



# Decriminalizing Illegal Immigration

By Pawel Styrna | July 2019

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## Summary

The near-universal endorsement by the Democratic presidential primary field has moved the idea of decriminalizing illegal entry from the backrooms to the national stage. Once reserved to academic circles, there is serious consideration and strong support for making illegal border crossing a civil, rather than a criminal offense. In fact, former Colorado Gov. John Hickenlooper and Sen. Michael Bennet, also of Colorado, were the only candidates to doubt the wisdom of such a proposal.

As Andrew Sullivan of the liberal New York magazine wrote, “In terms of enforcement of the immigration laws, this is a joke. It renders the distinction between a citizen and a noncitizen close to meaningless.”

Sullivan is right - repealing the current statutes that define improper entry as a crime would be reckless and would create additional incentive for illegal immigration. It would effectively represent an amnesty for 12.5 million illegal aliens, would dramatically lower the standard for becoming a citizen and would cripple an already-overwhelmed Department of Homeland Security. By decriminalizing illegal entry, Democrats and their allies would crush our already broken immigration system and open the borders so wide that we may never be able to regain control of them again. Americans must push back against such open-borders radicalism which encourages further illegal entries and law-breaking.

## The Issue

In an effort to appeal to special interest constituencies and to further their political goals, some in the Democratic Party are now proposing decriminalizing illegal immigration. While this is an idea once entertained on the fringes and among amnesty proponents, it was elevated when former San Antonio Mayor Julian Castro placed it at the center of his presidential immigration policy platform. Nearly all of his fellow Democratic primary opponents have since expressed support for changing immigration law so that illegal entry into the U.S. would be classified as a civil offense, rather than a crime. House

Speaker Nancy Pelosi has also backed this radical position, arguing that “you cannot say anybody coming across the border is breaking the law.”

Having been a member of the House during multiple immigration debates, Pelosi is fully aware that entering the U.S. without authorization is a violation of both civil and criminal law.

In other words, if the Democrats have their way, illegal entry would be considered a minor offense and a non-deportable one. It would, in essence, render our immigration laws mute and would encourage migrants from across the world to undertake a dangerous journey in the hope of eventually gaining citizenship, which is the natural outgrowth of this idea.

As we have seen in states and localities across the nation, the normalization of illegal immigration serves as step one toward other benefits, such as driver’s licenses, health care, education benefits, and jobs. It also is an idea designed to directly contrast with President Trump’s to stop the crisis at the southern border and stem the illegal migration surge. These policies - no penalties for violating our borders coupled with cost-free entitlements - would put America on a path toward a permanent border crisis, which would harm both U.S. citizens and the migrants alike.

## **What the Law Currently Says**

In April 2019, Democratic presidential candidate Julian Castro issued a policy proposal called “People First Immigration.” One of its elements was a call to repeal Section 1325 of the Immigration and Nationality Act.

Unlawful entry into the U.S. has been a criminal offense since 1929. Currently, INA § 275 (U.S.C. § 1325) makes it a crime to enter the U.S. without inspection and a formal grant of admission by an Immigration Officer. A first offense is a misdemeanor crime. Aliens who have previously been convicted of unlawful entry and attempt additional unlawful entries may be charged with felony Improper Entry by an Alien.

## **The Impact**

While most illegal aliens apprehended are placed into civil removal proceedings, the threat of being criminally charged, convicted, and imprisoned is supposed to serve as a deterrent to illegal migration. Enhanced criminal prosecutions, combined with needed asylum reforms and more immigration judges, would result in a greater deterrent effect with fewer migrants thus believing they could avoid consequences for breaking the law.

However, federal prosecutorial resources are limited and the federal government has proven unwilling or unable to charge and prosecute the nearly 400,000 illegal aliens who are apprehended in the U.S. during a typical year. Eliminating any criminal

prosecution of those who violate our immigration laws will send the wrong message to intending illegal aliens: “Come here and you’ll be allowed to stay, without any negative consequences.”

This would eviscerate our legal immigration system and eliminate any value in applying for citizenship or work permits legally. Why would anyone wait 25-30 years in India or the Philippines to obtain a visa lawfully when they could immediately sneak into the U.S. and stay here without penalty? Decriminalizing illegal immigration is thus not only unfair to American citizens but also foreign nationals wishing to immigrate legally.

It is all the more striking that this completely reckless policy proposal comes at a time of an intensifying border security and humanitarian crisis at our southern border. So far, there have been three months in 2019 in which U.S. Customs and Border Protection (CBP) agents have apprehended more than 100,000 migrants, which are historic highs. That places the U.S. on track to record 1 million apprehensions in FY2019. Given these facts, the proposal to decriminalize illegal immigration will likely turn what is a flood into a full-blown tsunami. That is why Americans must push back against this harmful idea.