genuine and relate to the individual presenting them. Also, there is a fine line between verifying documents and discriminating against employees.

A 2005 Government Accountability Office (GAO) report<sup>14</sup> confirms the difficult position for employers. The report states that various studies have shown that document and identity fraud have made it difficult for employers to comply with the employment verification process to hire only authorized workers. It also made it easier for unscrupulous employers to knowingly hire unauthorized workers. Also, the number and

variety of documents acceptable for proving work eligibility have hindered verification efforts.

Through the Department of Homeland Security's Basic Pilot Program, participating employers may voluntarily verify employees' work eligibility electronically. However, GAO found that current weaknesses in the program, such as its inability to detect identity fraud, data entry delays, and some employer noncompliance with pilot program requirements, could have a significant impact on the program's success. "Furthermore, U.S. Citizenship and Immigration Services officials stated that the current Basic Pilot Program may not be able to complete timely verifications if the number of employers using the program significantly increased." The report also notes that workforce enforcement has been a relatively low priority within the U.S. Department of Homeland Security.<sup>15</sup>

The U.S. Congress passed the "Real ID Act," (P.L. 109-13) in May 2005 which creates national standards for the issuance of state drivers' licenses and identification cards. Unauthorized aliens would not be eligible for the licenses or identification cards, which will require specific verification of original documents, (e.g., birth certificates and Social Security cards) and would be more difficult to counterfeit. States must meet the standards if the state IDs are to be used for valid identification with the federal government, e.g., to pass through airport security or enter federal buildings. The law requires states to meet the standards by May 11, 2008. Federal specifications and regulations, however, have yet to be issued, and most of the major systems necessary to comply with the verification process do not exist. While state organizations support the need to improve the security of state-issued identification and the integrity of the process, the cost imposed on the states is estimated at \$11 billion over five years.<sup>16</sup> Also, many states see ReallD as a costly and ineffective federal intrusion and legislatures have proposed anti-ReallD measures. Other states, including Tennessee, are beginning to make changes to bring their system into compliance with all or part of ReallD.

## IMPACT ON THE NATIONAL ECONOMY

***Many economists agree that immigrant workers are beneficial to national and state economic growth, and that unauthorized aliens are not taking jobs or significantly affecting native workers' wages.*** Immigrants, including unauthorized aliens, are filling a demand for labor, especially in low skilled jobs, which lowers prices and modestly raises natives' per capita income. Immigrants also boost the economy through their purchasing power for food, housing, transportation services, and consumer goods.

In June 2006, more than 500 economists of varying political perspectives, including five Nobel Prize winners,<sup>17</sup> signed a letter to President Bush and members of Congress declaring consensus that immigrants are a positive force in America. The letter states that "immigrants do not take American jobs." The letter concedes that a small percentage of low-skilled native-born Americans may be harmed by immigration, but states that vastly more Americans benefit from the contributions that immigrants make to the U.S. economy, including lower consumer prices.

The 2005 Economic Report to the President concluded that "summing up the economic benefits and costs of immigration shows that over time the benefits of immigration exceed the costs."<sup>18</sup>

A 1997 National Research Council report<sup>19</sup> concluded that immigration produces net economic gains for domestic residents by increasing wages of domestic, higher skilled workers and lower prices for goods and services provided by immigrant labor. However, the study notes that less skilled domestic workers who compete with immigrants will see their wages fall.

### ***Impact on Labor Force***

Economists do not agree on the impact of immigration on the native labor force. Some economists have concluded that the increase in the number of immigrants has resulted in a decline in employment among young native-born workers. Native-born high school dropouts may have seen their wages drop because of immigration between 1980 and 2000. However, other economists contend that these studies do not consider job creation through immigrant entrepreneurship, the dynamics of the job market, and that the education and job skills of immigrants complement those of



natives and do not compete for the same jobs as most natives.<sup>20</sup>

Estimates of labor shortages by occupational group were not readily available for Tennessee. However, at the request of the Comptroller's Office of Research, the Tennessee Department of Labor and Workforce Development compiled information comparing the current supply and demand for workers in lower skill occupational groups<sup>21</sup> as of December 2006. In particular, the department compared the labor shortage in occupations that require short to moderate on-the-job training to the number of active job applicants in December 2006. This short-term analysis indicated little or no shortage of workers in 25 of the 37 (68 percent) occupational groups including miscellaneous construction trades and horticulture and landscaping. However, some noticeable shortages were indicated in food preparation and services, housecleaning, and child care.<sup>22</sup>

Many businesses indicate a labor shortage in areas of Tennessee and the U.S. Additional immigrants are needed to fill the demand, especially in lower skilled occupations. Based on interviews by the Comptroller's Office of Research with several trade associations in the hospitality and construction industries in Tennessee, sufficient eligible workers are not available to meet their labor demands. They contend that the number of projected jobs is greater than the eligible workers moving into the workforce.

U.S. Commerce Secretary Carlos M. Gutierrez testified to the U.S. Senate Judiciary Committee in July 2006 that the fast growing U.S. economy faces the challenge of an aging and increasingly educated workforce.<sup>23</sup> He notes that the unemployment rate is below the average of the past four decades. As a result, he concluded that there are jobs that American citizens either aren't willing or aren't available to do. He added that in May 2006 there were 4.1 million job openings in the U.S. with a large number in the hospitality industry.

A study by the Pew Hispanic Center concludes that increases in the state foreign-born population are not associated with negative effects on the employment of native workers.<sup>24</sup> The study found no consistent pattern to show that native-born workers suffered or benefited from increased numbers of foreign-born workers. Employment of

native-born workers increased in some of the states with high growth in foreign-born populations and decreased in other states. Tennessee was one of eight states, which included 15 percent of native-born workers in the U.S. in 2000, with above-average growth in the foreign-born population and below-average employment rates for native-born workers.

A national study by Rob Paral, published by the American Immigration Law Foundation,<sup>25</sup> found that employment in about one-third of all U.S. job categories would have declined during the 1990s in the absence of recently arrived, non-citizen immigrants, even if all U.S. born workers with recent job experience in those categories had been reemployed.<sup>26</sup> Categories with the largest difference include agricultural workers, housekeeping cleaners, ground maintenance workers, and construction laborers. The study is based on U.S. Census data which includes unauthorized aliens.

Another study by Rob Paral concludes that immigrants don't have a negative impact on the majority of native-born workers because they aren't competing for the same jobs.<sup>27</sup> He found that "the U.S. population is growing older and better educated, while the economy continues to create a large number of jobs that favor younger workers with little formal education. As a result, immigrants increasingly fill jobs at the less skilled end of the occupational spectrum for which relatively few native-born workers are available."<sup>28</sup>

### ***Wage differences***

The Tennessee trade association representatives interviewed by the Comptroller's Office of Research indicated their companies pay similarly skilled workers at the same rate. In fact, the associations contend that the competitive labor market is keeping wages up in response to a need for workers.

Several studies indicate that wages are not reduced by the presence of immigrant workers because immigrants stimulate investment, have different skill sets that complement those of natives, and do not compete for the same jobs as most natives.<sup>29, 30</sup>

A recent study by Giovanni Peri published by the Public Policy Institute of California focused on the effect of immigrants on California employment and wages.<sup>31</sup> California has the largest percentage of

immigrants in its state's population and labor force in the U.S. The study found that between 1990 and 2004, as a result of immigration, real wages increased four percent for the average native worker, ranging from 0.2 percent for high school drop outs and between three and seven percent for native workers with a high school diploma or higher. In addition, the report found no evidence that the increase in immigrants between 1960 and 2004 hampered the employment of natives with similar education and experience. The study also found that greater numbers of natives within the same education and age group did not leave California as immigration increased. An earlier national study by the same author found that immigration increased the real wages of U.S. born workers as a whole by approximately 1.8 percent between 1990 and 2004.<sup>32</sup>

### ***Fiscal Benefits to the U.S. Economy***

***The 2005 Economic Report to the President concluded that unauthorized aliens do not impose a net cost at the federal level but notes that most of the costs are at the state and local level.*** According to the report, "more than half of the unauthorized aliens are believed to be working 'on the book' so they contribute to the tax rolls but are ineligible for almost all federal public assistance programs and most major joint federal-state programs."<sup>33</sup> The report notes that unauthorized aliens are believed to account for a major portion of the funds tracked in the Social Security Administration's Earning Suspense File, which represents social security taxes by workers who have invalid or mismatched social security numbers and therefore cannot receive social security benefits, \$463 billion in 2002. Also, because immigrants are younger and tend to have higher birth rates, their presence in the labor force serves to "slow the ongoing decline in the ratio of workers per retirees. This, in turn, contributes to the financing of pay-as-you-go entitlement programs, such as Social Security and Medicare."<sup>34</sup>

A 1997 National Research Council study found that "under most scenarios, the long-run fiscal impact is strongly positive at the federal level, but substantially negative at the state and local levels." However, long-term state and local costs should likely subside some as immigrants age and have fewer school age children to educate, and immigrants' incomes rise and they pay higher taxes.<sup>35</sup>

## **IMPACT ON TENNESSEE ECONOMY**

This briefing paper describes some of the costs to state government from unauthorized aliens, but does not provide a specific estimate of the overall impact of unauthorized aliens on Tennessee's economy. However, a recent Texas Comptroller's report (December 2006)<sup>36</sup> did a "comprehensive financial analysis of unauthorized aliens on that state's budget and economy, looking at gross state product, revenues generated, taxes paid, and the cost of state services."<sup>37</sup> Overall, the report found a positive benefit on the state's economy:

"unauthorized aliens generated more taxes and other revenue than the state spends on them."<sup>38</sup>

Texas has significantly more unauthorized aliens than Tennessee: 1.4 million versus 100,000. Also, Texas' state tax structure is similar to Tennessee's in relying on consumption and businesses taxes, rather than a broad-based state income tax. The largest cost factor in Texas was education, followed by incarceration and health care. Consumption taxes and fees, the largest of which were sales taxes, were the largest income generators from unauthorized aliens. The report focused on state costs and revenues but acknowledged that local government costs exceeded estimated local revenue from unauthorized aliens.

A 2007 Kenan Institute study<sup>39</sup> on the impact of immigrants on the Arkansas economy concluded that "immigrant workers contribute substantially to the economic output of the state and to the cost-competitiveness of key industries." The growth of the immigrant population has been a form of labor replacement to declining employment in several industries in the state. The total economic impact of immigrants on the Arkansas economy was estimated at \$3 billion in 2004 through their local consumer spending, after taxes, savings and remittances sent to families abroad. The study found a small but positive net fiscal impact (revenue over expenditures) on the state budget.

Studies in several states by the Federation for American Immigration Reform (FAIR)<sup>40</sup> concluded that costs exceeded revenue. The FAIR analyses focuses on cost of government services and taxes paid, but do not consider the impact of immigrant spending and its multiplier effect on the economy. The FAIR reports include the cost of educating U.S. citizen children of unauthorized aliens. Also, the reports included a broader definition of health



care costs that include local government costs. The difference in the fiscal benefit could also be related to the varying tax systems: consumption taxes versus income taxes.

## IMPACT ON THE TENNESSEE STATE AND LOCAL BUDGETS

***Unauthorized aliens are not eligible for most public benefits. The cost of public benefits provided to unauthorized aliens are primarily restricted to elementary and secondary education and emergency and public health care as required by federal law. State and local governments have some increased costs from the incarceration of unauthorized aliens for criminal behavior.*** However, unauthorized aliens contribute to state and local revenue as all residents in Tennessee through sales taxes on goods purchased, property tax through the payment of rent, as well as other user taxes such as those on gasoline. They are not able to access public services such as TennCare, housing, food stamps, welfare, and lower cost higher education.

The following represents an attempt to consider all areas of government support that immigrants may seek. This paper attempts to inform the reader whether unauthorized aliens qualify for such support under current laws.

### ***Education***

#### **Elementary and Secondary Education**

***Elementary and secondary education is the primary additional expense to state and local governments for unauthorized aliens.***

***Numbers have grown in recent years in Tennessee.*** However, the exact number of undocumented immigrant children can not be calculated nor would the cost calculations change Tennessee's obligation under federal and state law to educate these children as long as they live here. Also, as noted by the Kenan Institute, "expenditures to educate immigrants' children represent an important investment in the state's future workforce that could pay substantial returns to the state through increased worker productivity and economic growth."<sup>41</sup>

This paper uses the number of students that are not proficient in the English language (English Language Learners or ELL) as a *rough* estimate of unauthorized aliens in the schools, although the

number also includes legal aliens. The percentage of ELL students statewide is still fairly small (less than three percent). ELL students are concentrated primarily in Metro Nashville and Memphis, although some smaller districts have a higher share of these students relative to their size.

Federal law requires Tennessee elementary and secondary schools to admit all students regardless of their immigration status. TCA 49-6-3001(c)(1) requires all children age six to 17 to attend school. Under a 1982 Supreme Court Ruling (*Plyer v Doe*, 457 U.S. 202 (1982)), any child, regardless of immigration status, is eligible for free, public primary and secondary education.

In addition, public schools must provide services to non-English language proficient students. The Tennessee State Board of Education Policy 3.207 requires districts and schools to provide specialized programs for limited English proficient students to comply with Title VI of the Civil Rights Act of 1965 and TCA 4-21-90. These laws prohibit discriminatory practice by any state agency receiving federal funds or for any person receiving such federal funds from a state agency on the basis of race, color, or national origin.

A precise count of undocumented immigrant students in elementary and secondary schools in Tennessee is not available. A 2004 report by the Government Accountability Office found that although a variety of data are available, "no government source estimates the number of illegal alien school children for most or all states." The report concludes that at present, government information is insufficient to develop reliable cost estimates.<sup>42</sup>

The number of English Language Learners (ELL) in Tennessee public schools has grown significantly, although these students remain a small percentage of all students statewide. ELL students include all students who are limited English proficient and include legal immigrants, U.S.-born citizen children of naturalized citizens as well as legal and unauthorized aliens, and unauthorized alien children. The 26,707 ELL students made up about three percent of enrollment in 2006, an increase from one percent in 2000. The number of ELL students increased by 16,901 between 2000 and 2006, a 152 percent increase. Overall, average daily membership of all students increased 39,291, or 4.4 percent over the

same time period, indicating that about 43 percent of the increase represents students with limited English proficiency. About 60 percent of ELL students statewide attend school in Metro Nashville-Davidson County (27 percent), Memphis City Schools (20 percent), Rutherford County (five percent), Knox County (three percent), Hamilton County (three percent), and Shelby County Schools (three percent).

In 2006, the statewide operating expenditures per student were \$7,469. Additional costs for English language learners include lower student to teacher ratios and a translator for every 450 ELL students. In 2007, the amount of total additional state and local funding required in the Basic Education Program for ELL students in Tennessee was \$32 million (\$19 million state and \$13 million local). According to the Tennessee Department of Education, Tennessee received only \$5.5 million in federal funds under Title III of the No Child Left Behind Act for FY2006 for ELL students, which was allocated primarily to districts based on the number of ELL students. The General Assembly appropriated funds for FY 2007-08 to lower the teacher-student ratio for ELL from 1:45 to 1:30 and translator-student ratio from 1:450 to 1:300 at an estimated additional cost of \$14.9 million. The 2007 legislation will ultimately lower the ratios to 1:20 and 1:200, respectively.<sup>43</sup>

All students, regardless of immigration status, can qualify for free and reduced price lunches and other school assistance programs based on family income.

### **Higher Education**

***According to the Tennessee Higher Education Commission, unauthorized aliens can apply and be admitted to public colleges and universities in Tennessee based on their secondary school academic record. However, they are not eligible for in-state tuition or other government-sponsored financial aid.*** A few privately funded scholarships are available for immigrants and unauthorized aliens. International students must prove their financial ability to pay tuition and fees without violating U.S. and higher education visa employment rules. Affording a college education is difficult for unauthorized aliens who are not eligible to work in the United States.

In 1996, federal illegal immigration reform law "instituted a restriction on states' residency

requirements and in-state tuition benefits for higher education for unauthorized aliens."<sup>44</sup> Despite the federal legislation, ten states have passed legislation that allows unauthorized aliens to receive in-state tuition under certain conditions - California, Illinois, Kansas, Nevada, New Mexico, New York, Oklahoma, Texas, Utah, and Washington. A recent court ruling<sup>45</sup> in California upheld California's provision of in-state tuition at state colleges and universities for unauthorized aliens as well as anyone else who has attended at least three years of secondary education and graduated from high school (or obtained a GED) in the state.

Supporters of in-state tuition argue that most of the children of unauthorized aliens are in the United States to stay, and by providing them with access to postsecondary education, society benefits as a whole through increased earnings and taxes, and lower crime and poverty rates. "Critics argue that it is unfair to allocate in-state tuition to unauthorized aliens at a time when many American citizens cannot afford to attend postsecondary education."<sup>46</sup>

### **Adult Education**

***As required by federal Title VI of the Civil Rights Act of 1965, all residents of Tennessee are eligible for federally-funded adult education classes regardless of immigration status.*** The Department of Labor and Workforce Development, Division of Adult Education administers the federal Adult Education and Family Literacy Act (AEFLA) grant funds. According to the department's website, "these funds provide educational opportunities for those adults seeking: basic skills upgrades, Government Educational Development (GED) exam preparation, English for Speakers of Other Languages (ESOL) and basic workplace computer skills. The services are offered in every county at Adult Learning Centers and to employers on-site by request."<sup>47</sup> In July 2006 the department indicated that about 7,000 individuals were enrolled in these classes. Although immigration status is not considered, a majority appear to be foreign-born.

### **Public Assistance Programs**

***Unauthorized aliens are ineligible for almost all federal, state, and local public assistance programs.*** Exhibit 4 illustrates unauthorized aliens' eligibility for major government-sponsored programs. In addition, most legal permanent residents are not eligible for many government benefit programs for the first five years in the

United States. It is important to note that U.S. citizen children living with undocumented immigrant parents may be eligible for some of these benefits. All children born in the United States are U.S. citizens.

**Health care**

Government subsidized health services available to unauthorized aliens are limited in Tennessee to emergency services and to services that protect the public health (such as immunizations).

**Medicaid/TennCare and Cover Tennessee**

**Unauthorized aliens are not eligible for TennCare, Tennessee’s Medicaid program or the state’s subsidized health care assistance programs included under Cover Tennessee.**

Beginning in July 2006, federal Medicaid rules require the state to check citizenship status and documentation for all TennCare applicants. According to the Tennessee Department of Human Services, which determines TennCare eligibility, immigrants make up a small percentage of their caseload; most unauthorized aliens do not apply. The department indicates that this requirement put a hardship on all persons applying for TennCare as well as increased the department’s eligibility determination workload. Most potential TennCare clients do not have passports and must search for other required documents. The department is concerned that some eligible TennCare participants have been excluded because of the documentation requirements.

The Cover Tennessee initiatives, implemented in 2007, add state subsidized health insurance or

assistance under four programs: CoverKids, CoverTN, AccessTN, and CoverRx. These initiatives expand coverage for children, small business employees, uninsurable adults, and assistance for individuals with pharmacy benefits, respectively. Eligibility is specifically restricted to “U.S. citizens or qualified legal aliens.”<sup>48</sup>

**Emergency Medical Care**

**Unauthorized aliens are eligible for TennCare benefits only in emergency situations and only if they meet all other TennCare eligibility requirements other than citizenship.**

The federal Emergency Medical Treatment and Active Labor Act (EMTALA) requires hospitals participating in Medicare to medically screen all persons seeking emergency medical treatment and to stabilize those determined to have an emergency condition regardless of ability to pay or citizenship status.<sup>49</sup> TennCare reimburses hospitals if an undocumented migrant meets all other TennCare eligibility requirements, but only covers the costs associated with the emergency episode.

Darin Gordon, Deputy Commissioner of TennCare, testified to a U.S. House committee in August 2006 that emergency care covered by TennCare involves a small number of individuals in Tennessee compared to the program’s total population of 1.2 million people. In July 2006, TennCare covered emergency care to 62 unauthorized aliens at a total cost of \$1.7 million. In FY2005, TennCare spent approximately \$4.9 million (\$1.8 million in state funds) for 1,300 unauthorized aliens in Tennessee.<sup>50</sup>

**Exhibit 4: Major Government-Sponsored Programs and their Availability to Unauthorized Aliens**

Unavailable	Available
Medicare	K-12 Education
Medicaid/TennCare	Emergency Medical Care
Cash Assistance (Families First TANF-Welfare)	Children with Special Health Care Needs
Food Stamps	Substance Abuse Services
Supplemental Security Income (SSI)	Mental Health Services
Public Housing Assistance	Immunizations
Job Opportunities for Low Income Individuals	Women and Children’s Health Services
Child Care and Development	Public Health
Cover Tennessee	Emergency Medical Service

Source: United States Department of Health and Human Services as compiled by the Texas Comptroller’s Office in “Undocumented in Texas: A Financial Analysis of the Impact to the State Budget and Economy,” December, 2006; www.covertn.gov accessed on June 12, 2007.

The bureau estimates that about 90 percent of emergency services reimbursed by TennCare are for labor and delivery. According to Mr. Gordon's testimony: "The children born are U.S. citizens and immediately qualify for full Medicaid benefits for the first year of their lives. The cost of providing coverage for labor and delivery services must be weighed against the fact that the provision of this service may reduce birth complications and subsequent costs that the Medicaid program will incur for an infant with health problems resulting from such complication."

Hospitals ultimately cover the uncompensated cost of emergency care to unauthorized aliens who do not qualify for Medicaid reimbursement. In Tennessee, TennCare offers a fixed amount in essential access payments to a limited number of hospitals treating the majority of Medicaid enrollees to help offset some uncompensated care cost. The federal Medicare Prescription Drug, Improvement and Modernization Act of 2003 provides some reimbursement to hospitals, physicians, and ambulance providers for some or all of the costs of providing emergency care to undocumented aliens. Tennessee's allocation of these funds was \$1.1 million per year in fiscal years 2005, 2006, and 2007.

A May 2004 Government Accountability Office study<sup>51</sup> could not determine hospitals' uncompensated costs of emergency care for unauthorized aliens because hospitals do not collect information on their patients' immigration status. The report concludes that "federal funding to help offset hospitals' costs for treating unauthorized aliens has not covered care or all medical services of all undocumented aliens and has not been available to all hospitals."<sup>52</sup>

The Tennessee Hospital Association was not aware of any statewide estimates of the cost of uncompensated care by hospitals to unauthorized aliens in Tennessee. A spokesperson for Vanderbilt University Medical Center testified at a U.S House of Representatives hearing in Brentwood, Tennessee in August 2006, that Vanderbilt University Medical Center's estimated annual cost of unreimbursed care to unauthorized aliens was about \$3.8 million, about five percent of its annual uncompensated care of \$74 million.

## Mental Health

***The Department of Mental Health and Developmental Disabilities does not consider immigration status in determining eligibility for state hospital and community mental health services.*** Eligibility is based on diagnosis rather than income or citizenship status. Immigration status is not a criteria for federally-funded alcohol and substance abuse treatment and prevention programs administered by the department.

## Public Health Services

***The Department of Health provides public health services to all Tennessee residents regardless of citizenship status because public health services are intended to protect all Tennesseans' health.*** Title VI of the Civil Rights Act of 1965 and federal health care grants require all persons to be served equally. Programs of the department include immunizations, maternal and child health, TB control, and nutrition among many others. If the department did not treat all persons, citizens could be at risk for communicable diseases. Also, it is more cost-efficient to provide prenatal care to pregnant unauthorized aliens to avoid the potentially high cost of a poor birth outcome for a U.S. citizen baby born to an undocumented immigrant.

## Children's Services

***The Tennessee Department of Children's Services offers its services to all children in Tennessee regardless of immigration status.*** However, the department does not receive reimbursement from federally funded programs for undocumented aliens. The department assists children in dependency, abuse, and neglect cases, child welfare cases, and delinquency cases. However, unauthorized aliens are not eligible for federally funded services such as TennCare or Title IV-E foster care.

The department does not track immigration status of children in their care specifically, but can identify children who are not eligible for TennCare, most likely because of their immigration status. The department estimated about 20 to 25 clients in October 2006 were unauthorized aliens, less than one percent of their caseload of 9,000 children. The state must pick up the non-emergency medical costs for unauthorized aliens because they are not eligible for TennCare. These costs totaled about \$8,000 for July through early October 2006.



## Housing

**Officials at the Tennessee Housing Development Agency (THDA) indicated that the growth in the immigrant population has not had a significant impact on THDA programs.**

Unauthorized aliens are not eligible for most public assisted housing programs. Section 8, a federal program providing rental assistance to low income families, is limited to U.S. citizens and lawful permanent residents. Eligibility is confirmed through the U.S. Department of Homeland Security's eligibility database (SAVE). However, a household is eligible if any person in the household is eligible based on his or her immigration status (this may be a minor child). The subsidy is prorated based on the number of eligible occupants. According to THDA officials, THDA homeownership loan programs require a social security number and submission of prior tax returns, which should preclude unauthorized aliens.

Other housing assistance programs administered by THDA (HOME and Low Income Tax Credits) base awards on income requirements. HOME is a federally-funded program that provides grants to cities, counties, and non-profit organizations to fund construction, preservation, and rehabilitation of housing for low income households. Households applying for HOME assistance must provide a social security number. Rental assistance in housing financed through federal low income tax credits to developers is based solely on income, immigration status is not considered. However, THDA officials do not think that many undocumented immigrants, if any, live in tax credit financed housing.

## Food Stamps

**Unauthorized aliens are not eligible for federally-funded food stamps.** However, a U.S. citizen child of an undocumented immigrant is eligible if other program requirements are met. According to the Tennessee Department of Human Services, in FY 2005-06, 5,431 immigrant families with one or more U.S. citizen children qualified for Food Stamps, out of a caseload of 300,000 total families, or less than two percent of the Food Stamp caseload.

## Families First

**Unauthorized aliens are not eligible for Families First, Tennessee's Temporary Assistance to Needy Families (welfare) program.** However, a

U.S. citizen child of an undocumented immigrant is eligible if other program requirements are met. In FY 2005-06, 740 U.S. citizen children of unauthorized aliens qualified for Families First, or less than one percent of the total caseload of 71,000.

## Labor and Workforce Development

**Unauthorized aliens are not eligible for services from the Tennessee Department of Labor and Workforce Development, including unemployment compensation and job placement services.** The department verifies immigration status and social security numbers with the federal government. However, if an undocumented immigrant is injured on the job, the employer is responsible for paying workers' compensation to the employee.

## Interpreter Services

**Most state agencies interviewed indicated that they offer interpreter services for their clients.** In some instances these services are required by federal grants to avoid discriminating against persons applying for and receiving benefits. Some agencies hire interpreters and others use phone services. The agencies did not have specific cost estimates for the use of these services. The Tennessee Foreign Language Institute provides or coordinates interpreter services to some departments and charges fees to cover such costs.

## Driver Licenses

**Only U.S. citizens or lawful permanent residents who are Tennessee residents are eligible for a driver's license or photo identification only license.** Non-immigrants with documents evidencing temporary legal presence in the U.S. may receive a Certificate for Driving (CFD) for up to five years or to the expiration of their temporary immigration status. Unauthorized aliens are not eligible to drive in Tennessee.

The Department of Safety examines documents presented at the time of application using an industry standard to authenticate the documents. However, the department maintains that a Tennessee driver's license, photo-identification license, or certificate for driving is neither an indication nor determination of U.S. citizenship, immigration status, or classification.

From 2001 through February 2006, Tennessee allowed unauthorized aliens to have driving privileges. Public Chapter 158 (2001) gave persons who did not have a Social Security number, but could prove identity and state residency, the ability to apply for a Tennessee driver's license. Public safety was the primary reason for expanding the pool of people eligible for the driver license. In 2004, the General Assembly created a separate Certificate for Driving (CFD) that could be used for driving but not for identification purposes for persons unable to prove their immigration status.

According to the Department of Safety, to obtain the CFD, a person had to prove identity and Tennessee residency only, pass the required knowledge and road skills test, and pay appropriate fees.<sup>53</sup> Department officials indicated that concern over fraud and abuse led to rule and regulation changes in 2006. The new rules require non-immigrants to have documents evidencing temporary legal presence in the U.S. to receive a CFD. The Tennessee General Assembly passed Public Chapter 194 of 2007, effective October 2007, to abolish the certificate of driving and allow a temporary driver license for non-immigrants with a temporary legal presence in the U.S.

The Department of Safety indicates that there are approximately 52,000 Certificate of Driving records on file. About 23 percent of those records indicate the applicant presented a document authorizing a legal temporary stay in the U.S. About 77 percent of applicants presented identification and proof of Tennessee residency as required at the time issued; this includes non-immigrants with temporary status, undocumented aliens, as well as U.S. citizens.<sup>54</sup>

### ***Criminal Justice***

***The law does not distinguish between unauthorized aliens and U.S. citizens who commit crimes in Tennessee.*** However, after serving their sentences, the federal government may deport any foreign-born convicts including authorized or unauthorized aliens.

Overall, there does not appear to be a significant difference in crime rates among undocumented immigrants and native-born residents. A 2007 study by the Immigration Policy Center<sup>55</sup> concludes that "data from the census and other sources show that for every ethnic group, without exception, incarceration rates among young men are lowest

for immigrants, even those who are least educated. This holds true especially for Mexicans, Salvadorans, and Guatemalans who make up the bulk of the undocumented population." The report notes that although the undocumented population has doubled since 1994, violent crime rate in the U.S. dropped 34.2 percent and property crime rate dropped 26.4 percent. The report concludes that "among men 18-39 (who comprise the vast majority of the prison population), the 3.5 percent incarceration rate of native-born men in 2000 was five times higher than the 0.7 percent incarceration rate of the foreign-born."<sup>56</sup>

The Federation for American Immigration Reform<sup>57</sup> counters that adult illegal aliens made up an estimated 4.5 percent of the overall prison population compared to 3.1 percent of the adult population in 2003, indicating that illegal aliens have a higher incidence of crime.<sup>58</sup> FAIR argues that studies, such as the one cited above, compare crime and incarceration rates for all foreign-born residents to native born residents, not just illegal aliens. FAIR attempts to separate out illegal aliens, who have not been screened for previous criminal activities before gaining entry into the United States.

Noting the limitations of both studies, the methods used to estimate the incidence of crime of undocumented aliens do not indicate a much higher incidence for undocumented aliens.

### **State and Local Incarceration Costs**

Unauthorized aliens committing crimes affect all parts of the criminal justice system. Most studies looking at the cost of unauthorized aliens include estimates of the costs of incarceration to state and local governments, based on the perception that if unauthorized aliens were not here, the crime and resulting costs would not have occurred. Of course, incarceration costs are just a small piece of the full criminal justice and societal costs of crime but are more easily measured.

This study acknowledges the costs for local governments to process undocumented criminal offender immigrants through the criminal justice system but does not attempt to estimate the costs because of the lack of available information.

The Tennessee Department of Correction does not routinely check the immigration status of persons sentenced to incarceration with the department. A

departmental check of inmate records in July of 2006 found 152 inmates with a detainer requiring notification of the federal Immigration and Customs Enforcement (ICE) before the offender’s release for possible immigration action. An ICE detainer does not necessarily mean that the offender is an undocumented/illegal immigrant; detainees are also issued for immigrants in the U.S. legally. These offenders represent less than one percent of the department’s estimated 20,000 incarcerated felons in Tennessee. Using the department’s average institution cost per day of \$57.33, the estimated cost of housing a daily average of 152 inmates for a year would be \$3,180,700.

The Department of Justice’s State Criminal Alien Assistance Program (SCAAP) reimburses state and local governments for a portion of their costs for incarcerating some undocumented criminal aliens. SCAAP reimburses costs only for unauthorized aliens who have been convicted of a felony or two or more misdemeanors and have been incarcerated for four days or more. SCAAP reimburses costs only for a portion of correctional officer salaries and is limited by federal funds appropriated for the program. SCAAP payments were limited to 33.52 percent of salary costs for approved days that undocumented immigrants were incarcerated for FY2005.

The Tennessee Department of Correction received \$212,435 in SCAAP funds for FY 2005. Only five local jurisdictions in Tennessee applied for SCAAP funds; they received a total of \$239,174. (See Exhibit 5.)

**State and Local Immigration Enforcement**  
***Local law enforcement and corrections agencies have indicated frustration at the lack of response from the federal government in picking up criminal unauthorized aliens for possible deportation when eligible for release.***

The federal Department of Homeland Security, Immigration and Customs Enforcement (ICE) is responsible for enforcement of the immigration laws within the U.S. interior.

State and local law enforcement agencies can obtain some limited immigration enforcement powers through a memorandum of understanding with ICE. The 1996 amendments to the federal

**Exhibit 5. Federal Payments to Tennessee Local Governments for Housing Criminal Aliens, FY 2005**

<b>Local Jurisdictions</b>	<b>SCAAP Award</b>
Hamilton County	\$15,404
Knox County	\$6,375
Maury County	\$1,069
Metro Nashville-Davidson County	\$159,174
Shelby County	\$57,152
<b>Total</b>	<b>\$239,174</b>

Source: U.S. Department of Justice, Bureau of Justice Assistance, State Criminal Alien Assistance Program, FY 2005 SCAAP Payment List.

Immigration and Nationality Act authorized a voluntary program, referred to as 287(g), for “ICE to provide training and subsequent authorization to state and local law enforcement officers to identify, process, and when appropriate, detain immigration offenders they encounter during their regular, daily law enforcement activity.”<sup>59</sup> However, there are additional costs for participating state and local law enforcement agencies to consider.

In response to several serious cases involving criminal illegal immigrants in Nashville, the Nashville-Davidson County Sheriff’s Office has worked out a 287(g) memorandum of understanding with ICE to check immigration status of all foreign-born offenders booked for criminal offenses at the jail. According to a Sheriff’s Office official, the process has taken over nine months to finalize. The federal government will pay for the necessary equipment and training but the Sheriff’s Office will pay for the twelve officers dedicated to this process at a cost of about \$683,000 per year.

**RECOMMENDATIONS**

The state is limited in its control over unauthorized aliens in Tennessee. The General Assembly may wish to consider encouraging the federal government to take a stronger role in this area including increasing the quotas of immigrants allowed to enter the United States, increased enforcement against undocumented workers and employers hiring unauthorized aliens, deportation of criminal aliens, and funding state and local public services for this population.

State agencies, such as the Departments of Safety

and Health, should continue to assist to provide the federal government fair and timely mechanisms of worker verification. The federal government is developing regulations to require a verified and more secure identification system in the U.S., “Real ID.” Support for such a system could make it easier to identify unauthorized aliens and exclude them from jobs and services as currently required by federal law.

## ENDNOTES

<sup>1</sup> U.S. Census Bureau, “Quick Facts,” accessed January 3, 2007, [http://quickfacts.census.gov/qfd/meta/long\\_101614.htm](http://quickfacts.census.gov/qfd/meta/long_101614.htm).

<sup>2</sup> U.S. Census Bureau, “Census 2000 Brief: The Foreign-Born Population: 2000,” December 2003, accessed January 3, 2007, <http://www.census.gov/prod/2003pubs/c2kbr-34.pdf>.

<sup>3</sup> U.S. Census, “2005 American Community Survey: Selected Social Characteristics: Tennessee,” August 2006, accessed May 21, 2007, <http://www.census.gov/acs>.

<sup>4</sup> A metropolitan statistical area (MSA) is an urbanized area of 50,000 or more inhabitants and the adjacent counties with a high degree of economic and social integration with the core county. Definition at [www.census.gov/population/www/estimates/aboutmetro.html](http://www.census.gov/population/www/estimates/aboutmetro.html), accessed June 11, 2007.

<sup>5</sup> According to its website (<http://pewhispanic.org>), the Pew Hispanic Center is a nonpartisan research organization supported by the Pew Charitable Trusts. The Center does not take positions on policy issues but provides information on the issues, attitudes, and trends shaping America and the world.

<sup>6</sup> Pew Hispanic Center, “Estimates of the Unauthorized Migrant Population for States based on the March 2005 CPS,” April 26, 2006, accessed January 3, 2007, <http://pewhispanic.org/factsheets/factsheet.php?FactsheetID=17>.

<sup>7</sup> Pew Hispanic Center, “The Size and Characteristics of the Unauthorized Migrant Population in the U.S.,” March 7, 2006, accessed January 3, 2007, <http://pewhispanic.org/files/reports/61.pdf>.

<sup>8</sup> *Ibid.*

<sup>9</sup> *DeCanas v. Bica*, 424 U.S. 351, 354 (1976).

<sup>10</sup> U.S. Constitution, Article I, §8, cl. 4 (Naturalization Clause); U.S. Const. art. I, §8, cl. 2 (Commerce Clause); *Id.* §9, cl. 1 (Migration and

Importation Clause); and U.S. Const. art. I, §8, cl. 11 (War Power Clause).

<sup>11</sup> Mary Dougherty, Denise Wilson, and Amy Wu, “Immigration Enforcement Actions: 2004,” U.S. Department of Homeland Security, Office of Immigration Statistics, November, 2005.

<sup>12</sup> *Ibid.*

<sup>13</sup> Comparable figures were not updated in the most current Department of Homeland Security report: “Immigration Enforcement Actions: 2005.”

<sup>14</sup> Government Accountability Office, “Weaknesses Hinder Employment Verification and Worksite Enforcement Efforts,” August 2005, accessed April 26, 2007, [www.gao.gov](http://www.gao.gov) (Report GAO-05-813).

<sup>15</sup> *Ibid.*

<sup>16</sup> “The Real ID Act: National Impact Analysis,” National Governors Association, National Conference of State Legislators, and American Association of Motor Vehicle Administrators, September, 2006, accessed April 26, 2007 at [www.nga.org](http://www.nga.org).

<sup>17</sup> Open Letter on Immigration, June 19, 2006, accessed on September 25, 2006, [www.independent.org](http://www.independent.org).

<sup>18</sup> Economic Report to the President, February 2005, (Washington D.C.:U.S. Government Printing Office.), p. 115.

<sup>19</sup> James P. Smith and Barry Edmonston, Editors, “The New Americans: Economic, Demographic, and Fiscal Effects of Immigration,” National Research Council, 1997, accessed on May 23, 2007 at [www.nap.edu/catalog/5779.html](http://www.nap.edu/catalog/5779.html).

<sup>20</sup> Stuart Anderson, “The Debate Over Immigration’s Impact on U.S. Workers and the Economy,” National Foundation for American Policy, July 2006, accessed on March 29, 2007, [www.nfap.com](http://www.nfap.com).

<sup>21</sup> Occupations requiring average on-the-job training levels that were either short-term (up to one month) or moderate (one to two months).

<sup>22</sup> Martha Wettermann, Statistical Analyst Supervisor, Tennessee Department of Labor and Workforce Development, Research and Statistics, “Shortages in Low Skills Clusters,” e-mail to author, February 8, 2007.

<sup>23</sup> U.S. Department of Commerce, “Testimony before the Judiciary Committee, United States Senate, July 12, 2006.

<sup>24</sup> Rakesh Kochar, “Growth in the Foreign-Born Workforce and Employment of the Native Born,” Pew Hispanic Center, August, 2006, accessed September 25, 2007 at [www.pewhispanic.org](http://www.pewhispanic.org).

<sup>25</sup> According to its website ([www.aifl.org](http://www.aifl.org)), the American Immigration Law Foundation is a tax-



exempt, not-for-profit educational charitable foundation dedicated to increasing public understanding of immigration law and policy and the value of immigration to American society.

<sup>26</sup> Rob Paral, "Essential Workers: Immigrants are a Needed Supplement to the Native-born Labor Force," March, 2005, accessed December 7, 2007, [www.aifl.org](http://www.aifl.org), American Immigration Law Foundation.

<sup>27</sup> Rob Paral, "The Growth and Reach of Immigration," August, 2006, accessed September 26, 2007, [www.aifl.org/ipc](http://www.aifl.org/ipc), American Immigration Law Foundation.

<sup>28</sup> Ibid.

<sup>29</sup> Giovanni Peri, "Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004," *Immigration Policy in Focus*, October, 2006, accessed April 26, 2007, [http://www.aifl.org/ipc/ipc\\_index.asp](http://www.aifl.org/ipc/ipc_index.asp), American Immigration Law Foundation.

<sup>30</sup> Council of Economic Advisors, Executive Office of the President, "Economic Report to the President," February 2005, (Washington D.C.:U.S. Government Printing Office.), p. 105.

<sup>31</sup> Giovanni Peri, "How Immigrants Affect California Employment and Wages," *California Counts*, Volume 8, Number 3, February 2007, (Public Policy Institute of California), accessed April 26, 2007, [www.ppic.org](http://www.ppic.org).

<sup>32</sup> Giovanni Peri, "Rethinking the Effects of Immigration on Wages: New Data and Analysis from 1990-2004," *Immigration Policy in Focus*, October, 2006, accessed April 26, 2007, [http://www.aifl.org/ipc/ipc\\_index.asp](http://www.aifl.org/ipc/ipc_index.asp), American Immigration Law Foundation.

<sup>33</sup> Council of Economic Advisors, p.107.

<sup>34</sup> Ibid., p.108.

<sup>35</sup> James P. Smith and Barry Edmonston, Editors, "The New Americans: Economic, Demographic, and Fiscal Effects of Immigration," National Research Council, 1997, accessed on May 23, 2007 at [www.nap.edu/catalog/5779.html](http://www.nap.edu/catalog/5779.html).

<sup>36</sup> Carole Keeton Strayhorn, "Undocumented Immigrants in Texas: A Financial Analysis on the Impact to the State Budget and Economy," Special report of the Texas Office of the Comptroller, December 2006, accessed April 26, 2007, [www.window.state.tx.us/specialrpt/undocumented](http://www.window.state.tx.us/specialrpt/undocumented).

<sup>37</sup> Ibid., p.1.

<sup>38</sup> Ibid., p. 1.

<sup>39</sup> John D. Kasarda, James H. Johnson, Jr., Stephen J. Appold, Derrek L. Croney, "A Profile of Immigrants in Arkansas, Volume 2: Impacts on the Arkansas Economy," Urban Institute and Kenan

Institute of Private Enterprise, 2007, accessed May 23, 2007, <http://www.urban.org/publications/411441.html>.

<sup>40</sup> Federation for American Immigration Reform, accessed May 23, 2007 at [www.fairus.org](http://www.fairus.org). Studies are available for New York, (2006), New Jersey (2007), Texas (2007), as well as estimates for other states using the same methodology.

<sup>41</sup> John D. Kasarda, James H. Johnson, Jr., Stephen J. Appold, Derrek L. Croney, "A Profile of Immigrants in Arkansas, Volume 2: Impacts on the Arkansas Economy," Urban Institute and Kenan Institute of Private Enterprise, 2007, accessed May 23, 2004.

<sup>42</sup> Government Accountability Office, "Illegal Alien Schoolchildren: Issues in Estimating State-by-State Costs," GAO-04-733, June, 2004. Accessed on March 9, 2007 at [www.gao.gov](http://www.gao.gov).

<sup>43</sup> Tennessee General Assembly, 2007, SB2177 - HB 2293 and SB2334 - HB2353 (appropriations bill.). Cost estimate from Fiscal Review Committee, "Fiscal Memorandum SB 2177 – HB 2293", May 29, 2007.

<sup>44</sup> P.L. 104-208, Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (Sec. 505) as cited in National Conference of State Legislatures, "In-State Tuition and Unauthorized Immigrant Students," August, 2006, accessed January 24, 2007, [www.ncsl.org](http://www.ncsl.org).

<sup>45</sup> *Martinez v. Roberts*, NO. CV 05-2064 (California Superior Court) Oct. 6, 2006 as reported by the National Immigration Law Center on Oct. 10, 2006, accessed January 25, 2007, [www.nilc.org/immlawpolicy](http://www.nilc.org/immlawpolicy).

<sup>46</sup> Carl Krueger, "In-state Tuition for Undocumented Immigrants," Education Commission of the States, August 2006, accessed October 6, 2006, <http://www.ecs.org/clearinghouse/61/00/6100.htm>.

<sup>47</sup> See [www.state.tn.us/labor-wfd](http://www.state.tn.us/labor-wfd), accessed on May 25, 2007.

<sup>48</sup> Eligibility requirements included at [www.covertn.gov](http://www.covertn.gov), accessed on June 12, 2007.

<sup>49</sup> U.S. Government Accountability Office, "Undocumented Aliens: Questions Persist about their Impact on Hospitals' Uncompensated Care Costs," May 2004 (Report number GAO-04-472), accessed April 24, 2007, [www.gao.gov](http://www.gao.gov).

<sup>50</sup> Memo from J.D. Hickey, Deputy Commissioner, Bureau of TennCare to Senators Jim Bryson and Kathryn Bowers, April 10, 2006.

<sup>51</sup> U.S. Government Accountability Office, "Undocumented Aliens: Questions Persist about their Impact on Hospitals' Uncompensated Care

Costs,” May 2004. (Report number GAO-04-472), accessed April 24, 2007, [www.gao.gov](http://www.gao.gov).

<sup>52</sup> Ibid., p.3.

<sup>53</sup> Tennessee Department of Safety, Tennessee Driver License Issuance Agency, “Certificate for Driving Immigration Summary,” E-mail to author, December 15, 2006.

<sup>54</sup> Ibid.

<sup>55</sup> Ruben Rumbaut and Walter A. Ewing, “The Myth of Immigrant Criminality and the Paradox of Assimilation: Incarceration Rates among Native and Foreign-Born Men,” Immigration Policy Center, Spring, 2007, accessed April 26, 2007, [www.aifl.org/ipc](http://www.aifl.org/ipc), American Immigration Law Foundation.

<sup>56</sup> Ibid., p.1.

<sup>57</sup> According to their website ([www.fairus.org](http://www.fairus.org)), the Federation for American Immigration Reform (FAIR) is a national, nonprofit, public-interest, membership organization of concerned citizens who share a common belief that our nation’s immigration policies must be reformed to serve the national interest.

<sup>58</sup> “Illegal Aliens and Crime Incidence,” Federation for American Immigration Reform, accessed April 10, 2007, [www.fairus.org](http://www.fairus.org).

<sup>59</sup> U.S. Immigration and Customs Enforcement, Fact Sheet: Section 287(G) Immigration Enforcement, September 9, 2005 (Revised), [www.icw.gov](http://www.icw.gov) accessed March 27, 2007.

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