

Getting real about illegal immigration

By **PETER D. SALINS**
CONTRIBUTING WRITER

Settling the status of America's millions of "undocumented" residents is long overdue. Recently, President Obama and House Majority Leader Eric Cantor had an acrimonious telephone exchange about this issue. Just a week or so earlier, former Florida Gov. Jeb Bush stirred a hornets nest – at least among the Republicans – when he suggested that illegal immigrants are just trying to give their families a better life.

Clearly, it is time to have a realistic and constructive dialogue on the subject.

Most illegal immigrants will not be leaving the country. So, we have only two options in dealing with these 11 million American residents. We can keep them indefinitely in their current marginal status, with all the hardship this imposes on them and their communities, or acknowledge their ongoing presence among us and legalize it. Both they and the country will be much better off if we pursue the latter course.

Before indicating why, however, let me acknowledge the strong views on the other side that Cantor would have to placate: that unauthorized U.S. residency is a clear-cut instance of lawbreaking and should not be rewarded through "amnesty" – whatever form it might take – and that retroactively condoning it makes a mockery of our immigration laws and insults all those who have been waiting patiently to enter the country legally.

At the same time, the uncomfortable truth is that our illegal immigrants are not the only lawbreakers. We would never have had so many of them if it were not for the thousands of employers who broke the law by hiring them and were never penalized because authorities – quite intentionally – turned a blind eye to the issue until it became too politically visible to ignore.

Perversely, employers have escaped not only legal penalties for their behavior but any criticism from those most exercised about illegal immigration.

Looking back, in other words, there is plenty of blame to go around; now we need to look ahead and tackle the problem constructively. For starters, we should stop demonizing the entire illegal immigrant population – Jeb Bush's main point. For many American industries – and most American consumers – they are an economic boon and, contrary to the popular canards, they aren't mooching off the public trough (their payroll and other taxes far exceed the cost of the government services or payments they receive), disproportionately committing crimes, or taking jobs away from American workers.

Beyond that, we need to appreciate their family circumstances. The current cohort of illegal households includes several million essentially blameless immigrant children and another 5 million who are American-born – meaning fully legal – living with at least one illegal parent. Deporting their parents would orphan these millions of American children or – perhaps worse – wrench them out of the only national home they have ever known and cast them into poverty in a foreign land.

So far, this is only an argument against deportation. Here is the case for legalization. Aside from any "soft" appeals to humanitarian values or qualms about "second class" citizenship, the overriding practical rationale is that doing so will generate a human capital bonanza.

As numerous studies have documented, legalization will give millions of young illegal immigrants – and their American-born siblings – the motivation and means to continue their education; additionally it will encourage millions of their parents to further their own educations and training. For the immigrants, this means higher incomes and less dependency; for the country a quantum increase in economic productivity.

Of course, as Gov. Bush emphasized, any legislation to normalize the status of today's illegal immigrants must be matched by stringent measures to stem future illegal entry. This is not as difficult as it is often made out to be, and does not require heroic structural or manpower deployments at the U.S.-Mexico border. Employer verification and computer data-matching can do the trick – if followed up with severe penalties imposed on employer violators and deportation of foreign "visitors" who overstay their visas.

Congress is considering legislation along these lines, designed to allow most current illegal immigrants to gain legal status while making it virtually impossible for new ones to enter or remain in the country. Congress struck a similar compromise in 1986, with passage of the Immigration Reform and Control Act, which combined amnesty for the 3 million illegal immigrants then in the U.S. with border control measures – including employer sanctions. But then the country completely failed to enforce the second half of the package. Given that history, no legislation granting legalization can pass today without convincing assurance this won't happen again.

If our political leaders can rise above the rancor on both sides of the illegal immigration issue and craft a tough and realistic "grand bargain" on these terms, they would be unleashing an economic and social windfall not only for the affected immigrants but for all of American society.

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EDITORIALS

Luege for O.C. Court No. 35

Immigrant has lived through reality of government injustice.

These editorial pages were impressed by both candidates for Orange County Superior Court, Office 35, which made this endorsement a particularly difficult decision. Carmen R. Luege and Jeff Ferguson have extensive prosecutorial experience, both expressed concern for ensuring citizens' Fourth Amendment privacy rights, particularly when search warrants are involved, and, interestingly, both have lived portions of their lives overseas.

Though this editorial board feels Orange County would be well-served by both candidates, we feel Carmen Luege is the better choice, based on her judicial experience these past few years, an extra commitment to ensuring that she explains judicial proceedings to all those that appear before her, many of whom are unfamiliar with the judicial process, and a demeanor and judicial philosophy that neither rubber-stamps excessive government prosecutorial efforts nor indulges in sweeping, activist decisions.

Ms. Luege was born in Cuba and lived in Spain before her family made it to the United States in 1972. Despite not speaking or writing English when she arrived in America, she graduated high school a few years later as valedictorian and earned her law degree from UCLA. She spent eight years as a litigation associate at O'Melveny & Myers and 17 years as a prosecutor in the U.S. Attorney's Office in Orange County. She was appointed to the

Orange County Superior Court as commissioner, where she has served for five years. In this capacity, she has presided over unlawful-detainer trials, civil harassment cases, small claims, traffic cases and misdemeanor and felony arraignments.

Jeff Ferguson, too, is an accomplished candidate. He lived his earliest years as a "Navy brat" in Japan, China and the Philippines and spent his early career as a graphic designer and a creative director for an advertising and communications firm. He has been with the Orange County District Attorney's Office since 1983, and is currently senior deputy district attorney.



Luege

However, in addition to Ms. Luege's impressive career experience, she has a compelling personal story which informs her jurisprudence and outlook on life. She described an incident from her youth, growing up under a dictatorship in Cuba. When she was 10, police showed up with machine guns, but no warrant, after her family had been falsely accused of possessing an extra ration of something. It was a frightening experience that clearly made a significant impression on her. This, she said, "is what government without control looks like."

We feel that both Ms. Luege and those who appear before her would be well served by this healthy skepticism of government overreach and dedication to ensuring that all parties are properly informed of the judicial process.



ELECTION
2014

Motoike for O.C. Court No. 27

Judge Joanne Motoike was appointed by Gov. Jerry Brown last summer to fill a vacancy on the Orange County Superior Court created by the retirement of Judge Nancy Pollard.

Judge Motoike is vying for a six-year term in June against lawyer Wayne Phillips, who runs his own practice.

The Register endorses Judge Motoike. The incumbent's personal background, combined with her professional experience, make her exceptionally well-qualified to retain the court's Office 27.

Judge Motoike is the daughter of second-generation Japanese-Americans who own a family farm. She developed an interest in the law, she said, after learning the story of her father, who was sent to an internment camp during World War II, and similar stories of Japanese-American families.

She received an undergraduate diploma from UC Irvine before earning her J.D. from Loyola Law School.

Judge Motoike was an Orange County deputy public defender from 1994-2006. From 2006-08, she served as a trial attorney for the United Nations at the International Criminal Tribunal at the Hague, prosecuting high-level political figures for murder, torture, cruelty and crimes against humanity in the former Yugoslavia.



Motoike

trials.

In her relatively short time on the bench, Judge Motoike has earned high marks from fellow jurists on the Superior Court, as well as political and civic leaders and the law enforcement community.

We believe Judge Motoike has a promising judicial career ahead of her. She is the clear choice for Superior Court Office 27.



ELECTION
2014

LETTERS TO THE EDITOR

Digging into tax revenue numbers

As a Certified Public Accountant and professional tax preparer for more than 30 years, I would like to set the record straight on Tom Collins' letter ["The history of business taxes tells all," April 28]. First, President Ronald Reagan's Tax Reform Act of 1986 reduced the top tax rate from 70 percent to 35 percent and closed many egregious loopholes that benefited the wealthy. The government ended up collecting more tax revenue despite the top tax rate being cut in half.

Second, Collins speaks of "a few billionaires parting with a few more bucks to keep our system of government going." He also claims, "Today, the top tax rate is less than 40 percent. Well, let's see: 39.6 percent, plus 3.8 percent for the investment income surcharge, plus a phase-out of itemized deductions, exemptions and credits (all increase one's effective tax rate); that seems like much more than 40 percent to me (state income taxes have also increased exponentially). Tax benefits such as the Lifetime Learning Credit (for education expenses) start to disappear when income exceeds \$107,000; these taxpayers are hardly the "billionaires."

Finally, Collins says, "When my father began working, the top tax bracket was 91 percent, and there

was less whining than today." In fact, much of the whining today is not due to the tax rates so much as due to the complexity and convoluted nature of the tax code. In the 1960s, tax software didn't exist, and returns were prepared by hand, necessitating a tax code that was simple and manageable. Americans today spend 6.1 billion hours on tax preparation.

Perhaps members of Congress should be required to prepare their own tax returns, by hand, without a computer. I suspect we would see meaningful tax reform in about a week.

Robert Weinberg
Anaheim

SHOCKING REASONING

One wonders if Superior Court Judge Derek Johnson paid any attention in his biology or family life classes ["Hayden for Superior Court," Opinion, April 28]. Where did he hear such a fabrication as a female's "body won't permit her" to have sexual intercourse if she doesn't want it? In my almost 30 years as an emergency department nurse, I have assisted at many sexual assault exams and know that women may not choose sexual intercourse, but the rapist will have his way.

What does Johnson think causes the bruising, vaginal tears, abrasions and lacerations in sexual assaults? Force and penetration that is not wanted. He needs to be off the bench and find some help.

Sheryl Picco, RN
Tustin

BE VICTIMS NO MORE

When a group of people have been told for decades they are victims and will always be victims, they tend to believe it ["Life after affirmative action," Opinion, April 26]. There are now millions who don't think they are capable of anything without government intervention and special treatment. And, of course, there are politicians who make a career out of promoting this. It's time to cut the cord. We're not doing the "poor-me" people any favors.

Rodger Clarke
Santa Ana

TROLLEY FOLLIES

While governments are having financial difficulties, they continue to invest millions in questionable projects like the "trolley" in Dana Point ["State demands 'trolley' plan be put on hold for year," News, April 27]. The Orange County Transportation Authority must be run by people who have too much taxpayer money to spend.

This is another non-essential government project pushed by politicians who think they have a credit card with no limit. If providing this service is feasible and worth it, some private outfit will do it better than any government agency.

Is it any wonder many local governments are looking into bankruptcy? Politicians don't know their jobs.

Paul Kartinen
Laguna Hills

Expanding police power on highways

The Supreme Court has just made it easier for the police to stop any of us on the roads. It ruled that an anonymous tip that a



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person is driving erratically is a sufficient basis for a police stop. Although the usual rule is that there must be some corroboration in order for an anonymous tip to be the basis for a police stop, the court held

that this is not required when a vehicle is being pulled over.

On Aug. 23, 2008, an anonymous call was made to 911 that a car was driving erratically and had run the caller off the road. The Mendocino County 911 dispatch team recoded the call as: "Showing southbound Highway 1 at mile marker 88, Silver Ford I50 pickup. Plate of 8-David-94925. Ran the reporting party off the roadway and was last seen approximately 5 [minutes] ago."

Within 15 minutes, police officers located the pickup that had allegedly been driving erratically and the police followed it for five minutes. The driver violated no traffic laws and was not driving erratically during this time. Nonetheless, the officers pulled the truck over solely because of the anonymous 911 call. When the police approached the truck, they said that they smelled marijuana and a search of the truck bed revealed 30 pounds of marijuana.

The driver, Lorenzo Prado Navarette, and the passenger, José Prado Navarette, were arrested. They moved to suppress the evidence from being used against them, arguing that the traffic stop violated the Fourth Amendment because the officers lacked reasonable suspicion of criminal activity. The California Superior Court ruled against them, and they were convicted and sentenced to jail. They appealed.

On April 22, in a 5-4 decision, the Supreme Court rejected the defendants' Fourth Amendment arguments. Justice Thomas wrote the opinion for the court, joined by Chief Justice Roberts and Justices Kennedy, Breyer and Alito. Justice Scalia wrote a vehement dissent, which was joined by Justices Ginsburg, Sotomayor and Kagan.

This is one of several recent Fourth Amendment cases in which Justice Breyer has ruled in favor of the police, while Justice Scalia has been on the side of criminal defendants. This is a major shift on the court and one with significant long-term implications. Without Justice Breyer, rarely will criminal defendants be able to get five votes in a Fourth Amendment case.

Justice Scalia, in dissent, said that the case establishes a new rule: "So long as the caller identifies where the car is, anonymous claims of a single instance of possibly careless or reckless driving, called in to 911, will support a traffic stop." It makes it too easy to subject anyone to a police stop by calling 911 and make an anonymous report of erratic driving. If someone doesn't like the bumper sticker on a car, all it takes is making a 911 call describing the vehicle and saying that it was driving erratically. And even if the car was behaving erratically at the moment there are many explanations other than that driver was intoxicated. Perhaps the driver sneezed or was texting or simply swerved to avoid an animal in the road.

The alternative would have required that police themselves observe erratic driving or a violation of a traffic law before pulling over the vehicle. This would not have restricted the police from stopping cars where that was appropriate, but would have prevented an anonymous call by itself from being the basis for a stop.

Being pulled over by the police always is upsetting, even if one has done nothing wrong. Police certainly can do so when they have an adequate basis for the stop. But an anonymous tip by itself is just not enough.

Unfortunately, the majority of the justices did not see it this way, and, as a result, we all have less freedom from police stops when we are driving.

Erwin Chemerinsky is the dean of the UC Irvine School of Law.