



A Judicial Watch Special Report: !
U.S. Border Patrol Survey Analysis



Detailing the U.S. Government's Polling of Apprehended Illegal Immigrants
on the Southern Border in January 2004

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Introduction

This Judicial Watch Special Report analyzes a U.S. Border Patrol Survey of apprehended illegal immigrants conducted in January 2004. The surveys were obtained by Judicial Watch under the provisions of 5 U.S.C. §552, the Freedom of Information Act (“FOIA”), as part of the organization’s ongoing public education program. The subject FOIA request, first filed on February 27, 2004, is being litigated in the U.S. District Court for the District of Columbia (*Judicial Watch v. Department of Homeland Security*, Civil Action No. 04-0907 (RBW)).

Judicial Watch is a non-profit, non-partisan public interest group that investigates and prosecutes government corruption. Judicial Watch was founded in 1994 with the mission of promoting and restoring ethics and morality in the United States government and legal systems. As part of that mission Judicial Watch is a leader, with 600,000 supporters, in fighting for transparency, integrity and accountability in government, law and politics.

Judicial Watch makes aggressive use of open records and open meetings laws as a means to educate the American public on the operations of their government and to hold public officials accountable. We have filed well over 400 open records requests and successfully litigated many of these requests in federal and state courts. Judicial Watch also provides technical, research and litigation assistance to public interest groups interested in obtaining information about government activity who may not have the necessary resources or experience to pursue information on their own as part of the Judicial Watch Open Records Project.

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Executive Summary

President Bush's "temporary guest worker" proposal of January 7, 2004 was broadly interpreted as an illegal immigration amnesty program around the country and abroad. The Bush administration ordered the U.S. Border Patrol to survey apprehended illegal immigrants concerning President Bush's proposal. The results indicated that President Bush's proposal had actually lured greater numbers of illegal immigrants to violate the law. Politically inconvenient and/or potentially embarrassing data from the Border Patrol survey resulted in the Bush administration calling off the survey on January 27, 2004. The U.S. government never released a report based on the survey.

The White House directed Homeland Security Public Affairs Officers to deliberately withhold information from the public and the media about the Border Patrol survey and a related spike in illegal immigration. The Bush administration misled Americans for political purposes. The White House approved talking points included:

- Do not talk about amnesty, increase in apprehensions, or give comparisons of past immigration reform proposals.
- Do not provide statistics on apprehension spikes or past amnesty data.

While the Border Patrol's unscientific survey and its aborted execution may not provide a comprehensive picture of the relationship between President Bush's immigration proposal and illegal immigration, the initial data is deeply disturbing. Analysis of the raw data from the survey forms indicates:

- 45% crossed illegally based on rumors of a Bush administration amnesty.
- 63% received Mexican government or media information supporting the notion of a Bush administration amnesty.
- 64% previously entered the United States illegally.
- 80% desired to apply for amnesty.
- 66% desired to petition for family members to join them in the U.S.

A detailed summary of our findings and conclusions can be found starting at page 15 of this report.

Judicial Watch will continue to pursue this case and other illegal immigration matters, and report facts to the American people as part of its mission as a public interest educational foundation.

Background

On January 7, 2004, President George W. Bush gathered members of his cabinet in the East Room of the White House, including Secretary of State Colin Powell, Attorney General John Ashcroft, Secretary of Commerce Don Evans and Secretary of Homeland Security Tom Ridge, for a speech proposing a new “temporary worker program.” Members of Congress also joined the president in his announcement: Senator Larry Craig, Congressman Chris Cannon, and Congressman Jeff Flake. The President took time to specifically recognize other guests at the policy address. These guests included Mexican Ambassador Tony Garza (whom Mr. Bush referred to as a “member of my cabinet”) as well as Chairman of the Hispanic Alliance for Progress, Manny Lujan; Gil Moreno, the President and CEO of the Association for the Advancement of Mexican Americans; Roberto De Posada, the President of the Latino Coalition; and Hector Flores, the President of the League of United Latin American Citizens (LULAC).

President Bush’s January 7th proposal featured four main points:

First, America must control its borders. Following the attacks of September the 11th, 2001, this duty of the federal government has become even more urgent. And we're fulfilling that duty.

For the first time in our history, we have consolidated all border agencies under one roof to make sure they share information and the work is more effective. We're matching all visa applicants against an expanded screening list to identify terrorists and criminals and immigration violators. This month, we have begun using advanced technology to better record and track aliens who enter our country -- and to make sure they leave as scheduled. We have deployed new gamma and x-ray systems to scan cargo and containers and shipments at ports of entry to America. We have significantly expanded the Border Patrol -- with more than a thousand new agents on the borders, and 40 percent greater funding over the last two years. We're working closely with the Canadian and Mexican governments to increase border security. America is acting on a basic belief: our borders should be open to legal travel and honest trade; our borders should be shut and barred tight to criminals, to drug traders, to drug traffickers and to criminals, and to terrorists.

Second, new immigration laws should serve the economic needs of our country. If an American employer is offering a job that American citizens are not willing to take, we ought to welcome into our country a person who will fill that job.

Third, we should not give unfair rewards to illegal immigrants in the citizenship process or disadvantage those who came here lawfully, or hope to do so.

Fourth, new laws should provide incentives for temporary, foreign workers to return permanently to their home countries after their period of work in the United States has expired.

Today, I ask the Congress to join me in passing new immigration laws that reflect these principles, that meet America's economic needs, and live up to our highest ideals.¹

The remainder of President Bush's speech focused on implementation of these four objectives. A White House Fact Sheet detailing President Bush's plan can be found at Enclosure 1.

Open Records Request Filed

In late February 2004, Judicial Watch's Investigations Department prepared FOIA requests to the Department of Homeland Security ("DHS") regarding a U.S. Border Patrol survey being conducted with apprehended illegal immigrants. The survey asked questions about "rumors" of a Bush administration proposal for the U.S. government to grant amnesty to all illegal immigrants entering the United States.

The Border Patrol survey was ordered by the Bush administration following President Bush's January 7th policy speech proposing a "temporary guest worker" program for illegal immigrants. Within a week of President Bush's speech Border Patrol agents began asking randomly chosen illegal immigrants caught at the border if they were trying to get across because of Bush's proposal.

Judicial Watch filed a lawsuit against the Department of Homeland Security on June 4, 2004 due to the agency's failure to respond substantively to any of the elements of the FOIA request. Finally, in May 2005, the U.S. Citizenship and Immigration Services agency (a subordinate component of DHS) made a partial response to Judicial Watch's FOIA request by producing nearly 1000 records. Our staff analyzed the documents – tabulating results; collecting anecdotal responses; and performing much needed analysis of the raw data the agency provided.

Because the early results of the survey seemed to indicate President Bush's amnesty proposal had actually lured greater numbers of illegal immigrants to violate the

¹ "President Bush Proposes New Temporary Worker Program," Remarks by the President on Immigration Policy, The East Room, The White House, January 7, 2004, found at: <http://www.whitehouse.gov/news/releases/2004/01/20040107-3.html>

law, the Bush administration ordered the survey called off on January 27, 2004.² The U.S. government never released a report based on its aborted survey.

Judicial Watch had to file suit in federal court to compel the government's production of the closest thing the American public has seen to an "official report" of the survey's results. The document is an e-mail purportedly from "Senior Border Patrol Agents" to other "Agents in Charge," dated Thursday, January 29, 2004 at 3:01 PM, Subject: "Casa Blanca [i.e., White House] Additional Info." (See Enclosure 2) The identity(ies) of the e-mail's author(s) and recipient(s) were redacted by the Border Patrol under FOIA Exemption (b)(7)(c) – to protect the personal privacy of the agents. The body of the e-mail states:

Temporary Guest Worker Program Questionnaire:

Southwest Border:

Total number of Questionnaires: 1,711

Total number of positive responses 655 38%

The DHS has not produced 1,711 questionnaires to Judicial Watch in response to its FOIA request or subsequent litigation. Judicial Watch has surveys for only 882 respondents. Nowhere in the documentation is the term "positive responses" defined. What is meant by "positive responses?" The disparity in numbers and statistics is just one part of this controversial survey that will be addressed in a narrative fashion below and through legal means in our ongoing litigation against the DHS.

The Bush administration ordered U.S. Border Patrol officers not to discuss the survey. In a remarkable, one-page, DHS letterhead document marked: "Public Affairs Guidance – White House Approved Talking Points – Temporary Worker Program – INTERNAL USE ONLY" (See Enclosure 3), the agency propounded these talking points:

- Do not talk about amnesty, increase in apprehensions, or give comparisons of past immigration reform proposals.
- Do not provide statistics on apprehension spikes or past amnesty data.

These public affairs directives are at odds with the concepts of open government and public accountability. At a time when the United States faces an illegal immigration crisis, the White House directed Homeland Security Public Affairs Officers ("PAO") to withhold information from the public deliberately, thus misleading Americans for political purposes.

² Jerry Seper, "More Aliens Try to Enter for Amnesty," *The Washington Times*, February 19, 2004.

Problems with the Survey

According to the documents obtained under the Judicial Watch FOIA request, the Office of Border Patrol Intelligence tasked Border Patrol Intelligence Agents in sectors along the Mexican border to complete a questionnaire on a random basis for aliens of all countries encountered by Service Agents. The tasking was expressed to the field as a “Priority Intelligence Requirement” (PIR) – a formal means of tasking intelligence collection requirements to field elements in a paramilitary law enforcement organization such as the U.S. Border Patrol.

Use of the term “PIR” has special significance within the intelligence community. It is a term developed by U.S. Army Intelligence and later adopted by other intelligence services (e.g., all military services and the Defense Intelligence Agency), including the Border Patrol, with a very specific, technical meaning. The definition of a PIR is: “An intelligence requirement associated with a decision that affects mission accomplishment.”³ (See Enclosure 4) The intelligence requirement has a stated priority in all planning and decision making.

Clearly, the subject survey was extremely important to the leadership of the U.S. Border Patrol and Homeland Security. Conducting the survey was categorized as a “do or die” requirement essential to the accomplishment of the Homeland Security/Border Patrol mission. It is reasonable to conclude, based upon the timing of the President’s January 7th speech and the PIR tasking, also to begin January 7th, that the agencies’ sense of urgency was driven by the White House.

It is both frustrating and disappointing to see from the documents produced how the Border Patrol took an intelligence requirement that was deemed critical to the accomplishment of the agency’s mission and botched the definition, tasking, execution, reporting and analysis tasks. The survey’s poor design and inconsistent, incomplete execution does not lend itself to scientific or complex statistical analysis.

First, the PIR survey was poorly drafted. The survey contains both open-ended and compound questions. For example, when an apprehended immigrant is asked: “Have you been to the U.S.A. prior to this incident, legally or illegally?” and the subject answers simply “Yes,” – how do agents uniformly and consistently record such a response? To what is the subject answering “Yes?” Some questions assume knowledge or activity that the interrogator or subject may or may not have known or conducted. (“Is the Temporary Worker Program being interpreted in your country as a type of amnesty?”) Also, key terms are not clearly and uniformly defined – not just for the illegal immigrant being questioned, but for the agent interrogating the apprehended immigrant. Too much is left open to individual interpretation.

³ U.S. Army Field Manual 2-0, “Intelligence,” May 2004. Within the “intelligence community” the lexicon for intelligence requirements, tasking, reporting and analysis is, thankfully, being increasingly harmonized and standardized. In the alphabet soup of bureaucratic government jargon and acronyms, “PIR” is a standard and important term all U.S. intelligence services recognize and understand.

The PIR should have been drafted strictly using basic interrogatives: Who, What, When, Where, How and Why. Nothing should be assumed and no “false choices” should be offered the subject of the survey. All questions should be designed in the “dichotomous tree” design – simple “Yes” and “No” questions leading to further levels of “Yes/No” detail, with the ability to add narrative detail once the fundamental question is satisfied.

Since most Border Patrol agents are neither trained interrogators nor sociologists, conducting a survey such as the one driven by this PIR would have required significant additional training in order for any of the data to be reliable. Remember, these apprehended illegal aliens are being questioned by armed law enforcement officers in a “custodial” environment. They are very likely to tell the agents what they think the agents want to hear.

Two additional resources are essential for gathering valid data on a PIR survey such as this: (1) time to conduct the surveys properly and (2) attention to detail in questioning and recording their responses. The surveys provided to Judicial Watch indicate that those two factors were simply not part of the equation for agents legitimately busy with their regular duties.

Further complicating the difficulties of the Border Patrol survey is the fact that different versions of the survey were adapted by various Border Patrol offices. Offices were not asking the same questions, or sets of questions, of apprehended illegal immigrants. Anyone consolidating and analyzing the responses is left to compare “apples and oranges” in some of the questions/replies.

Some Border Patrol offices submitted consolidated reports omitting individual responses to key questions. They provided numbers for the simple “Yes/No” replies, but simply ignored questions designed for a narrative response.

As an intelligence gathering tool, the PIR survey is a disaster. It doesn’t fare too well from a sociological perspective either.

“But even then, it would be a questionable project,” said Nestor Rodriguez, a sociology professor and co-director of the Center for Immigration Research at the University of Houston. “That’s because the Border Patrol isn’t equipped to handle sociological research,” he said. “The intentions and survey questions may be legitimate, but the methodology would make the results unreliable,” he said.

“You have officers of the law interviewing detained migrants,” said Rodriguez. “It’s the worst possible environment in which to gather social data. Plus, their sample won’t be representative – what about the migrants they don’t catch?”⁴

⁴ Hernan Rozemberg, “Immigrant Survey Melts in the Spotlight,” *San Antonio Express-News*, January 30, 2004.

The survey does have residual value only as a means of illuminating just how the DHS and the Border Patrol are doing business. Some value can also be gleaned from the raw, preliminary numbers, based on our first review of the recoverable data from the survey documents.

What the PIR Survey Asks

We have provided a sample of the original PIR survey tasking document at Enclosure 5. Here is the text of the original PIR tasking:

Obtain the following information: The Office of Border Patrol Intelligence is requiring that a Border Patrol Intelligence Agent complete a questionnaire, on a random basis, for aliens of all countries encountered by Service Agents for the purpose of collecting data concerning the issue of amnesty. The following is a list of questions to be asked of and answered by the aliens interviewed.

- What country do you claim your citizenship and residence?
- Do you have immediate family or other relatives within the U.S.A.?
- How long did you originally plan to remain in the U.S.A.?
- Did the rumors of amnesty influence your decision to enter the U.S.A.?
- Have you heard from your government, or other person any mention of amnesty in the future by the U.S. government?
- If yes, how did you hear about it? (Radio, TV, acquaintances, etc.)
- Have you been to the U.S.A. prior to this incident, legally or illegally?

- Do you plan to apply for amnesty if it is offered?
- What proof do you have to indicate you are eligible for amnesty? (Documents indicating proof of residence)
- How do you plan to obtain this documentation?
- Do you plan to become a U.S. citizen?
- Will you petition for other family members?

By reviewing and analyzing each of the survey documents, it becomes apparent that the original PIR survey was adapted and expanded by different Border Patrol offices. No documentation was provided to Judicial Watch describing how or why those adaptations were instituted. The changes to the survey are interesting because they show how the Border Patrol was thinking as the survey began to collect data. New questions arose based on survey responses, local conditions and additional intelligence requirements being fed into the survey vehicle as a means of collecting data on matters that surfaced during the three weeks the survey was conducted. The following are additional questions (or *variations* from the original PIR questions) that appear on later versions of survey forms produced to Judicial Watch:

- Is the Temporary Worker Program being interpreted in your country as a type of amnesty?
- Did the rumors of the Program or amnesty influence your decision to enter the U.S.A.?
- Have you heard from your government, news media or other person any mention of this Program or Amnesty?
- If you used an alien smuggler to enter the U.S. illegally, how much were you charged?
- Was it difficult to find a smuggler to help you cross the border?
- Where did you come in contact with this smuggler? (Your hometown, border)

- How long did it take you to travel from your hometown to the border?
- How long did you stay at the border before you crossed?
- What is your destination?
- How do you plan to obtain this documentation?
[Documents indicating proof of residency.]

These variations and adaptations of the PIR survey questions are important to note for two reasons: (1) no documentation has been produced to Judicial Watch explaining the changes/adaptations to the PIR survey by the Border Patrol and (2) the changes indicate that new information either needed to be collected or was “stumbled upon” information that merited a change to the PIR tasking to the field offices. Changes to the intelligence requirements that comprise a PIR are not a bad thing. In fact, they tend to substantiate the value of the original requirements, if only to further highlight or fine tune the information truly required to fill intelligence gaps. To paraphrase Defense Secretary Rumsfeld, it’s a case of not knowing what you do not know until you know it.

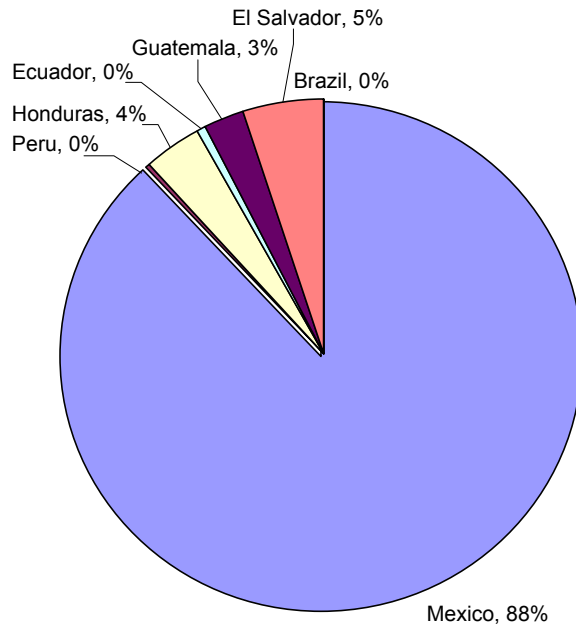
Analyzing and Tabulating the Survey Responses

Given the very raw and inconsistently derived and reported data from the Border Patrol PIR survey, it was incumbent upon the investigations and research arm of Judicial Watch to make some sense of the material and present a useful report to educate the public concerning the activities of the Border Patrol and the DHS with respect to the Bush administration’s immigration proposals.

Our staff pored over the documents – comparing and contrasting forms, questions responses, and related documents. One of the first challenges was overcoming the PIR’s shortcomings as detailed above. The raw data we were provided simply did not lend itself to a scientific or complex statistical analysis. We decided to focus on eight (8) questions from the survey. They were the eight most answered questions that also helped to define the survey population and the questions most pertinent to the Bush administration’s proposed immigration policy changes. In cases where the question was adapted by the Border Patrol during the survey, we have represented the most often asked version of the question. In the case of a compound question (e.g., “Have you been to the U.S.A. prior to this incident, legally or illegally?”) we present the question based upon the responses and anecdotal remarks from the survey forms. For this question, recording and representing the data as to the number of persons who have previously crossed into the U.S. illegally. The eight questions are presented below with a graph or chart to help

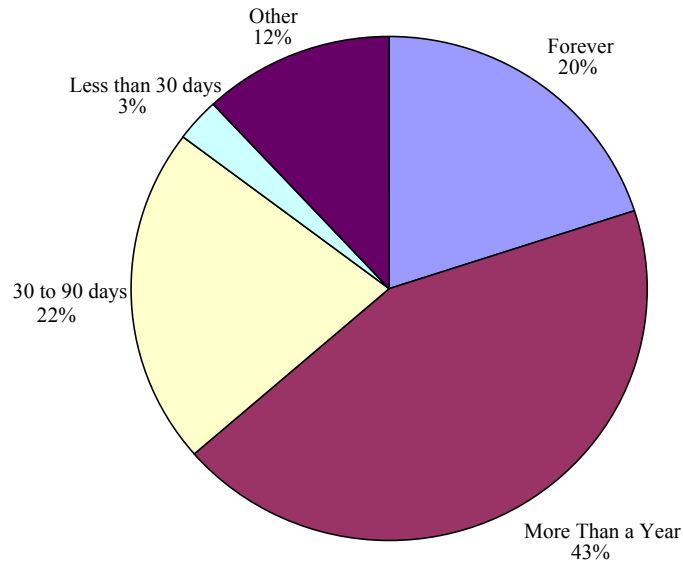
depict the survey data. Anecdotal responses or remarks from the original survey forms are associated with each question and graph/chart.

Survey Respondents Country of Origin: !



Mexican – 777; El Salvadoran – 42; Honduran – 34; Guatemalan – 24; Ecuadorian – 3; Peruvian – 1; Brazilian – 1; TOTAL = 882.

Plans to Stay in the U.S.: !



Forever – 163; Several years – 95; 1-2 years – 263; Several months – 92; 30-90 days – 86; a few days – 24; No answer – 80; Various other responses – 17.

Amnesty rumors influence your decision to enter the U.S.A.?: !



Have you heard from your government or other sources (TV/radio) any mention of amnesty by the U.S. Government?

Yes – 532 (61.2%); No – 329 (37.8%); N/A – 8 (1%).

Sample Responses:

- “Heard a speech by Fox and Bush about amnesty.”
- “On TV while in Houston, TX.”
- “Yes, from the Mexican government.”
- “Everyone is talking about it.”
- “Everywhere, radio, TV, and people talking.”
- “On the news that George Bush and Fox are agreeing to it.”
- “Yes, from a Federal policeman in Mexico.”

Did amnesty rumors influence your decision to enter the U.S.A.?

Yes – 393 (44.6%); No – 477 (54.2%); No answer – 9 (1%); Don't know – 1 (0.2%)

Sample Responses:

- “Yes, I am coming for the Bush amnesty program.”
- “Yes, after hearing it on the news, I thought that I would be able to fix my papers.”
- “Yes, that's why I crossed.”
- “Yes, I am coming for amnesty program that your president Bush is giving.”

Will you apply for amnesty? !

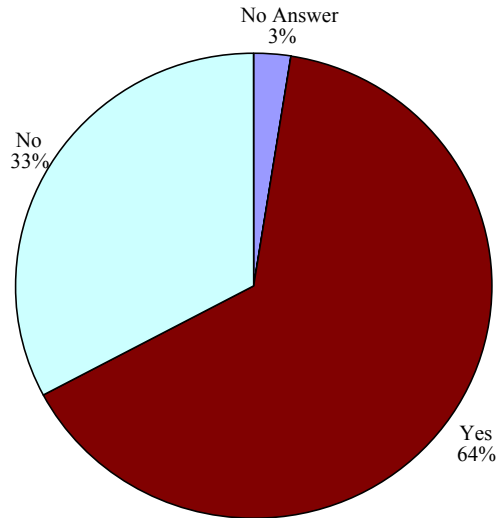
Yes – 708 (80.6%); No – 148 (16.8%); Unsure – 19 (2.1%); N/A – 3 (0.5%).

Sample Responses:

“Yes, of course!”

“*Si, Yo no estoy estúpido.*” (Yes, I am not stupid.)

Previous Illegal Crossings Into the U.S.?



Yes – 542; No – 276; N/A – 21; claimed previous legal crossings – 14.

Sample Responses:

“Illegally – 3 times.”

“Yes, One time illegally and I was caught in Casa Grande, AZ.”

“Yes, illegally for 4 years in Chicago, Ill.”

“I have entered several times illegally.”

“I have been apprehended twice.”

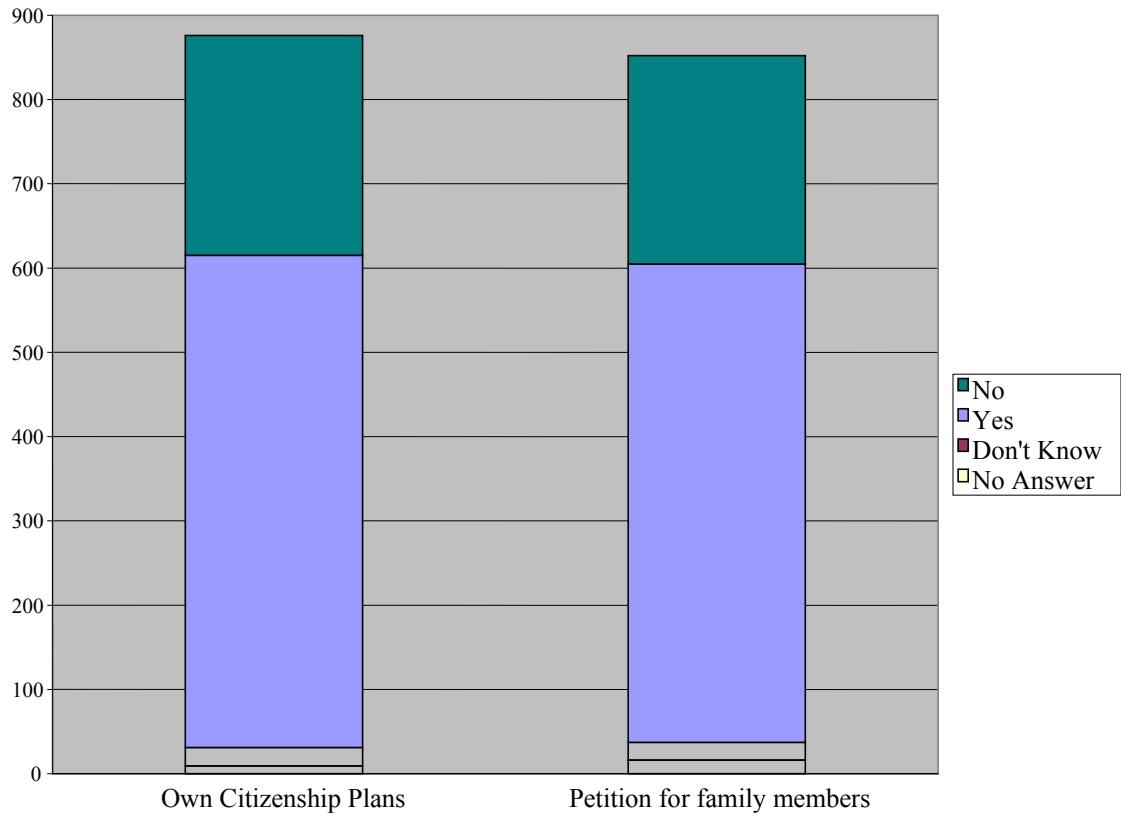
“I have entered several times illegally.”

“Lived in GA for six years.”

“Yes [illegally]. Previously here 12 years.”

“Yes, I was on vacation here for three months illegally.”

Plans for Citizenship?



Do you plan to become a U.S. Citizen? !

Yes – 584 (66.6%); No – 261 (29.7%); Unsure – 22 (2.5%); N/A – 9 (1.2%).

Do you plan to petition for other family members? !

Yes – 568 (66.6%); No – 247 (28.9%); Unsure – 21 (2.4%); N/A – 16 (2.1%).

Findings !

- The Department of Homeland Security stonewalled Judicial Watch's FOIA request for the survey and related records until we brought a lawsuit in the U.S. District Court for the District of Columbia.
- Record production from DHS has been inadequate in four (4) subject areas and completely non-responsive in three (3) others.
- The Border Patrol/DHS have yet to produce approximately 829 survey documents Judicial Watch specifically requested (roughly half of the surveys).
- The timing and tasking of the Border Patrol PIR Survey was keyed to President Bush's "temporary guest worker" program speech of January 7, 2004.
- President Bush's "temporary guest worker" proposal was broadly interpreted as an illegal immigration amnesty around the country and abroad.
- Early results from the Border Patrol PIR Survey indicated President Bush's proposal had actually lured greater numbers of illegal immigrants to violate the law.
- Politically inconvenient and/or potentially embarrassing data from the Border Patrol PIR Survey resulted in the Bush administration calling off the survey on January 27, 2004.
- No U.S. government report was produced or released to the public from the survey results, thus wasting valuable taxpayer's money and other resources.
- DHS/Border Patrol Public Affairs officers and agents were ordered by the White House to withhold information from the public and the media – deliberately misleading Americans for political purposes.
- The Border Patrol's PIR Survey was poorly designed and of very limited utility – both as an intelligence collection tool and as a sociological experiment.
- The survey's poor design and incomplete, inconsistent execution does not lend itself to scientific or complex statistical analysis.
- Anecdotal remarks from interviews recorded on the survey forms were helpful in providing perspective on the responses and helping to gauge reporting trends.
- The Border Patrol PIR Survey was tasked as an additional duty/requirement to agents struggling to maintain their current, regular workload. Illegal crossings

increased following President Bush's January 7th speech.

- Analysis of the raw data from the survey forms indicates:
 - 45% crossed illegally based on rumors of a Bush administration amnesty
 - 63% received Mexican government or media information supporting the notion of a Bush administration amnesty
 - 64% previously entered the United States illegally
 - 80% desired to apply for amnesty
 - 66% desired to petition for family members to join them in the U.S.
- Roughly 25% of those who stated rumors of a Bush administration amnesty had NO influence on their decision to cross said they were determined to come to the U.S. anyway.

Conclusions

President Bush's proposed "temporary worker program" was broadly interpreted as an amnesty offer to illegal immigrants. A spike in illegal immigration following President Bush's speech was surveyed as a priority intelligence requirement for a three-week period by the Border Patrol. Survey results were politically unfavorable to the Bush administration, who ordered the survey stopped. The White House directed public affairs officers to withhold information in order to mislead the public and stave off potential political embarrassment. The government only produced records material to the survey once Judicial Watch filed a FOIA lawsuit in federal court. The government continues to withhold additional records concerning this matter. Judicial Watch will continue to pursue this case and other illegal immigration matters, and report facts to the American people, as part of its mission as a public interest education foundation.