



Institute For Policy Innovation

# ISSUE BRIEF

## ELEMENTS OF A 21<sup>ST</sup> CENTURY PRO-GROWTH IMMIGRATION SYSTEM AND A PROPOSED SOLUTION TO THE PROBLEM OF ILLEGAL IMMIGRANTS

by Tom Giovanetti

*There have been few attempts to put forward specific policy proposals to remedy our dysfunctional immigration system. This paper suggests several new policies designed to create a reasonable, secure, functioning immigration system that is in the best interests of the United States. It further suggests a specific approach to dealing humanely and realistically with the current illegal population.*

### Synopsis

It is a truism that the United States is a nation of immigrants. From our nation's founding, the United States has been a destination—a Land of Opportunity for those seeking freedom and a better life for themselves and their families by escaping persecution, poverty and limitations imposed by their native lands. Indeed, who among us is not descended from immigrants?

But today our immigration system is badly broken. The simple fact that the number of illegal immigrants consistently outnumbers the number of legal immigrants<sup>1</sup> should be proof enough. Our immigration system serves neither the positive goal of adding the world's best, brightest, and hardest working to our American culture, nor the negative goal of protecting us from those who threaten our security or our economy. The result is, unfortunately, a deficit of the former and a surplus of the latter.

Because our current immigration system demonstrably does not succeed at these critical goals, reform of our immigration system is imperative. Further, immigration policy has vaulted to become one of the key issues of the 2016 presidential campaign. Beyond a doubt, the American people are animated on the topic of immigration. Policy thinkers, activists, and voters must begin to grapple with the goals and details of a functioning immigration system so that reform can take place when politically possible. In the meantime, failure to enforce the immigration laws already on the books, including the failure of the Executive Branch to implement measures explicitly authorized by Congress, actively damages our economy, our national security, and the rule of law.

### Introduction

1. Jeffrey S. Passel, "Unauthorized Migrants: Numbers and Characteristics," Pew Hispanic Center, June 14, 2015. <http://pewhispanic.org/files/reports/46.pdf>

This short paper does not attempt to offer a comprehensive immigration reform proposal, but rather makes several suggestions for a functioning, 21<sup>st</sup> Century pro-growth immigration system. The final section suggests a proposed solution to the controversial issue of the current population of illegal immigrants.

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## Some Observations to Guide Us

- The United States has long thrived as a nation that welcomes immigration.
- A sovereign nation has the right to determine who enters the country, for what purpose, for how long, and to what end.
- A destination nation such as the United States has a particular need for a functioning immigration system.
- Any secure nation has control over its borders, and a functioning immigration system is impossible without secure borders.
- Border controls are neither heartless nor totalitarian. Totalitarian nations use border controls to keep people in, not out.
- The federal government itself bears significant responsibility for the problem of illegal immigration due to the complete dysfunction of our immigration system.
- Regardless of the impact of illegal immigration on the economy, it nonetheless allows significant gaps that cost our country not only in social welfare but also in significant costs to state and federal government.
- A civilized nation treats immigrants and refugees with dignity but is under no obligation to extend to them citizenship, or rights and privileges commensurate with citizenship.
- There is already a legally defined pathway to citizenship. There is no need for a new one or for a “fast track.” Illegal immigrants came to the United States looking for economic opportunity, not citizenship. No line-jumping.
- Everyone is subject to the law, regardless of whether or not they possess citizenship. Within the rule of law, however, there is room for various types of legal status other than citizenship. Legal is not citizenship, but legal is better than illegal. In other words, the choice is not simply between citizenship and amnesty, or between a police state and chaos.
- State and federal governments have a compelling interest in preserving the integrity of elections, and ensuring that only American citizens vote in elections.
- **Incentives matter.** Systems that ignore the reality of incentives are designed to fail.
- **Reality matters.** Regardless of the strong emotions caused by illegal immigration, the American people will not tolerate mass forced deportations.
- In the modern economy, nations compete for human capital as well as for financial capital. Just as we should seek to attract financial investment, we should also seek to attract human capital.

With these observations, let's consider what should be permanent, ongoing features of a functioning, pro-growth immigration system.

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# Knowing Who Is Here: A Functioning Entry and Exit System

Any functioning immigration system must be able to:

1. Screen applicants for entry into the U.S. effectively,
2. Track entry and exit to ensure that visas are not overstayed, and
3. Monitor authorized entrants to ensure they are complying with the terms of their entry.

Unfortunately, our current system fails at all three.

With regard to **screening applicants**, scrutiny was intensified after the 9/11 attack to such a degree that today our screening process has sometimes perverse results. Screening is now so labor intensive that chronic delays cost the United States in terms of lost tourism<sup>2</sup> and other economic gains.<sup>3</sup> According to a 2011 estimate, in the post-9/11 decade the U.S. lost over \$600 billion in lost tourism spending, which cost approximately 467,000 jobs.<sup>4</sup>

The State Department requires across-the-board, labor intensive personal interviews for all applicants for entry instead of implementing computerized screening and sensibly discriminating between low-risk and high-risk applicants. For instance, it has become almost impossible for overseas schools to put together group tourism trips to the United States, because each student must appear at the U.S. embassy or consulate and must be interviewed individually, despite the low risk of such entry. So, for instance, a school group in Porto Alegre, Brazil would have to fly the entire group 700 miles to São Paulo simply so that each student in the group could be individually interviewed in order to grant the necessary visas.<sup>5</sup> This harms the U.S. tourism industry, including the very significant theme park industry in Florida and California, and other tourism magnets such as New York City, Las Vegas, California, Hawaii, Alaska, etc.

**Solution:** Embassy personnel should be able to use discretion, for instance interviewing adult teachers and sponsors for groups of younger students. Discretion also allows more scrutiny for applicants from higher risk regions of the world. While we may have an obligation to treat everyone with dignity, protecting the security of the United States requires identifying regions of higher risk entrants and using appropriately higher levels of scrutiny.

Screening processes should implement much more use of computerized screening, with personal interviews reserved for those identified as requiring additional scrutiny. Existing or similar technologies that are used by Customs and Border Protection (CBP) for identifying risky goods imported into the country could be applied to persons as well.<sup>6</sup> While stopping counterfeit goods from

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2. "America's Lost Tourism Opportunity: By the Numbers," The Week, Nov 23, 2011  
<http://theweek.com/article/index/221790/americas-lost-tourism-opportunity-by-the-numbers>
  3. Edward Alden, et al, "Faster, Safer, and Smarter: A Modern Visa System for the United States," Council on Foreign Relations, Jan 2012.  
<http://www.cfr.org/immigration/faster-safer-smarter-modern-visa-system-united-states/p27055>
  4. Roger J. Dow, "America's Lost Decade of Tourism," The Wall Street Journal, Nov 21, 2011.  
<http://www.wsj.com/articles/SB10001424052970203699404577042440873063450>
  5. Tim Rogers, "Let Them In: How Brazilians Could Help the U.S. Economy," Time, June 3, 2011.  
<http://content.time.com/time/world/article/0,8599,2075717,00.html>
  6. Alden

entering the country is of significant economic importance,<sup>7</sup> stopping dangerous persons is even more important.

Such security technologies are in many cases already being used in the private sector for fraud detection and prevention. Given government's dismal failure at implementing technology despite vast allocations of funding, those charged with implementing such solutions should take advantage of existing expertise in the private sector, and in many cases these services could be outsourced to private sector contractors.

**Tracking Entry and Exit:** When an alien enters the country through an authorized entry point, the US-VISIT system collects biometric data—ten fingerprints and digital facial images—from the visitor. This information contributes to a database of valuable machine-readable data.

It should be just as easy to collect biometric data upon exit as it is upon entry, and to automatically cross reference that information against visa duration. **But we don't,** despite eight federal statutes that require a biometric exit system.<sup>8</sup> Those statutes include the 1996 Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (passed in the wake of the first attack on the World Trade Center), the 2004 Intelligence Reform and Terrorism Prevention Act, the 2007 Visa Waiver Program for Certain Visitors, and the 2013 Homeland Security Appropriations Act.

Not knowing whether an alien has left the country as scheduled is not an insignificant problem. Six of the 9/11 terrorists had overstayed visas at some point, and four had overstayed their visas at the time of the attack. In fact, two weeks before the 9/11 attack, law enforcement gave up looking for two of the attackers under the false assumption that they had left the country.<sup>9</sup> It's important to point out that, had such a system been implemented as Congress required in the 1996 legislation, it might have prevented the 9/11 attack.

Beyond the national security concerns, visa overstays are a major source of illegal immigration. It is estimated that 45 percent of illegal immigrants arrived on a legal visa but then overstayed that visa.<sup>10</sup>

In fact, a 2013 audit revealed that the Department of Homeland Security had lost track of over 1 million people who it knew had arrived in the U.S. but could not determine whether they had exited the country. But even that was an improvement over the previous year in which DHS had lost track of 1.6 million entrants.<sup>11</sup>

It's not as if biometric exit systems are impossible. In fact, the technology is proven and such systems are being used or implemented in a number of countries, because biometric systems are superior—they mitigate the problem of name misspellings and forged identity documents, and facial recognition software in addition to fingerprint matching provides a high degree of reliability.

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7. Stephen E. Siwek, "The True Cost of Copyright Industry Piracy to the U.S. Economy," The Institute for Policy Innovation, Oct 3, 2007.

[http://www.ipi.org/ipi\\_issues/detail/the-true-cost-of-copyright-industry-piracy-to-the-us-economy](http://www.ipi.org/ipi_issues/detail/the-true-cost-of-copyright-industry-piracy-to-the-us-economy)

8. Janice Kephart, "Biometric Exit Tracking," Center for Immigration Studies, Sep 2013.

<http://cis.org/biometric-exit-tracking-feasible-and-cost-effective>

9. *ibid*

10. "U.S. Aims To Track Foreigners Who Arrive, But Never Leave," NPR, May 1, 2013.

<http://www.npr.org/2013/05/01/180338462/u-s-aims-to-track-foreigners-who-arrive-but-never-leave>

11. "Overstay Enforcement: Additional Actions Needed to Assess DHS's Data and Improve Planning for a Biometric Air Exit Program," U.S. Government Accountability Office, GAO-13-683: Published: Jul 30, 2013. <http://gao.gov/products/GAO-13-683>

Stunningly, while our federal government has failed to implement a biometric exit system for the United States despite repeated statutory requirement, **the federal government IS helping install biometric exit systems in Nigeria and the Philippines.**<sup>12</sup>

**Solution:** The Executive Branch should comply with existing statutes and immediately begin implementing a biometric exit system. Janice Kephart of the Center for Immigration Studies has detailed how such a system would work, the fact that it would use existing proven technologies, and that the costs are manageable.<sup>13</sup> She estimates that a biometric exist system could be implemented for between \$400 - \$600 million. The Guest Worker Tax (see below) would provide more than enough funding to rollout and operate biometric monitoring and exit.

**Monitoring:** While it's astonishing that the Executive Branch has failed to implement a biometric exit monitoring system as mandated by Congress, it is almost equally flawed that we make no attempt to monitor aliens while they are within the country to make sure they are where they are supposed to be. Indeed, once someone enters the country, we have no idea whether they are actually engaged in the activity for which they requested entry. We don't know if those on student visas have even matriculated, much less whether they are attending classes. If they are supposed to be attending college in Virginia, we have no idea whether they are in Virginia or not, much less in the vicinity of their supposed college.

Contrast this utter failure to monitor aliens with the relative ease with which private sector companies are able to monitor the patterns of their customers. The major credit card issuers, for instance are able to detect changes in purchase patterns of their users, including an out-of-character geographic location. Of course, in the private sector such monitoring is the result of a voluntary agreement between the customer and the provider, and is viewed as a service to the customer rather than a burden or a violation of privacy. Were the federal government to monitor the patterns and behaviors of citizens in such a way, this would rightly be perceived as a gross violation of privacy. But aliens in the United States are not citizens, are admitted as a matter of privilege and not right, and thus there should be no objection to obligatory monitoring of visa compliance as a condition of entry.

**Solution:** In order to facilitate the monitoring of aliens, the same US-VISIT system used for biometric entry and expanded to monitor exit (see above) should also be extended to facilitate the periodic monitoring of visitors, who would be required to have smart cards and biometric data scanned at regular increments, perhaps monthly but at least quarterly. The required interval might vary depending on the type and duration of the visa. Aliens would also be required to have a working email address, through which they would receive periodic reminders to check-in, and warnings for overdue scans.

Monitoring scanners could easily be placed in a variety of locations. The most obvious location is U.S. Post Offices—already the main point of contact for passport requests and services, and encompassing approximately 31,000 locations. The Post Office is, after all, looking for a reason to remain in existence, so facilitating alien check-in could be added to its portfolio. Large employers of immigrant workers would also likely be happy to host monitoring scanners on their campuses for the convenience of their alien workers, as would colleges and universities for the convenience of their students, and theme parks for the convenience of their immigrant tourists.

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12. Kephart

13. *ibid*

In addition, many smart phones today feature fingerprint readers. This means that admitted immigrants could also use a federally designed or approved app on a smartphone to perform their biometric check-in. The GPS or wireless data would be used to locate the person's physical location at time of check-in.

It is not unreasonable to require aliens admitted to the country to be in possession of their identity documents and to report their location periodically as a means of demonstrating compliance with the terms of their admission. Such a system is not inhumane, and does not violate any of their legal or human rights.

Because of the tendency of government programs to expand beyond the scope of the original problem, application of these systems should be legislatively restricted to non-citizen visitors. To apply these requirements to U.S. citizens as they enter and exit the country would be a violation of the civil rights and privileges of citizenship. We need not adapt police-state policies toward citizens in order to ensure that aliens are complying with the terms of their visas.

Some may be concerned that implementation of such a system would create mechanisms that could easily be extended to use to monitor citizens. But such slippery slope arguments are recognized as a logical fallacy. Many existing legal structures could be extended by an overreaching government to encroach on personal freedoms. It falls to citizens and the courts to ensure such extensions of government power do not occur.

So how do we pay for these and other costs of a functioning immigration system?

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## The Guest Worker Tax

The Guest Worker Tax would be a new federal payroll tax paid by both registered non-citizens and their employers. The purpose of the Guest Worker Tax is to ensure that aliens are contributing to the costs of maintaining a robust biometric entry, exit and monitoring system, as well as the border control system itself. Employers of immigrant workers would also pay a matching share of the Guest Worker Tax to create a slight bias in favor of citizens in hiring, to help determine the degree to which immigrant labor is necessary to remedy shortages in the citizen worker population, and to help fund the costs of the immigration system.

Remember, the Guest Worker Tax would not be an offensive mandate or imposition on businesses, since employment of immigrants is optional and the choice of the employer.

A two percentage point Guest Worker Tax (two percentage points paid each by the worker and the employer) would not be so high as to discourage employment for necessary immigrant workers, but would represent a significant amount of revenue and would help to garner public support for immigrant labor, as they would be "paying their way." It would also, as previously stated, create a slight but meaningful bias in hiring in favor of U.S. citizens.

The Guest Worker Tax would also create additional legal (tax) liability for employers who intentionally hire illegal workers and who do not withhold the tax. This is a design feature of the tax, not a bug.

While it is beyond the scope of this paper to model the effects of various tax options, a two percent Guest Worker Tax (four percent total) assessed against the average annual

earnings of \$33,000<sup>14</sup> for ten million immigrant workers would deliver over \$13 billion annually. That's a lot of border security—almost as much as the \$18 billion we currently spend on all immigration enforcement agencies.<sup>15</sup> If there were only 4 million immigrant workers, that would still be an additional \$5.3 billion in annual revenue.

In recognition of the fact that immigrant populations place additional burdens upon state-administered programs such as health and education, funding from the Guest Worker Tax should be divided by formula between the federal and state governments.

A functioning entry and exit system, with appropriate screening of applicants and biometric entry, exit and monitoring could be implemented with existing technology and funded at a healthy level through a Guest Worker Tax, which could also contribute toward the burdens imposed by immigrant populations upon state budgets.

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## Summary

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# A Market-Friendly Way to Allocate Work Visas

Currently, U.S. employers, especially technology companies, claim that they are unable to find a sufficient number of qualified American workers and thus need to turn to immigrant workers through such programs as H-1B, H-2A and H-2B. These employers complain that these programs are too limited in number, and they have a point: On the first day it could tally applications, the U.S. Citizenship and Immigration Services (USCIS) bureau reported that it had more than enough to account for all of the 85,000 H-1B visas available for FY2015.<sup>16</sup> This has been the typical pattern for many years, and it's why for years American employers have been calling for an increase in the number of work visas issued.

Because these visas are offered simply first-come, first-served or through a random lottery, the permits are not being allocated across the economy in an efficient manner, and no value is being established for these permits through any market function. In other words, the cost/value of skilled immigrant workers is not being priced.

In addition, it seems that outsourcing companies are consuming a large share of available H-1B visas, when then most likely offer their foreign employees to employers at a markup.<sup>17</sup> This is essentially arbitrage of the random or lottery approach for allocating H-1B visas.

Some people, however, suspect that the problem isn't availability of skilled American workers but rather that employers simply prefer to hire less expensive immigrant labor. That's also something we can't determine—since the limited number of visas are being allocated in the absence of any market function, there is no market clearing price established for the ability to hire an immigrant worker, no “premium” determined through markets for immigrant workers, and the total number of H-1B visas issued is determined by zero information political decisions rather than through market factors.

**Solution:** A way to address these problems and more efficiently allocate the available number of work visas through a market-based process would be through

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14. “Undocumented Immigrants’ State and Local Tax Contributions,” Institute on Taxation and Economic Policy, Jul 2013 <http://www.itep.org/pdf/undocumentedtaxes.pdf>

15. Christie Thompson, “Billions Proposed for New Border Security. Where Would the Money Go?” Pr Publica, Apr 26, 2013 <http://www.propublica.org/article/billions-proposed-for-new-border-security-where-would-the-money-go>

16. “Need for lottery highlights importance of reforms to legal immigration system,” Immigration Legal, Apr 7, 2014. <http://immigrationlegalblog.com/tag/h1b-immigration-reform/>

17. Haeyoun Park, “How Outsourcing Companies Are Gaming the Visa System,” The New York Times, Nov 10, 2015. <http://www.nytimes.com/interactive/2015/11/06/us/outsourcing-companies-dominate-h1b-visas.html>

an auction. If the available visas were auctioned to employers each year in a sealed bid process, with the bids allocated from highest to lowest until the available permits are exhausted, market forces would establish a market-clearing price for the right to hire an immigrant worker. Because of the likely higher permit price offered due to the auction function, employers would have no incentive to hire an immigrant worker if an equivalent American worker were available, which would lead to more accurately determining areas where shortages of American workers actually exist. Such an auction process has been detailed in a Hamilton Project paper.<sup>18</sup> Importantly, the authors estimate that such an auction process might raise as much as \$1 billion annually in additional revenue, which we would suggest should also be devoted to funding the federal immigration system.

Were work visas also made transferrable between employers, dynamic allocation of immigrant workers would be possible. Secondary markets for such permits would also help inform subsequent primary auctions, resulting in more accurate pricing and thus better information on the demand for immigrant workers in various industries. It would effectively price the value of immigrant workers to the U.S. economy. In this scenario, reselling of work visas and even speculating in work visas would be a feature, not a bug.

A logical result of this auction process would be that the number of work visas made available each year could be determined by the price function rather than by arbitrary regulatory fiat. And the auction process would also likely create a slight bias in hiring toward U.S. citizens.

Immigrant workers admitted under these work visas would be subject to the Guest Worker Tax as outlined above.

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## **“Brain Gain” Immigration Policies: Enhanced Ways to Attract the World’s Best, Brightest, and Hardest Working**

In a global economy, countries compete for investment capital. That’s why nations around the world have been consistently lowering their corporate and other tax rates. It’s also why the United States’ highest corporate tax rate in the developed world puts the U.S. at a distinct disadvantage in attracting investment capital.

But countries today also compete for human capital. Throughout its history, the United States has benefitted immeasurably from the continuous infusion of new wealth, energy and dynamism that immigration has represented to our economy and American culture. Other countries’ “brain drain” has been our “brain gain.” Our economic vitality, individual freedom, openness to the new, and robust educational system has drawn the world’s best and brightest to the U.S. like a magnet. To deny this is to deny the facts of U.S. history.

An immigration system can be designed and can function so that it maximizes the contributions of immigration to our economy and minimizes the social cost and security risk, and that should be the goal of a 21st Century American immigration system.

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18. Pia Orrenius, et al, “Overhauling the Temporary Work Visa System,” The Hamilton Project, Feb 11, 2013 [http://www.hamiltonproject.org/papers/overhauling\\_the\\_temporary\\_work\\_visa\\_system/](http://www.hamiltonproject.org/papers/overhauling_the_temporary_work_visa_system/)

What additional incentives could be used to attract overseas talent to the United States?

**Automatic Visas for those Holding Advanced Degrees.** The economic and educational opportunities available in the United States are part of our comparative advantage. An immigration system in the national interest should be designed to actually poach the best and brightest from other countries around the world.

While it is true that the U.S. has visa programs for those with advanced degrees or exceptional skills, those programs are too restrictive, subject to numerical caps, and require that a job already be on offer.

For that reason, outside of any limited quantity visa auction system discussed above, the United States could offer automatic foreign worker visas for those holding advanced degrees from accredited institutions from around the world. It's not a guarantee of a job, but it's an open invitation to the world's best to bring their talents to these shores, where they can create new technologies and new businesses that can employ American workers.

In fact, 40 percent of America's largest companies were founded by immigrants,<sup>19</sup> as were half of recent venture capital-backed startups.<sup>20</sup> Google, eBay, Yahoo, Pfizer, DuPont, Kraft Foods, and Proctor & Gamble are just a few of the major U.S. companies founded by immigrants. Encouraging talented immigrants to come to the United States is clearly in the best interest of the American worker.

**Automatic Visas for those with Capital to Invest.** Similarly, outside of any limited quantity visa auction system, the United States could offer automatic foreign investor visas for those who can demonstrate sufficient net worth. It's true that the United States has an immigrant investor visa program, but it requires investment of a minimum of \$1,000,000. We should lower that threshold to \$250,000 or so to encourage immigrant investors capable of starting small businesses as well as larger ones.

These automatic visa programs would not be exempt from security screening, of course. Such visa holders would still be subject to entry and exit monitoring, and all the conditions of the described guest worker program, including the Guest Worker Tax.

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## A Proposed Solution to the Problem of Illegal Immigrants

Thus far we've created new sources of revenue to fund a robust, working immigration system, we've introduced biases that would favor US citizens in employment, we've dealt with ideas for attracting talented immigrants to the United States, as well as ways to make sure we know who is here, whether they are in compliance, and when they leave. But there remains the most controversial and most dysfunctional problem of our immigration system; those already here illegally. What is needed, in addition to those permanent, ongoing features of a functioning immigration system, is *a temporary program of limited duration to resolve the status of the illegal population in the national interest*. Onto this minefield we shall now step.

There are estimated to be between 12 and 15 million illegal immigrants in the United States, though this number fluctuates with the fortunes of the U.S. economy. Despite the

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19. Robert Lenzner, "40% Of The Largest U.S. Companies Founded by Immigrants or Their Children," *Forbes*, Apr 25, 2013 <http://www.forbes.com/sites/robertlenzner/2013/04/25/40-largest-u-s-companies-founded-by-immigrants-or-their-children/>

20. Sarah McBride, "Immigrants Founded Half of Top U.S. Start-up Companies," *Reuters*, Dec 20, 2011. <http://www.reuters.com/article/2011/12/20/us-venture-immigration-idUSTRE7BJ1WK20111220>

fact that almost every economic estimate has concluded that immigration has a net positive economic impact on the U.S. economy, even accounting for their consumption of public and social services, many Americans are skeptical. But beyond economic considerations, allowing a significant population of illegal immigrants to remain on the margins of society undermines the rule of law, fails to maximize the productive capacity of this worker population to contribute to the overall U.S. economy, and leaves states weighed down by the additional drain on social services.

In particular, having a sizeable population that exists outside of the law and outside of civil institutions, that is incentivized to remain invisible, has obvious negative implications for crime and national security.

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## The Benefits of Moving Illegal Immigrants to Legal Status

Legal immigrant workers earn more income and thus pay more taxes than do illegal immigrant workers, while imposing likely lower social costs upon the system. In addition, because legal immigrants earn more, the spread between the earnings of citizens and illegal immigrants would actually shrink under a legal status regime, reducing the labor discount an employer might seek by employing illegals.

And under the proposed Guest Worker Tax, legalized immigrant workers and their employers would pay additional taxes, further reducing the spread and funding immigration and border security. It's clear that finding a just way to move illegal immigrants to legal status would be a net positive to the U.S. economy, and would enroll them in the kind of entry, exit and monitoring system we've described above, which would contribute to national security.

Once the majority of illegal immigrants has been given an opportunity to attain a legal status, it would also create more public support for more enhanced scrutiny and swift justice measures for those remaining outside of the law.

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## The Borders of the Discussion

Every illegal immigrant has, by definition, broken the law, but not all illegal immigrants are in the same situation. Some entered the country illegally, while other entered legally but have overstayed their visas, as described earlier. Some illegals have nonetheless lived constructive lives while in the United States, purchasing property and starting businesses—in fact, it's certain that some American citizens work in businesses owned by illegal immigrants. When crafting a remedy to the problem of the illegal population in the United States, it makes little sense to treat those in such diverse situations with a one-size-fits-all solution.

It is also true that our dysfunctional immigration system is also itself significantly to blame for the presence of illegal immigrants in the United States. Our national wealth, easy availability of social services, dysfunctional bureaucracy, failure to adopt appropriate technology and birthright citizenship policy create strong incentives for immigrants to chose an illegal path to enter the country, and our insecure border makes entry easy.

The challenge—perhaps the greatest challenge of immigration reform—is to find a way to incentivize the illegal population to either take the necessary steps to begin participating legitimately in the U.S. economy, or to return home.

*But to make progress, this discussion must take place within several borders. Reality matters. At one extreme is door-to-door mass force deportations of illegal immigrants, which the American people will never accept. Remember that 2000 Pulitzer Prize winning photo of Elian Gonzalez being cornered in a bedroom closet at the point of an automatic rifle? Imagine that scene being played out on the evening news 12 million times. It will never happen.*

At the other extreme is whatever amorphous definition of “amnesty” you choose, which fails to hold illegals accountable for their violations. A just, realistic system must find a way between these two extremes to incentivize the vast majority of illegal immigrants to come forward voluntarily. Incentives matter, and systems that ignore incentives are designed to fail. There is no real alternative to an incentive-based system.

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## Incentives to Register

How might illegals recognize and pay for breaking the immigration laws in the first place? Other than mass forced deportation and doubling or tripling our incarcerated population?

The illegal population could be given some period of time, say twelve months, in order to register for legal, guest worker status (not citizenship). Registration would be contingent on the payment of a fine, which would represent the penalty for their illegal status, and background checks. Of course the amount of such a fine will have to be politically determined, but again must be significant enough to be meaningful but not so oppressive that it discourages registration. A \$10,000 fine, for instance, would obviously be so high that it would discourage registration. It is impractical to attempt to recoup the past social costs of an illegal immigrant through fees and fines.

Because incentives matter, registrants during the twelve month period might be offered lower fines as an incentive for early registration. Imagine, for example, that in the first month of the twelve month registration period, illegals were able to register for a \$500 fine per adult, with the rate increasing by \$200 each month so that those who waited until the last month would be liable for a \$2,700 fine per adult. Such an escalating fine system would encourage prompt registration, sparing the system from a mad rush at the end of the period.

The fine would represent payment for illegally entering the country, and could add a one-time windfall of as much as \$10 billion to the U.S. Treasury to fund enhanced border security. Newly registered guest workers would be able to fully function in the economy—they would be able to purchase property, enroll in schools, purchase automobile insurance, etc.

Registration would free the registrant from prosecution for past immigration violations, but would not be a “get out of jail free card” for future violations or any other crimes. Remember, legal immigrant workers would be subject to the biometric entry, exit and monitoring system described above, and of course the Guest Worker Tax.

Once the registration period has ended, it is closed. Unregistered immigrants would be out of compliance with the legal requirements of the immigration system and would be deported upon identification by law enforcement. Society would be far more supportive of robust prosecution and deportation of those who choose to not avail themselves of convenient legal status.

We also anticipate that during the twelve month registration period, certain illegal immigrants would return to their countries, knowing they would not pass a background check and that they would be subject to immediate deportation along with their families as outlined in legislation.

These proposals would hold illegal immigrants accountable for violating past immigration laws and give them legal immigrant worker status, subject to biometric, entry, exit and monitoring, and the Guest Worker Tax. It would neither create a new path to citizenship nor put newly registered immigrant workers on a fast track toward citizenship. Our system already outlines a route to citizenship for those who choose to pursue it. Those who tout new and streamlined pathways to citizenship for illegal immigrants are

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## What Legal Status Would Not Do

simply using immigration reform to manipulate political outcomes rather than achieving greater economic growth and security for the American people.

In addition, immigrant workers would not qualify for means-tested welfare programs such as food stamps, the refundable Earned Income Tax Credit (EITC), unemployment and other means tested benefits. If they cannot maintain adequate employment, they must leave.

The Supreme Court has found (*Plyler v. Doe*) that access to public education may not be denied to children of illegal immigrants. It has not held that illegal immigrants are entitled to the benefit of all existing federal benefits, such as unemployment insurance, Medicaid, or welfare benefits. The Court has deferred to the states on the matter of allowing illegal immigrants access to in-state resident tuition levels for secondary education. It is reasonable to assume that the Court would allow differentiation between citizens and legal aliens for purposes of benefits, especially benefits related to employment.

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## A Comment about Border Security

Of course, we would deceive ourselves to think that any of these systems will work effectively without a more secure border than we have today. In fact, absent a secure border, the lure of legal status would likely incentivize even more immigrants to enter the country illegally in order to obtain legal worker status.

It would seem reasonable to achieve measurable border security before implementing the recommendations in this paper, which does not describe specific details about how to enhance border security. The border security problem is a problem of will first, and resources second.

This paper does, however, create funding mechanisms for greatly enhanced border security measures. Standards of border security must be mandated in law, and there must be a commitment within the federal government to enforce the law and secure the border.

Needless to say, in any scenario, Congress must hold the president to his oath to “take Care that the Laws be faithfully executed” under Article II, Section 3 of the Constitution.

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## Conclusion

This paper is an attempt to provide content for what has largely been a content-free policy discussion over immigration for the past several years. Hopefully one or more of these suggestions could become part of a compromise package of solutions amenable to a majority in Congress. At the very least, it may facilitate discussion of these ideas.

There are, of course, other issues to consider within a comprehensive immigration policy reform beyond what we have dealt with in this paper, including our current practices regarding birthright citizenship, variable admissions criteria by country or region, etc. It is also clear that a healthy and growing Mexican economy would reduce illegal immigration from Mexico, so such is also in the best interests of the United States.

It's clear that our current immigration system is dysfunctional, unpopular, economically suboptimal, and poses a threat to our national security. The good news is that, given the political will, an immigration system can be designed that would attract the best and brightest from around the world, respect the contributions of immigrant workers toward greater U.S. economic growth, and self-fund the expenses of robust enforcement and border security.

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