

## INTRODUCTION

### COMPREHENSIVE IMMIGRATION REFORM: WHAT CONGRESS AND THE PRESIDENT NEED TO DO TO MAKE IT WORK

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A steep recession and more aggressive border enforcement have temporarily slowed illegal immigration, but the problem is far from fixed. As President Obama and congressional leaders prepare to tackle immigration reform once again, they should learn from the past and create a system that accommodates the future needs of a recovering economy.

Even with fewer immigrants entering the country illegally, the number already here remains at nearly 12,000,000, with an estimated 8,000,000 in the workforce.<sup>1</sup> One in twenty workers is here without authorization.<sup>2</sup> When the economy begins to grow, that number will inevitably climb again despite the United States' best efforts to enforce the current, broken system.

Any lasting solution to the challenge of illegal immigration must recognize the important contribution that immigration has made and continues to make to the success of America's free-market economy. To succeed, comprehensive reform must accommodate the legitimate needs of American employers to hire the workers they require to meet the demands of their customers. Reform must also address the legitimate expectation that the rule of law should be respected and that illegal immigration should be replaced by legal immigration.

The challenge for Congress and the President is to enact a comprehensive reform of U.S. immigration law that is not only politically salable but consistent with the realities of the

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<sup>1</sup> JEFFREY S. PASSEL & D'VERA COHN, PEW HISPANIC CTR., A PORTRAIT OF UNAUTHORIZED IMMIGRANTS IN THE UNITED STATES i (2009), <http://pewhispanic.org/files/reports/107.pdf>.

<sup>2</sup> *Id.* at 13.

American labor market.

## I. IMMIGRATION AND THE AMERICAN WORKFORCE

Despite the claims by critics of immigration reform, America is not being “flooded” with immigrants. When we consider the rate of immigration—the number of immigrants entering the United States each year as a share of the United States’ population—the current inflow of immigrants, legal and illegal, is well within American historical norms. Since 2000, the annual number of legal and illegal immigrants joining the U.S. population has averaged 5.1 per 1,000 U.S. residents.<sup>3</sup> That compares to a rate of 10.4 immigrants per 1,000 in the decade of 1901–1910 at the peak of the Great Migration. In fact, today’s immigration rate is lower than during any decade between 1840 and 1920.<sup>4</sup>

The number of foreign-born residents as a share of the U.S. population is also below historical highs. Today, foreign-born residents represent 12.7% of the population, below the peak of 14.7% in 1910.<sup>5</sup> A higher share of U.S. residents was foreign-born in every decade from 1860 through 1920 than today. If the United States is an immigrant nation today, it was more of an immigrant nation a century ago.

Immigration has allowed the U.S. population to maintain a

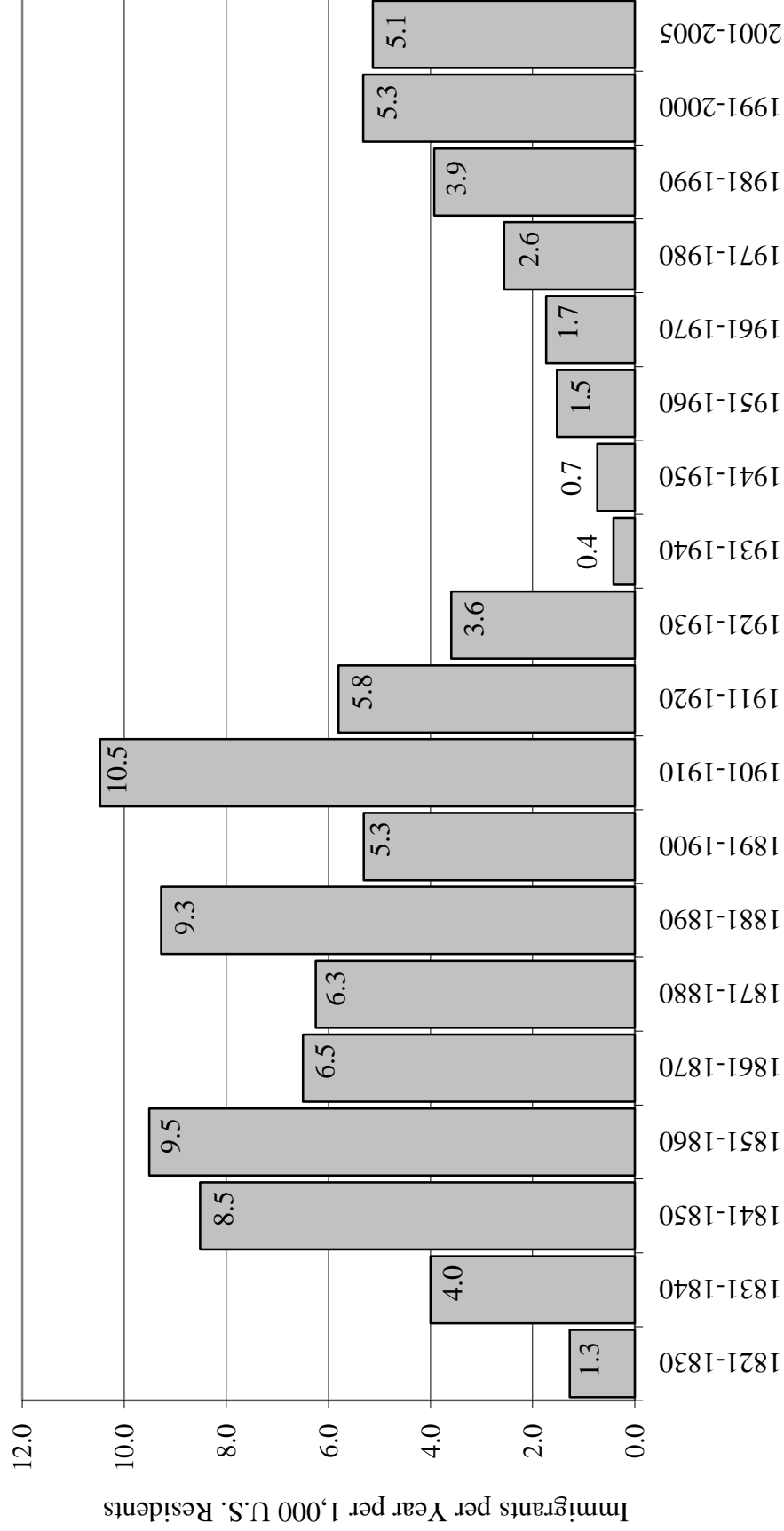
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<sup>3</sup> See U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, CURRENT POPULATION REPORTS: POPULATION PROJECTIONS OF THE UNITED STATES BY AGE, SEX, RACE, AND HISPANIC ORIGIN: 1995 TO 2050, at 32 tbl.1 (1996), <http://www.census.gov/prod/1/pop/p25-1130.pdf> [hereinafter CURRENT POPULATION REPORTS].

<sup>4</sup> See *infra* chart I; U.S. CENSUS BUREAU, U.S. DEP’T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 7 tbls.1 & 2 (2007), <http://www.census.gov/prod/2006pubs/07statab/pop.pdf> (providing U.S. population figures); OFFICE OF IMMIGRATION STATISTICS, U.S. DEP’T OF HOMELAND SEC., 2005 YEARBOOK OF IMMIGRATION STATISTICS 5 tbl.1 (2006), [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS\\_2005\\_Yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2005/OIS_2005_Yearbook.pdf) (providing legal immigration numbers). See generally JEFFREY S. PASSEL & ROBERTO SURO, PEW HISPANIC CTR., RISE, PEAK, AND DECLINE: TRENDS IN U.S. IMMIGRATION 1992–2004, at 54 tbl.4 (2005), <http://pewhispanic.org/files/reports/53.pdf>.

<sup>5</sup> Press Release, U.S. Census Bureau, Household Income Rises, Poverty Rate Unchanged, Number of Uninsured Down (Aug. 26, 2008), [http://www.census.gov/Press-Release/www/releases/archives/income\\_wealth/012528.html](http://www.census.gov/Press-Release/www/releases/archives/income_wealth/012528.html); Campbell J. Gibson & Emily Lennon, *Historical Census Statistics on the Foreign-Born Population of the United States: 1850–1990*, at tbl.1 (Population Div., U.S. Census Bureau, Working Paper No. 29, 1999), <http://www.census.gov/population/www/documentation/twps0029/twps0029.html>.

**Chart 1**  
**American Immigration in Perspective, by Decade, 1820-2005**



Sources: U.S. Census Bureau; 2005 Yearbook of Immigration Statistics, U.S. Office of Immigration Statistics; Pew Hispanic Center.

modest but healthy growth rate. During the twentieth century, from 1900 to 2000, America's population growth averaged 1.32% per year.<sup>6</sup> Since 1980, even with growing numbers of immigrants, the United States' annual growth rate has slipped to 1.07%, and since 2000, it has actually fallen to slightly below 1.0%.<sup>7</sup> Only one other period in U.S. history has witnessed slower population growth than the nation has seen in the past twenty-six years: the Great Depression of the 1930s.<sup>8</sup>

Rising levels of immigration have only partially offset the steep decline in natural population growth of births over deaths. The natural rate of growth of the U.S. population has plunged by more than half since the early 1960s, from about 1.4% per year to below 0.6% during the past decade.<sup>9</sup> Net foreign migration has edged up slightly as a share of population growth, but not enough to reverse the long-term downward trend of the overall growth rate.<sup>10</sup> Immigration has not spurred a population explosion in the United States; it has saved the United States from a population implosion.

## II. WHAT DRIVES ILLEGAL, LOW-SKILLED IMMIGRATION

Low-skilled migrant workers enter the United States in response to demand in the labor market. The continuing inflow of unskilled immigrants to the United States has been driven by two powerful economic and demographic trends.

On the demand side, the U.S. economy continues to create hundreds of thousands of net new jobs each year that require relatively low skills. Although the fastest growing categories of new jobs being created in the United States' increasingly sophisticated economy require at least some specialized skills, training, and education, jobs are also being created in lower-skilled, mostly service sectors that complement the higher-end

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<sup>6</sup> See Tammany J. Mulder, *Accuracy of the U.S. Census Bureau National Population Projections and Their Respective Components of Change* 16 (Population Div., U.S. Census Bureau, Working Paper No. 50, 2002), <http://www.census.gov/population/www/documentation/twps0050/twps0050.pdf>.

<sup>7</sup> See Central Intelligence Agency, *The World Factbook on the United States*, <https://www.cia.gov/library/publications/the-world-factbook/geos/us.html> (last visited Jan. 9, 2010) (estimating the United States population growth to be 0.975% in 2009).

<sup>8</sup> See CURRENT POPULATION REPORTS, *supra* note 3, at 6 fig.3.

<sup>9</sup> *Id.* at 6 fig.4, 7 tbl.D.

<sup>10</sup> See Mulder, *supra* note 6, at 59 graph 1; see also CURRENT POPULATION REPORTS, *supra* note 3, at 20 fig.13.

jobs.

According to the Department of Labor, between 2006 and 2016, the U.S. economy will add several million net new jobs that “require [only] short-term on-the-job training.”<sup>11</sup> We all know where those jobs can be found: retail salespersons; janitors and cleaners; waiters and waitresses; food preparation and serving workers, including fast food; home health and personal care aides; laborers and hand-movers of freight, stock, and other materials; and landscaping and groundskeeping workers. Net new jobs to be added during the decade in those categories alone will amount to 2,900,000, according to Department of Labor estimates.<sup>12</sup>

At the same time, the pool of native-born Americans who have traditionally been satisfied to fill those jobs continues to shrink. In the past decade, the number of adults twenty-five and older without a high school diploma—the type of workers who have filled those lower-skilled jobs—fell by 3,200,000.<sup>13</sup> Their ranks are projected to fall by another 2,000,000 to 3,000,000 in the next decade.<sup>14</sup> A better educated labor force is a profoundly positive development for the United States, but it also means that there are fewer workers available who are willing and happy to claim the still growing number of jobs in the U.S. economy that require few skills and minimal formal education.

Immigrants fill the growing gap between expanding low-skilled jobs and the shrinking pool of native-born Americans who would want such jobs. By willingly filling this gap, immigrant workers enable important sectors of the U.S. economy to continue to grow and meet the needs of their customers. By facilitating the growth of such sectors as retail, construction, landscaping, restaurants,

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<sup>11</sup> Arlene Dohm & Lynn Shniper, *Occupational Employment Projections to 2016*, 130 MONTHLY LAB. REV. 86, 96, 97–98 tbl.3 (2007), <http://www.bls.gov/opub/mlr/2007/11/mlr200711.pdf>; Drew Liming & Michael Wolf, *Job Outlook by Education, 2006–16*, OCCUPATIONAL OUTLOOK Q., Fall 2008, at 2, 5, <http://www.bls.gov/opub/ooq/2008/fall/art01.pdf>.

<sup>12</sup> See Dohm & Shniper, *supra* note 11, at 97–98 tbl.3.

<sup>13</sup> See STEVEN A. CAMAROTA, CTR. FOR IMMIGRATION STUDIES, *DROPPING OUT: IMMIGRANT ENTRY AND NATIVE EXIT FROM THE LABOR MARKET 2000–2005*, at 4 (2006), <http://www.cis.org/articles/2006/back206.pdf>.

<sup>14</sup> See Jennifer Cheeseman Day & Kurt J. Bauman, *Have We Reached the Top? Educational Attainment Projections of the U.S. Population 9–11*, 20 tbl.2 (Population Div., U.S. Census Bureau, Working Paper No. 43, 2000), <http://www.census.gov/population/www/documentation/twps0043/twps0043.pdf> (estimating an increase in the percentage of the twenty-five year-old and over population with a high school diploma through 2028).

and hotels, low-skilled immigrants have enabled those sectors to expand, attract investment, and create middle-class jobs in management, bookkeeping, marketing and other areas that employ native-born Americans.

### III. FAILURES TO CURB ILLEGAL IMMIGRATION

Despite these powerful economic and demographic realities, the United States' immigration system contains no legal channel for lower-skilled, foreign-born workers to enter the country legally to fill the jobs that an insufficient number of Americans want. Visa categories, such as the H1-B program, exist for highly skilled foreign-born workers such as computer scientists, physics professors, and even think-tank policy analysts.<sup>15</sup> Other categories exist for close family relatives of immigrants already in the country legally.<sup>16</sup> But a peaceful, hardworking twenty-four year old in Mexico or Central America who knows of a job in the United States for which no Americans are available, simply has no legal means of entering the United States. The result of this missing channel in the U.S. immigration system, unfortunately, is wide-scale illegal immigration.

For the past twenty years, the U.S. government has pursued a policy of "enforcement only" in its effort to curb illegal immigration. Since the late 1980s, spending on border enforcement has grown exponentially. The number of Border Patrol officers grew by three fold between 1986 and 2002, and then doubled again during President Bush's two terms in office.<sup>17</sup> Various operations at the busiest crossing points on the United States-Mexican border have resulted in miles of fencing being built through urban areas and into the surrounding desert.

Since 1986, U.S. employers have been subject to fines for knowingly hiring undocumented workers.<sup>18</sup> Interior enforcement of those laws has waxed and waned over the years. In the late 1990s, the Clinton Administration raided hundreds of workplaces

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<sup>15</sup> See Immigration & Nationality Act (INA) § 203(b)(2), 8 U.S.C. § 1153(b)(2) (2006).

<sup>16</sup> INA § 203(a), 8 U.S.C. § 1153(a).

<sup>17</sup> See *Comprehensive Immigration Reform: Hearing Before the S. Comm. on the Judiciary*, 110th Cong. 7 (2007) (statement of Michael Chertoff, Secretary of Homeland Security); DOUGLAS S. MASSEY, CATO INST., BACKFIRE AT THE BORDER: WHY ENFORCEMENT WITHOUT LEGALIZATION CANNOT STOP ILLEGAL IMMIGRATION 7 (2005), <http://www.cato.org/pubs/tpa/tpa-029.pdf>.

<sup>18</sup> See INA § 274(a)(3), 8 U.S.C. § 1324(a)(3).

and detained thousands of illegal workers, and in 2008, the Bush Administration stepped up such raids again.<sup>19</sup> There is no evidence, however, that more vigorous interior enforcement has had any noticeable effect on the number of illegal workers entering the country.

Along with the futility of interior enforcement, the policy also threatens to draw resources away from policing employment at such “critical infrastructure” as airports and nuclear power plants. In the aftermath of the September 11, 2001 terrorist attacks, the U.S. government rightly refocused its enforcement efforts away from chicken processing plants and discount stores to protect the American homeland from people who intend to do us harm.

#### IV. PERVERSE CONSEQUENCES OF “ENFORCEMENT ONLY”

The United States’ enforcement-only efforts have failed to stem the flow of illegal immigration, but they have yielded three perverse and unintended consequences.

First, enforcement efforts in urban areas have diverted the inflow to more remote desert regions where the rate of interception has actually dropped. Because of more sophisticated smuggling operations through these more remote regions, an individual attempting to sneak into the country is actually more likely to succeed today than when border enforcement was more lax in the early 1990s.<sup>20</sup>

Second, immigrants entering the country illegally are more likely to die in the attempt. The death rate of migrants crossing the border with Mexico tripled during the 1990s.<sup>21</sup> In recent years, 300 to 400 people have died horrible deaths along the border from heat stroke and dehydration.<sup>22</sup> The death toll during the past decade has reached 3,500.<sup>23</sup> Unclaimed and unnamed

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<sup>19</sup> Julia Preston, *New Tactics to Control Immigration are Unveiled*, N.Y. TIMES, Feb. 23, 2008, at A10; Ronald Smothers, *New Tactic is Tested on Illegal Immigrants*, N.Y. TIMES, Sept. 26, 1995, at A19.

<sup>20</sup> MASSEY, *supra* note 17, at 6.

<sup>21</sup> See Karl Eschbach et al., *Deaths During Undocumented Migration: Trends and Policy Implications in the New Era of Homeland Security*, in 26 IN DEFENSE OF THE ALIEN 37, 46 (Joseph Fugolo ed., 2003).

<sup>22</sup> See *id.*; LAURIE E. EKSTRAND, U.S. GOV’T ACCOUNTABILITY OFFICE, ILLEGAL IMMIGRATION: BORDER CROSSING DEATHS HAVE DOUBLED SINCE 1995; BORDER PATROL’S EFFORTS TO PREVENT DEATHS HAVE NOT BEEN FULLY EVALUATED 4, 58–59 (2006), <http://www.gao.gov/new.items/d06770.pdf>.

<sup>23</sup> See John Pomfret, *An Increasingly Deadly Trail*, WASH. POST, June 6, 2006,

bodies have accumulated in morgues and makeshift refrigerator trucks along the border.

Finally, illegal immigrants entering the country today stay longer than before the United States began more aggressive enforcement at the border. Because the United States' enforcement-only efforts have raised the cost and risk of crossing the border, those who successfully enter are more inclined to stay. As a result, the average length of stay for a Mexican entering the United States has doubled, from 2.6 years in the 1980s to more than five years currently.<sup>24</sup>

The United States' current policy has perversely interrupted what had been an established circular pattern of migration from Mexico to the United States. From the mid-1960s to the mid-1980s, during a time of relatively relaxed border enforcement, an estimated 80% of Mexicans who entered the United States illegally eventually returned to Mexico.<sup>25</sup> The federal government's ramped-up border enforcement turned a temporary and circular flow into a permanent and growing settlement of illegal immigrants.

## V. ENDING ILLEGAL IMMIGRATION

The most rational, cost-effective way to reduce illegal immigration is comprehensive immigration reform, including a sufficiently accommodating temporary worker program. Enforcing a fundamentally flawed system is a recipe for frustration and wasted tax dollars. The law must be changed to reflect the fundamental realities of the nation's labor market and economy.

The key to successful reform will be the temporary worker program. Any real hope of reducing illegal immigration will depend on allowing a sufficient number of foreign-born workers to enter the United States legally to fill the growing gap at the lower rungs of the labor ladder. Without a workable temporary worker program, workers will continue to enter the United States illegally, with all the consequences that flow from a continued flow and stock of an illegal workforce.

Skeptics of immigration reform point to the 1986 Immigration

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at A01.

<sup>24</sup> See DOUGLAS S. MASSEY ET AL., *BEYOND SMOKE AND MIRRORS: MEXICAN IMMIGRATION IN AN ERA OF ECONOMIC INTEGRATION* 131 (2002).

<sup>25</sup> See *id.*



Reform and Control Act (IRCA) as evidence that reform and legalization cannot work. The 1986 Act contained two major provisions: it offered “legal permanent resident” status (i.e., a green card) to 2,700,000 illegal workers who had entered the country before 1982 and to certain agricultural workers; and it significantly ramped up enforcement efforts, including making it illegal for the first time in U.S. history for employers to knowingly hire illegal workers.<sup>26</sup>

Notably missing from IRCA, however, was any provision to expand the opportunity for low-skilled workers to enter the country legally. The pool of illegal workers was drained temporarily by the amnesty, but it soon began to fill up again as the economic pull of the U.S. labor market overwhelmed even the stepped-up enforcement efforts. IRCA failed to recognize the reality that low-skilled workers play an important and legitimate role in the U.S. economy.

Large-scale illegal immigration will end only when America’s immigration system offers a legal alternative. If foreign-born workers are allowed to enter the country through a safe, orderly, and legal path, the number choosing to enter illegally will drop sharply. When given the choice of paying a smuggler \$2,000, risking robbery and death in the desert, and living a shadowy existence in the underground U.S. economy, unable to leave and return freely to visit home, or entering the United States across a legal port of entry with legal documents, enjoying the full responsibility and protection of the law, and the freedom to visit home without fear of being denied re-entry, the large majority of potential entrants will choose the legal path.

We know from experience that legal immigration, if allowed, will crowd out illegal immigration. In the 1950s, the Bracero program allowed Mexican workers to enter the country temporarily, typically to work on farms in the Southwest.<sup>27</sup> Early in that decade, illegal immigration was widespread because the program offered an insufficient number of visas to meet the labor demands of a growing U.S. economy. Instead of merely redoubling efforts to enforce a flawed law, Congress dramatically increased the number of visas to accommodate demand. The result: apprehensions of illegal entrants at the border soon

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<sup>26</sup> IRCA, Pub. L. No. 99-603, §§ 101, 201, 302, 100 Stat. 3359, 3360, 3394, 3417.

<sup>27</sup> See MASSEY ET AL., *supra* note 24, at 35–41.

dropped by more than 90%.<sup>28</sup> Back then, as we could expect now, foreign-born workers rationally chose the legal path to entry when it was available. When the Bracero program was abolished in 1964,<sup>29</sup> illegal immigration began an inexorable rise that continues to this day.

## VI. ISSUE ENOUGH VISAS TO MEET UNITED STATES LABOR DEMAND

If the goal is to curb illegal immigration, any temporary worker program must offer a sufficient number of visas to meet the legitimate demands of a future U.S. labor market. The fact that 400,000 to 500,000 foreign-born workers were joining the U.S. labor force illegally in years past indicates the general magnitude of the need for additional legal workers when the U.S. economy resumes normal growth. A temporary worker program should offer at least that number of visas to allow the revealed demand of American employers to be met legally.

Capping the number of visas much below that level will be self-defeating. In 2006 and again in 2007, the Senate voted to essentially gut the temporary visa program of the immigration reform legislation.<sup>30</sup> This time around, the AFL-CIO strongly opposes the establishment of a robust temporary-worker program,<sup>31</sup> a position that, if adopted, would still leave a large number of jobs in the United States without sufficient legal workers available to fill them, and would almost certainly guarantee a continued inflow of illegal workers, defeating one of the central goals of immigration reform.

Fears that the United States will be overwhelmed by a “flood” of immigrants if the temporary visa numbers are not tightly capped are unfounded. First, legalization does not necessarily mean more immigrants will enter the United States. The most likely consequence of a temporary worker program, as with expansion of the Bracero program in the 1950s, would be the transformation of an illegal flow into a legal flow. The number of

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<sup>28</sup> See *id.* at 37–38.

<sup>29</sup> See *id.* at 41.

<sup>30</sup> See, e.g., Robert Pear & Jim Rutenberg, *Senators in Bipartisan Deal on Broad Immigration Bill*, N.Y. TIMES, May 18, 2007, at A1; Rachel L. Swarns, *Senate in Bipartisan Act, Passes Immigration Bill*, N.Y. TIMES, May 26, 2006, at A19.

<sup>31</sup> See Kris Maher & Miriam Jordan, *Labor Set to Fight Over Guest Workers*, WALL ST. J., Apr. 15, 2009, at A5.

workers entering the country illegally has already been effectively “capped” by the demand in the U.S. labor market. If there are not jobs available, the workers will not come.

Second, a workable legalization program could be expected to restore the traditional circularity of Mexican migration to the United States, increasing the number of foreign-born workers who leave the country after a temporary period of work. Many low-skilled workers enter the U.S. labor market to solve temporary problems back home. They send remittances home to help pay medical bills, upgrade housing, raise capital for a business, or smooth the family’s income during an economic downturn. Once such goals are achieved, a large share of workers has chosen in the past to return home. Based on that experience, we could expect that an increase in the number of workers entering the country after legalization would be largely, or wholly, offset by an increase in those leaving.

Third, any fears of “chain migration” can be addressed by restricting the ability of immigrants to sponsor extended family members. One possible compromise would be to restrict or eliminate quotas for parents, adult siblings, and adult children of legal permanent residents in the United States. The ability to sponsor relatives could be limited to the “nuclear family” of spouses and minor children. The result would be to allow nuclear families to remain intact, while at the same time incrementally moving the U.S. immigration system from one that is primarily family-based to one that is employment-based.

Fears about chain migration tend to be exaggerated. In May 2006, Robert Rector of the Heritage Foundation estimated that the original version of the Senate’s Comprehensive Immigration Reform Act (S. 2611) would increase U.S. immigration by a whopping 103,000,000 during the next twenty years.<sup>32</sup> But the United States knows from its experience with IRCA that nothing like a flood of new immigration occurred.

As mentioned earlier, IRCA legalized 2,700,000 undocumented workers. In the twenty years since IRCA was enacted (by coincidence the same time frame as the Heritage study), the United States has accepted an average of 950,000 legal immigrants per year.<sup>33</sup> Subtracting the baseline annual

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<sup>32</sup> ROBERT RECTOR, HERITAGE FOUND., SENATE IMMIGRATION BILL WOULD ALLOW 100 MILLION NEW LEGAL IMMIGRANTS OVER THE NEXT TWENTY YEARS 1 (2006), [http://www.heritage.org/Research/Immigration/upload/wm\\_1076.pdf](http://www.heritage.org/Research/Immigration/upload/wm_1076.pdf).

<sup>33</sup> *Id.* at 4.

immigration of 600,000 in the decade before IRCA, and the 2,700,000 workers directly legalized by the IRCA amnesty, the annual increase since then amounts to less than 200,000 a year from pre-IRCA levels.<sup>34</sup> That is an increase of about 4,000,000 over a twenty-year period. And a significant share of that increase can be attributed to a 1990 immigration bill that raised quotas for legal immigration.<sup>35</sup> Obviously, the 1986 amnesty did not cause anything like a flood of chain migration. There is no reason to believe that a comprehensive immigration bill would either.

A far more credible and objective study by the Congressional Budget Office estimated that S. 2611 would increase the U.S. population by 7,800,000 in the first ten years.<sup>36</sup> Although more chain migration would be expected in the second decade after the original temporary workers achieve citizenship, the rate of 800,000 immigrants per year is far more in line with recent history and the expected need of the U.S. economy for new workers.<sup>37</sup>

An analysis by the Immigration Policy Center (IPC) exposed a number of flaws in the Heritage study. The IPC found that the study double counts millions of new immigrants, first as guest workers, then again as new green-card holders.<sup>38</sup> It substantially overestimates the number of illegal immigrants who would remain in the United States permanently as well as the number of parents of newly naturalized citizens who would immigrate, and it ignores millions of immigrants who would later choose to leave.<sup>39</sup>

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<sup>34</sup> See OFFICE OF IMMIGRATION STATISTICS, U.S. DEP'T OF HOMELAND SEC., 2007 YEARBOOK OF IMMIGRATION STATISTICS 5 tbl.1 (2008), [http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois\\_2007\\_yearbook.pdf](http://www.dhs.gov/xlibrary/assets/statistics/yearbook/2007/ois_2007_yearbook.pdf).

<sup>35</sup> See *generally* Immigration Act of 1990, Pub. L. No. 101-649, 104 Stat. 4478.

<sup>36</sup> CONGRESSIONAL BUDGET OFFICE, COST ESTIMATE OF S. 2611: COMPREHENSIVE IMMIGRATION REFORM ACT OF 2006, at 4-6 & tbl.2 (2006), <http://www.cbo.gov/ftpdocs/75xx/doc7501/s2611spass.pdf>.

<sup>37</sup> See *id.*

<sup>38</sup> IMMIGRATION POLICY CTR., AM. IMMIGRATION LAW FOUND., IMMIGRATION SCARE-TACTICS: EXAGGERATED ESTIMATES OF NEW IMMIGRATION UNDER S. 2611, at 2-3 (2006), <http://www.immigrationpolicy.org/sites/default/files/docs/Scare%20Tactics.pdf>.

<sup>39</sup> *Id.* at 3-4.

## VII. VISAS MUST INCLUDE MAXIMUM MOBILITY, MINIMAL RED TAPE

Any temporary worker program must also include complete worker mobility. The best protection for legalized workers remains the freedom to change jobs if pay or conditions are unsatisfactory. The fatal flaw of the Bracero program was the fact that it tied workers too closely to specific employers as a condition of the visa. That gave employers too much leverage and encouraged the kinds of abuses that, when they became public, spurred Congress to shut the program down. A portable visa that allows temporary workers to freely choose who they work for with minimal red tape would enhance their bargaining power in the marketplace, improving their pay and working conditions.

Worker mobility would also benefit the economy overall. It would allow workers to shift from one region of the country or sector of the economy to another in response to changing conditions. When the housing sector turns down, temporary workers would be free to shift to the retail or hospitality sectors, for example.

Legalized workers with full freedom to change jobs would not need a raft of new labor laws to protect their rights. True reforms must avoid stifling labor regulations that discourage legal hiring. Union leaders are pressuring Democrats to require that temporary workers be paid “prevailing wages”—that is, artificially high, union-level wages rather than market wages.<sup>40</sup> That would be a recipe for failure, because many of the jobs filled by immigrant workers are low-skilled, low-wage jobs that would simply not exist in the legal economy if union-level wages were mandated. Adding cumbersome labor rules will only perpetuate the underground labor market that has been created by the current system.

Mandating that employers pay above-market wages for low-skilled workers would only reduce growth and opportunities in the affected sectors of the economy. Pay earned by low-skilled workers is determined and limited by their productivity. Wages paid to low-skilled workers tend to be low because their productivity is low. If pay were to rise above productivity, prices would need to rise, demand among consumers would fall, and investment and employment in the affected industries would slow

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<sup>40</sup> See Daniel Griswold, Editorial, *Illegal Immigration: Will Congress Finally Solve It?*, ORLANDO SENTINEL, May 22, 2007, at A9.

or shrink. Ultimately, there would be fewer jobs available in the affected sectors for native and foreign-born workers alike.

Also unfounded are the claims that increased legal immigration will drive down the wages and working conditions for a broad swath of American workers. Only a small and declining share of the American workforce competes against immigrant workers. According to *The New Americans*, the authoritative 1997 National Research Council (NRC) study of immigration, the only two groups of Americans who face downward wage pressure from immigration are other recent immigrants and native-born Americans without a high school diploma.<sup>41</sup> The wage impact on the affected American workers is not large. “The weight of the empirical evidence suggests that the impact of immigration on the wages of competing native-born workers is small—possibly reducing them by only 1 or 2 percent,” the authors concluded.<sup>42</sup>

More recent studies confirm the small impact of low-skilled immigration on competing American workers. In an August 2006 study for the National Bureau of Economic Research, economists Gianmarco Ottaviano and Giovanni Peri found that immigration during the 1990–2004 period lowered the real wages of the least educated U.S.-born workers by 1.1 to 2.2%, consistent with the NRC findings of a decade earlier.<sup>43</sup> The study found that for all other native-born American workers, that is, those with at least a high school diploma, immigration delivered real wage gains in the long-run of between 0.7 and 3.4% through lower prices and a more efficient economy.<sup>44</sup>

The key to raising wages for low-skilled American workers is to improve their levels of education and training. Just by earning a high school diploma, an American will earn an average of \$25,829 a year compared to average earnings of \$18,435 for an American worker without a diploma—a 40% wage premium for finishing high school.<sup>45</sup> Enabling and urging young Americans to graduate

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<sup>41</sup> See NAT'L RESEARCH COUNCIL, *THE NEW AMERICANS: ECONOMIC, DEMOGRAPHIC, AND FISCAL EFFECTS OF IMMIGRATION* 219–28 (James P. Smith & Barry Edmonston eds., 1997).

<sup>42</sup> *Id.* at 220.

<sup>43</sup> Gianmarco I.P. Ottaviano & Giovanni Peri, *Rethinking the Effects of Immigration on Wages* 4 (Nat'l Bureau of Econ. Research, Working Paper No. 12497, 2006), [http://www.econ.ucdavis.edu/working\\_papers/06-34.pdf](http://www.econ.ucdavis.edu/working_papers/06-34.pdf).

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Census Bureau, *United States-Earnings in the Past 12 Months* (in 2005 Inflated-Adjusted Dollars), <http://factfinder.census.gov/servlet/>

from high school will do far more to raise the earnings of American workers than barring low-skilled immigrants from the country.

#### VIII. A PATH TO LEGALITY FOR WORKERS ALREADY HERE

Finally, any comprehensive immigration reform worth its name must offer a path to legal status for the millions of workers already here without authorization. It would be an economic and humanitarian disaster, as well as an administrative nightmare, to round up the 12,000,000 people already here illegally and somehow deport them back to their home countries.

Any realistic immigration reform must recognize that many undocumented workers have become valued employees. Most have been in the country for five years or more, and 34% have been here for more than a decade.<sup>46</sup> Their contributions to the U.S. economy should be recognized and weighed against their violation of U.S. immigration laws.

Long-standing critics of comprehensive immigration reform will brand any legalization as an “amnesty.” But amnesty means a general pardon, in particular for political offenses. Legalization would not be a pardon or amnesty because, according to the most serious proposals put forward in Congress, undocumented workers would be expected to pay fines and back taxes. They would undergo security checks and could even be required to leave the country before being allowed to enter legally. They would not be granted automatic permanent legal status but only temporary status to remain and work in the United States for a specified period of time.

Americans expect the law to be respected and obeyed, and those who violate the United States’ laws to face the appropriate consequences. But at the same time, laws must be reasonable and not fundamentally out of step with how millions of otherwise peaceful and hardworking people arrange their lives. That was the fatal flaw of the fifty-five mile-per-hour speed limit in the 1970s and alcohol prohibition in the 1920s and 1930s. Any

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<sup>46</sup> JEFFREY S. PASSEL, PEW HISPANIC CTR., THE SIZE AND CHARACTERISTICS OF THE UNAUTHORIZED MIGRANT POPULATION IN THE U.S. 1–2 (2006), <http://pewhispanic.org/files/reports/61.pdf>.

punishment must also fit the infraction. In the case of immigration, several million foreign-born workers are guilty of engaging in an activity that is not inherently criminal—crossing an international border to provide labor for a willing employer and additional income for their families back home.

Legalization would not necessarily mean automatic permanent status and a path to citizenship. Most workers who enter the United States illegally intend to stay here temporarily. They come to solve temporary problems back home—to raise money for better housing, education, or medical expenses. If workers allowed in under a temporary worker program or formerly undocumented workers who gain legal status want to become permanent residents, they should be required to wait their turn behind those immigrants who have applied under existing channels. At the same time, the government should accelerate existing applications to reduce the backlog, and expand the number of green cards available to accommodate the long-term labor needs of the growing U.S. economy.

Like the temporary worker program, the legalization of workers already in the United States must be workable. The penalties and procedures must not be so onerous that millions of illegal workers decide to continue their underground existence in the U.S. labor market. Immigration reform, to be successful, must balance the political demand that illegal workers pay a penalty for breaking U.S. immigration law with the reality that the United States would be better off without a large pool of illegal workers in its midst.

## CONCLUSION

Comprehensive immigration reform that followed the guidelines outlined above could be expected to dramatically lower illegal entries into the United States and the tragic death toll at the border. It would empower newly legalized workers to bargain more effectively in the workplace for better wages and working conditions, allowing those workers to enjoy the full protections and responsibilities of the law. It would free the Department of Homeland Security to focus its resources on identifying and apprehending terrorists and criminals rather than wasting billions of tax dollars chasing after peaceful, hardworking people seeking a better job.

Comprehensive reform would provide a predictable, legal, and modestly growing labor force, which could in turn provide a wider



and more affordable array of goods and services for American households, raising living standards for the large majority of American workers. It would reaffirm our ideals as a nation that has traditionally welcomed immigrants who come here to work hard and build better lives for themselves and their families.

To overcome political opposition, Democratic leaders will need to face down labor-union opponents of a temporary worker program, just as Republican leaders seeking reform will need to face down the anti-immigration wing of the conservative movement. If advocates of responsible reform in both parties can work together to enact a sufficiently robust visa program, this could be the President and the Congress that finally fix the problem of illegal immigration.