

NOTES

BE OUR GUEST: SYNTHESIZING A REALISTIC GUEST WORKER PROGRAM AS AN ELEMENT OF COMPREHENSIVE IMMIGRATION REFORM

INTRODUCTION

The United States is frequently referred to as a “nation of immigrants.”¹ This description, when considered alongside such public displays of openness as the erection of the Statue of Liberty² and the inauguration of Ellis Island, suggests that the United States has a history of being particularly accepting of immigrants.³ However, immigration law and policy remains a “controversial political, social, economic, and moral issue”⁴ despite the fact that most Americans have immigrant backgrounds.⁵ In fact, twenty percent of this country’s population

1. See, e.g., Elizabeth M. Dunne, *The Embarrassing Secret of Immigration Policy: Understanding Why Congress Should Enact an Enforcement Statute for Undocumented Workers*, 49 EMORY L.J. 623 (2000); Ryan Frei, Comment, *Reforming U.S. Immigration Policy in an Era of Latin American Immigration: the Logic Inherent in Accommodating the Inevitable*, 39 U. RICH. L. REV. 1355 (2005); OWEN FISS, A COMMUNITY OF EQUALS: THE CONSTITUTIONAL PROTECTION OF NEW AMERICANS 3 (Joshua Cohen & Joel Rogers eds., 1999).

2. At the base of the Statue of Liberty, an inscription taken from a sonnet by Emma Lazarus reads, “[g]ive me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore . . .” Hon. Paul Brickner & Megan Hanson, *The American Dreamers: Racial Prejudices and Discrimination as Seen Through the History of American Immigration Law*, 26 T. JEFFERSON L. REV. 203, 216 n.64 (2004) (quoting EMMA LAZARUS, THE NEW COLOSSUS (1983) in THE OXFORD DICTIONARY OF QUOTATIONS 413 (Angela Partington ed., 4th ed. 1992)).

3. See, e.g., Rex D. Khan, Note, *The Variable Up-Front Per Capita Visa Tax: A Contractual Approach to Immigration Law*, 13 GEO. IMMIGR. L.J. 409, 410 (1999) (“When we think about the U.S. immigration policy, we normally think of a generous open-door policy.”). But see Hon. John F. Gossart, Jr., *Lady Liberty Blows Out Her Torch: New Immigration Law is Unforgiving and Far More Restrictive*, 27 U. BALT. L.F. 25 (1997) (“Yet these words inscribed on Lady Liberty are no longer particularly true today and clearly have not been the rallying call in the last decade.”).

4. Dunne, *supra* note 1, at 623; see also PETER BRIMELOW, ALIEN NATION: COMMON SENSE ABOUT AMERICA’S IMMIGRATION DISASTER 57 (1995) (“There is no precedent for a sovereign country undergoing such a rapid and radical transformation of its ethnic character in the entire history of the world.”).

5. FISS, *supra* note 1, at 3.

consists of immigrants or individuals who have at least one immigrant parent.⁶

Part I of this note, after a brief history of immigration legislation, will explore current immigration policy and the problems it engenders relating to undocumented workers. Part I will also survey the arguments proffered by both the pro-immigration and anti-immigration camps in support of their respective criticisms of and suggestions for improving the system. Part II of this note will address proposed legislative acts, such as President Bush's Fair and Secure Immigration Reform Bill, Senator John McCain and Senator Edward Kennedy's Secure America and Orderly Immigration Act, and Senator John Cornyn and Senator John Kyl's Comprehensive Enforcement and Immigration Reform Act of 2005. These bills all include provisions encouraging legal immigration by expanding the number of channels available for legal entry. Each proposal contains provisions or policies that are worthy of consideration. This note concludes with a possible synthesis of all three proposals.

I. HOW NATIONAL POLICY AFFECTS IMMIGRATION LAW RELATING TO UNDOCUMENTED WORKERS

A. *A History of Immigration Law and the Undocumented Worker*

Since the late 1800s, the federal government has passed much legislation restricting immigration.⁷ Since the first piece of legislation, the Immigration Act of 1875, which narrowly focused on prohibiting Chinese prostitutes and European criminals from entering the country,⁸ Congress has continued to show "its willingness to embrace a federal regulatory system that would impose and tailor immigration restrictions as necessary."⁹ It has done so by passing numerous subsequent acts. During the "era of extreme restriction," from 1920 through 1965, Congress adopted "quantitative restrictions in the form of strict national-origin-based quota limitations."¹⁰

The first time labor and employment issues were implicated in

6. See Frei, *supra* note 1, at 1381.

7. See U.S. IMMIGRATION AND NATURALIZATION LAWS AND ISSUES: A DOCUMENTARY HISTORY, xxvii, xxxi-xxxii (Michael LeMay & Elliott Robert Barkan eds., 1999) [hereinafter U.S. IMMIGRATION].

8. See Frei, *supra* note 1, at 1363.

9. *Id.* at 1366.

10. *Id.* at 1368.

immigration law was in the establishment of the Bracero Program in 1942.¹¹ This program authorized the necessary employment of temporary Mexican “guest workers” to satisfy war-time demands.¹² The program was established in an effort to counter the “flight [of American agricultural laborers] to higher-paying industrial jobs generated by the war.”¹³ It provided for Mexican immigrants to enter the United States for a certain period of time specified in a labor contract, and work in areas experiencing labor shortages.¹⁴ Unless their agreements were renewed, the Braceros were forced to leave the United States immediately upon the contract’s expiration.¹⁵

In the late 1970s, an even more apparent nexus between immigration and employment law emerged. Economic forces, like the need to escape poverty and obtain gainful employment, pushed immigrants out of their home countries.¹⁶ Simultaneously, “the legal framework of the destination country and the lax enforcement of laws that prohibit[ed] the employment of illegal immigrants serve[d] as pull factors.”¹⁷ As a result, immigration to countries like the United States increased.¹⁸ The threats of unrestricted immigration, such as the “loss of cultural homogeneity,” the risk to national security, and “shortages in housing, transportation, and other infrastructural facilities” led to an increase in regulation.¹⁹ However, an increase in regulation only served to encourage illegal immigration.²⁰

In response to the increase in illegal immigration of the 1970s, Congress created the Select Commission on Immigration and Refugee Policy in 1978.²¹ Certain recommendations made by the Commission appeared in the first major piece of legislation confronting the growing problem of illegal immigration: the Immigration Reform and Control

11. See, e.g., *id.* at 1369; U.S. IMMIGRATION, *supra* note 7, at xxxiv-xxxv.

12. Frei, *supra* note 1 at 1369.

13. Lorenzo A. Alvarado, Comment, *A Lesson From My Grandfather, the Bracero*, 22 CHICANO-LATINO L. REV. 55, 57 (2001).

14. *Id.* at 58-60.

15. *Id.* at 60.

16. Note, Aristides Diaz-Pedrosa, Note, *A Tale of Competing Policies: The Creation of Havens for Illegal Immigrants and the Black Market Economy in the European Union*, 37 CORNELL INT’L L.J. 431, 436. (2004).

17. *Id.* at 445.

18. *Id.*

19. *Id.* at 439-40.

20. See *id.* at 447.

21. U.S. IMMIGRATION, *supra* note 7, at 252; see also Frei, *supra* note 1, at 1372 (noting that Congress formed the Commission in response to pressure to enact restrictive legislation after the U.S. experienced a major increase in the number of illegal Mexican immigrants).

Act of 1986 (“IRCA”).²² By this point, Congress had realized that the ready willingness of employers to hire illegal immigrants was at the root of the problem.²³ Congress’ goal when enacting the IRCA was to curtail illegal immigration by (1) sanctioning employers for hiring undocumented workers,²⁴ and (2) conferring amnesty to agricultural workers who had been working in the United States for at least ninety days without documentation.²⁵ Nonetheless, the IRCA failed to facilitate a decrease in illegal immigration as Congress had hoped.²⁶

In 1990, Congress passed the Immigration Act (“1990 Act”),²⁷ and in 1996 Congress passed the Illegal Immigration Reform and Immigration Responsibility Act (“IIRIRA”).²⁸ The 1990 Act focused on deporting criminal aliens and increasing the size of the Border Patrol, while the IIRIRA focused on increasing Border Patrol, imposing stricter penalties on alien smugglers, and constructing fencing along the Mexican border.²⁹ Both measures were intended to further restrict illegal immigration.³⁰ However, both acts failed to consider changes in employment law as possible solutions, and to combat the growing demand for cheap labor being supplied by undocumented workers. Instead, the system made it nonviable for undocumented immigrants to regularize their status and compelled employers to ignore federal law and hire undocumented workers.³¹

22. See, e.g., U.S. IMMIGRATION, *supra* note 6, at 252-53.

23. See Diaz-Pedrosa, *supra* note 16, at 441 (“[T]he black market economy results partly from the mutual convenience for employers who hire illegal immigrants and the illegal immigrants themselves.”).

24. The act required employers to “verify the employment authorization of their employees upon hire by reference to specifically designated documents.” Christopher Ho & Jennifer C. Change, *Drawing the Line After Hoffman Plastic Compounds, Inc. v. NLRB: Strategies for Protecting Undocumented Workers in the Title VII Context and Beyond*, 22 HOFSTRA LAB. & EMP. L.J. 473, 481-82 (2005). “Any person or entity which engages in . . . violations of subsection (a)(1)(A) . . . shall be fined not more than \$3,000 for each unauthorized alien with respect to whom such a violation occurs, imprisoned for not more than six months . . . or both.” 8 U.S.C. § 1324(a)(f)(1) (2000).

25. See, e.g., Frei, *supra* note 1, at 1373.

26. See, U.S. IMMIGRATION, *supra* note 7, at 253 (“IRCA had but a very temporary impact on the flow of immigrants.”).

27. Immigration Act of 1990, PUB. L. NO. 101-649, 104 STAT. 4978 (1990) (codified in sections 8 and 18 of U.S.C.).

28. Illegal Immigration Reform and Immigrant Responsibility Act of 1996, Pub L. No. 104-208, 110 Stat. 3009 (1996) (codified as amended in sections of 8 U.S.C.).

29. See JoAnne D. Spotts, *U.S. Immigration Policy on the Southwest Border from Reagan Through Clinton, 1981-2001*, 16 GEO. IMMIGR. L.J. 601, 612, 615 (2002).

30. See *id.*

31. See, e.g., Tisha R. Tallman, *Liberty, Justice, and Equality: An Examination of Past, Present, and Proposed Immigration Policy Reform Legislation*, 30 N.C. J. INT’L L. & COM. REG. 869, 873 (2005) (“[O]ur current system is not supporting present or future economic demands for

During the Bush administration, talks ensued between President Bush and Mexican President Vicente Fox, whereby a commitment was made on behalf of both nations to “reach mutually satisfactory results on border safety, a temporary worker program and the status of undocumented Mexicans in the United States.”³² Dialogue, however, was thwarted by the terrorist attacks of September 11, 2001.³³ While attempts to reconvene were made by President Fox, those efforts failed since this country was focusing all of its attention on the global war on terror.³⁴

B. The Two Sides of the Debate

Currently, Latin American immigration is at an all-time high. In 2004, Mexican immigrants accounted for thirty-one percent of the foreign born population, making Mexico the top “sending country.”³⁵ The majority of the illegal aliens that entered the United States in 2004 were from Mexico.³⁶ The growth of this “minority majority” put immigration reform in the political forefront during the 2004 Presidential election, resulting in increased awareness of the American population on such issues.³⁷ Generally speaking, there are two opposing sides of the immigration debate: those who identify themselves as “anti-immigration” and support even stricter regulation, and those who maintain a pro-immigration perspective and encourage “inclusiveness.”³⁸

immigrant labor. It forces employers to seek employment through unlawful and clandestine means.”).

32. Press Release, The White House, Joint Statement between the United States of America and the United Mexican States, (Sept. 6, 2001), available at <http://www.whitehouse.gov/news/releases/2001/09/20010906-8.html>.

33. See Frei, *supra* note 1, at 1375 (“[T]he devastating terrorist attacks immediately shifted the United States government’s attention from immigration reform to more urgent national security matters.”).

34. *Id.* at 1376.

35. See STEVEN A. CAMAROTA, CENTER FOR IMMIGRATION STUDIES: ECONOMY SLOWED, BUT IMMIGRATION DIDN’T – THE FOREIGN-BORN POPULATION, 2000-2004, at 13 (2004), available at <http://www.cis.org/articles/2004/back1204.pdf>.

36. See Frei, *supra* note 1, at 1377 (noting that approximately three million illegal immigrants entered the United States in 2004).

37. See *id.* at 1378 (“During the 2004 presidential campaign season, both President Bush and Senator Kerry recognized the importance of appealing to Latin American voters by proposing immigration reform, since the crucial Hispanic swing vote brings a strong interest in immigration issues.”).

38. See John S. Richbourg, *Liberty and Security: the Yin and Yang of Immigration Law*, 33 MEM. L. REV. 475, 477-78 (2003).

1. Anti-Immigration Argument

The most frequently referred to basis for animus towards immigration is the idea that immigrants take jobs from Americans.³⁹ To counter this particular grievance, President Fox of Mexico, in May of 2005, said “[t]here’s no doubt that Mexican men and women – full of dignity, willpower and a capacity for work – are doing the work that not even blacks want to do in the United States.”⁴⁰ While he later publicly apologized for his comment, it exposed a belief that Mexicans are taking jobs that are either less desirable or not being filled.⁴¹ Those who support the anti-immigration view disagree. They argue that undocumented workers do not take jobs that Americans do not want; they take jobs in industries in which immigrants have undercut the market employment rate, thereby creating an artificially low cost of human capital.⁴² The new, depressed market wages deter Americans from taking those jobs.⁴³

Illegal immigrants are willing to work for below minimum wage; therefore, employers are more inclined to hire them over U.S. citizens.⁴⁴ Immigration adversaries argue that “[t]here has been substantial displacement of native-born workers by new immigrants, especially in entry-level jobs.”⁴⁵ Statistics show that nearly fifty percent of wage loss experienced by low-skilled American workers is directly related to illegal immigration.⁴⁶ “It is estimated that illegal aliens displace roughly 730,000 American workers every year, at a cost of \$4.28 billion a year,

39. See, e.g., David Turoff, Note, *Illegal Aliens: Can Monetary Damages be Recovered from Countries of Origin Under an Exception to the Foreign Sovereign Immunities Act?*, 28 BROOK. J. INT’L L. 179, 183-84, 194 n.40 (2002).

40. CBS News, *Fox Regrets Racial Remark* (May 17, 2005), <http://www.cbsnews.com/stories/2005/05/16/world/main695682.shtml>.

41. CNN, *Mexican Leader Criticized for Comment on Blacks* (May 15 2005), <http://www.cnn.com/2005/US/05/14/fox.jackson/>.

42. See Elizabeth M. Dunne, *The Embarrassing Secret of Immigration Policy: Understanding Why Congress Should Enact an Enforcement Statute for Undocumented Workers*, 49 EMORY L.J. 623, 641-643 (2000) (discussing the impact of immigrants as work force participants and their effect on the employment market).

43. See *id.*

44. Heather Rupp, *Illegal Aliens Working Legally: How Will This Affect Illegal Aliens, U.S. Citizens, and Their Respective Families?*, 6 J.L. & FAM. STUD. 409, 415 (2004).

45. Andrew M. Sum & Paul E. Harrington, *Rise of the Off-the-Books Workforce*, L.A. TIMES, Feb. 22, 2004, at M1; see also Frei, *supra* note 1, at 1379 (“One study performed in the early 1990s predicted that the cost of job displacement by illegal aliens would reach approximately \$171.5 billion between 1993 and 2002.”).

46. See Cliff Stearns, Editorial, *Don’t Decriminalize Illegal Immigration*, ORLANDO SENTINEL, Jan. 28, 2004, at A13.

and the supply of cheap labor they provide depresses the wages and working conditions of the working poor.⁴⁷ U.S. citizens are forced to work for lower wages in order to stay competitive.⁴⁸

Another ground for complaint is the perceived threat of illegal immigration to the U.S. economy and taxpayer funds. Many states' constitutions that provide for public assistance programs, such as welfare and non-emergency healthcare, have been extended to cover illegal immigrants.⁴⁹ The result is that many illegal immigrants reap the benefits of these social services free of charge.⁵⁰ In California alone, "illegal immigration is costing the taxpayers more than \$10.5 billion per year for education, medical care and incarceration. [And] [e]ven if the estimated tax contributions by illegal immigrants are subtracted, net outlays still amount to nearly \$9 billion per year."⁵¹ A study from the Center for Immigration Studies, based on Census Bureau data, estimated that "households headed by illegal aliens used \$10 billion more in government services than they paid in taxes in 2002."⁵² The study went on to declare that even "if illegals were given amnesty, the fiscal deficit at the federal level would grow to nearly \$29 billion."⁵³

Lastly, those against immigration argue that the dollars earned by undocumented workers enter the U.S. economy at a far lower multiple than dollars earned by citizens and legal immigrants. On a local scale, Rene Leon Rodriguez, El Salvador's Ambassador to the United States, said that while "there are no solid statistics on how much of the money immigrants earn on [Long Island] stays here. [He estimates] that

47. See Rupp, *supra* note 44, at 414.

48. See *id.* at 415.

49. Peter L. Reich, *Public Benefits for Undocumented Aliens: State Law into the Breach Once More*, 21 N.M. L. REV. 219, 241 (1991).

50. Donald L. Barlett & James B. Steel, *Who Left the Door Open?*, TIME, Sept. 20, 2004, at 51-52.

51. JACK MARTIN & IRA MEHLMAN, THE COST OF ILLEGAL IMMIGRATION TO CALIFORNIANS (Federation for American Immigration Reform) (Nov. 2004), available at http://www.fairus.org/site/PageServer?pagename=iic_immigrationissuecentersffec. "The annual fiscal burden from those three areas of state expenditures amounts to \$1,183 per household headed by a native-born resident." *Id.*

52. CENTER FOR IMMIGRATION STUDIES, THE COSTS OF ILLEGAL IMMIGRATION (August 25, 2004) ("Among the largest federal costs: Medicaid (\$2.5 billion); treatment for the uninsured (\$2.2 billion); food assistance programs (\$1.9 billion); the federal prison and court systems (\$1.6 billion); and federal aid to schools (\$1.4 billion).").

53. "If illegal aliens were legalized and began to pay taxes and use services like legal immigrants with the same education levels, the estimated annual fiscal deficit at the federal level would increase from \$2,700 per household to nearly \$7,700, for a total federal deficit of \$29 billion." *Id.* Additionally, if granted amnesty, "illegals would still be largely unskilled, and thus their tax payments would continue to be very modest, but once legalized they would be able to access many more government services." *Id.*

Salvadorans living in Nassau and Suffolk send ten percent of their earnings, or \$600 million - \$800 million a year, back to family members in El Salvador.”⁵⁴

2. Pro-Immigration View

Those in favor of immigration believe it to be a “necessary and appropriate affirmation of the ideals on which the United States was founded – inclusiveness, opportunities for self-made success in the form of the ‘American Dream,’ and the notion that diversity is the greatest asset to this nation’s unique identity in the world.”⁵⁵ It is argued that immigrants come here to improve their families’ quality of life, not to freeload off of public assistance.⁵⁶

While immigration opponents believe that immigrants have an unfavorable influence on wages and employment opportunities for the native population, there isn’t much evidence to support this conclusion.⁵⁷ Studies actually suggest that immigration helps to create new jobs as opposed to displacing American workers.⁵⁸ They “may expand the demand for goods and services through their consumption”⁵⁹ and they “may fill vital niches in the low and high skilled ends of the labor market, thus creating subsidiary job opportunities for Americans.”⁶⁰

Additionally, while immigration opponents claim it is a fallacy that immigrants take the jobs Americans don’t want, immigrant proponents suggest that undocumented workers do not displace American workers because they tend to find employment in the secondary market where the wages are low and the working conditions undesirable.⁶¹ In fact, the

54. Phillip Lutz, *Immigrant Entrepreneurs are Saving Main Street*, N.Y. TIMES, Sept. 25, 2005, at 14, 8.

55. Frei, *supra* note 1, at 1381.

56. *Id.*

57. AM. IMMIGRATION LAW FOUND., THE ECONOMIC CONSENSUS ON IMMIGRATION, in IMMIGRATION POLICY REPORTS (1999), available at http://www.aifl.org/ipc/policy_reports_1996_pr9604.htm.

58. *Id.*

59. *Id.*

60. *Id.* (“Leading economists have pronounced immigration a benefit to the U.S. A group of economists that included Nobel prize winners, former members of the President’s Council of Economic Advisers, and past presidents of the American Economic Association were asked, ‘On balance, what effect has twentieth-century immigration had on the nation’s economic growth?’ 81% answered ‘favorable’ and 19% replied ‘slightly favorable’ to the question. None of these leading economists believed that immigration exerted an unfavorable influence on America’s economy. When asked, ‘What level of immigration would have the most favorable impact on the U.S. standard of living?’ 63% said ‘more’ and 30 % answered the ‘same number.’ None replied ‘fewer.’”).

61. See Michael Piore, *The “Illegal Aliens” Debate Misses the Boat*, (Working Papers for a

jobs occupied by undocumented workers are typically in industries that would shut down if the low wage labor provided by illegal immigrants became unavailable.⁶² Moreover, studies have demonstrated that “where native workers receive lower wages and the number of immigrants is high, immigrants act as substitutes; whereas if native workers receive lower wages, but the number of immigrants is scarce, they act as complements.”⁶³ These studies show that undocumented workers are not replacing the native workers.

Immigrant advocates respond to the argument that illegal immigrants drain the economy with evidence that legal and illegal immigrants actually contribute in taxes.⁶⁴ In fact, they are significant sources of tax revenue.⁶⁵ “The average illegal household pays more than \$4,200 a year in federal taxes, for a total of nearly \$16 billion.”⁶⁶ Furthermore, “about 43 percent, or \$7 billion, of the federal taxes illegals pay goes to Social Security and Medicare.”⁶⁷ According to the National Immigration Forum, the one hundred and sixty-eight million dollars in taxes that go to state unemployment benefit funds acts as a direct subsidy since the undocumented worker cannot even benefit from that system.⁶⁸ Considering all of the facts, it is feasible that undocumented workers make a net positive contribution to the U.S. economy.⁶⁹

C. Current Immigration Policy and its Problems

The current system makes it “nearly impossible for working, undocumented immigrants to regularize their immigration status.”⁷⁰ One must be sponsored by a family member or an employer in order to regularize his status.⁷¹ This is difficult as not all employment fields offer equal opportunities for acquiring visas and many family members lack

New Soc’y, Working Paper No. 60, 1978).

62. See Albert Kutchins & Kate Tweedy, *No Two Ways About It: Employer Sanctions Versus Labor Law Protections for Undocumented Workers*, 5 INDUS. REL. L.J. 339, 345 (1983).

63. Dunne, *supra* note 1, at 642.

64. Kristen M. Oven, *The Immigrant First as a Human: International Human Rights Principles and Catholic Doctrine as New Moral Guidelines for U.S. Immigration Policy*, 13 NOTRE DAME J.L. ETHICS & PUB. POL’Y 499 (1999).

65. See CENTER FOR IMMIGRATION STUDIES, *supra* note 52, at page 5, 24-25.

66. *Id.* at 5.

67. *Id.*

68. David Bacon, *Undocumented Workers Give More Than They Get*, PEOPLE’S WEEKLY WORLD NEWSPAPER ONLINE, (Oct. 2, 2004), <http://www.pww.org/article/view/4169/>.

69. *Id.*

70. Tallman, *supra* note 31, at 873.

71. *Id.*

the ability to sponsor other family members.⁷²

Millions of applicants are forced to endure lengthy waits due to such an oppressive backlog.⁷³ At the same time that these individuals are denied opportunities to become naturalized, the demand for their labor increases. Employers are still willing to take the risk because the labor is cheap and the fine, at \$3,000 for each unauthorized alien hired, recruited or referred for a fee, is not that substantial.⁷⁴ Instead of proposing a way to address the economic demand for immigrant labor, Congress chooses to pass more restrictive immigration laws, some of which punish employers for hiring undocumented workers.⁷⁵ These sanctions, however, are wholly unsuccessful in stamping out the incentive for hiring illegal immigrants.⁷⁶ It is intimated that one reason for this may be the difficulty in complying with certain regulations.⁷⁷

For example, the IRCA makes it a violation of federal law to either hire a prospective employee without first requesting specific documentation of employment authorization or hire that individual after he failed to supply the documentation.⁷⁸ However, because many illegal immigrants obtain falsified documentation, the efforts of employers who are attempting to act in accordance with the IRCA are frequently stymied.⁷⁹ Concurrently, because all that is required is evidence that the employer requested documentation, an employer who accepts what reasonably appears to be genuine on its face, avoids sanctioning even though he hires an undocumented worker. "The problem of counterfeit documents as a barrier to effective enforcement is further compounded by the fact that under IRCA an employer may assert a 'good faith' defense to avoid liability for hiring, or recruiting for a fee, an unauthorized alien for employment in the United States."⁸⁰ While the

72. *Id.*

73. *Id.*

74. 8 U.S.C. § 1324a(f)(1) (2000).

75. *See, e.g.*, Tallman, *supra* note 31, at 872-3.

76. *See* Dunne, *supra* note 1, at 643.

77. *Id.* Other explanations include "a lack of resources, and other practical barriers to effective enforcement." *Id.*

78. *See, e.g.*, 8 U.S.C. § 1324a(b) (2000).

79. In the late 1990s after ten companies were investigated by INS, approximately 1,061 workers were fired due to actual or suspected fraudulent work-authorization documents. Kristi Ellis, *The Hire Wire: Today's Highly Sophisticated Fraudulent Work Documents Along with the INS's Recent Crackdown on Unauthorized Workers Are Leaving Many Manufacturers Walking a Fine Line*, WOMEN'S WEAR DAILY, June 2, 1998, at 14S; *see also* Scott Baldauf, *Targeting Workers' Phony IDs: INS Crackdown Foils Fake Documents but May Unfairly Target Legal Minorities*, CHRISTIAN SCI. MONITOR, Sept. 9, 1998, at A1; Dunne, *supra* note 1, at 644.

80. Dunne, *supra* note 1, at 644-45 ("A person or entity is considered to have engaged in good faith compliance where 'notwithstanding a technical or procedural failure to meet such a

good faith doctrine may relieve employers from engaging in the arduous task of differentiating invalid documents from valid ones, it also “reduces the impact of the employer sanctions.”⁸¹

Some of the interior enforcement policies, arising out of the restrictive immigration laws and designed to combat the employment of undocumented workers, focus more on punishing the illegal immigrant than the employer.⁸² Many of the interior enforcement policies have resembled “targeted and systematic employment raids where the employees are taken into custody and deported.”⁸³ Operation Tarmac, which concentrated on airport workers, resulted in twenty-four airport raids which caused the arrests, detentions, summary suspensions, and expulsions of many immigrant airport workers.⁸⁴

The failure to address the economic reliance on immigrant labor and the resultant creation of more restrictive laws causes another problem: the exploitation of the undocumented worker. By ignoring the dependency on illegal labor, “politicians rob immigrants of the opportunity for lawful employment at prevailing wages, and, at the same time, contribute to their exploitation. If the need for immigrant labor was more explicitly recognized, a greater number of workers could be legally admitted under temporary work visa programs.”⁸⁵ However, while the dependency is ignored it continues to exist leaving a discrepancy between the demand for illegal labor and the supply. This contributes to the exploitation of the undocumented population.⁸⁶ These people became victims of exploitation via various mediums and methods: sweatshops, domestic servitude, agriculture and construction sites.⁸⁷ For example, Human Rights Watch recently issued a report “indicating that meatpacking workers, who are primarily undocumented immigrants, ‘contend with conditions, vulnerabilities, and abuses which violate human rights.’”⁸⁸

In addition to the interior problems discussed, there is the problem

requirement . . . there was a good faith attempt to comply with the requirement.”).

81. *Id.* at 645.

82. *See* Tallman, *supra* note 31, at 878 (noting that United States policy to prevent hiring of illegal employees has largely focused on punishing employees, notwithstanding some measures to punish employers).

83. *Id.* at 877.

84. *Id.* at 878.

85. *See* Dunne, *supra* note 1, at 638 (“Under temporary work visa programs, employers must comply with federal regulations with respect to prevailing wage rates, housing, and health and safety conditions, as well as with state workers’ compensation insurance requirements.”).

86. *See* Tallman, *supra* note 31, at 879. “In 2004, the federal government estimated that between 14,500 and 17,500 people were trafficked into the United States.” *Id.* at 880.

87. *See id.* at 879-80.

88. *See id.*

of border control. Despite an increase in the number of border agents, illegal immigration has not decreased.⁸⁹ For example, Operation Gatekeeper, which was implemented as a method of monitoring the San Diego border, did not serve to stop the flow of migrants—it merely shifted the activity east to Arizona.⁹⁰ According to the U.S. Border Patrol statistics, the number of apprehensions in Arizona’s Tucson sector increased three hundred and forty two percent between 1994 and 2000.⁹¹ One major issue with tighter border control is that it essentially keeps undocumented workers within the United States.⁹² There are also more obvious problems promoted by tighter border control. Around twenty-six hundred people have died while trying to cross the border between 1994 and 2003.⁹³ This is due, in part, to the increased vigilantism at the border.⁹⁴ It is also a result of the United States’ conflicting policies.⁹⁵ Most people are under the impression that if they survive the trip and make it across the border they will be home-free.⁹⁶ Consequently, they are willing to take their chances and risk their lives crossing extremely dangerous ground.⁹⁷

Today, there are several guest worker programs in place which attempt to alleviate some of these problems. There are programs for specialty workers (H-1B) and for agricultural workers (H-2A).⁹⁸ “The H-2A temporary agricultural guest worker program establishes a means for agricultural employers who anticipate a shortage of domestic workers to bring nonimmigrant aliens to the United States to perform

89. See *id.* at 875; see also Miki Meek, *Life and Death on the Southwest Border*, NAT’L GEOGRAPHIC, Nov. 2003, http://magma.nationalgeographic.com/hgm/0311/feature1/online_extra.html (last visited Feb. 17, 2006).

90. See Meek, *supra* note 89.

91. See *id.*

92. Dr. Demetrios G. Papademetriou, President of the Migration Policy Inst., Address before the Senate Foreign Relations Committee (Mar. 23, 2004), <http://foreign.senate.gov/testimony/2004/PapademetriouTestimony040323.pdf> (“Stepped up enforcement on the United States’ southern border has . . . contributed to longer stays by unauthorized Mexican immigrants and has made the tendency toward longer and essentially permanent stays the key to understanding the Mexico-to-U.S. migration of the last decade or so.”); see also Meek, *supra* note 89 (“Traditionally many would return to Mexico, particularly when agricultural seasons ended. But with the reentry risks much higher, the average stay since 1990 has jumped from almost two years to nine.”).

93. Meek, *supra* note 89.

94. Tallman, *supra* note 31, at 876 (“[I]ndividuals have taken it upon themselves to detain, harm, and even kill individuals suspected of crossing the border without permission.”).

95. See Meek, *supra* note 89.

96. See *id.*

97. See *id.*

98. Michael Mayerle, *Proposed Guest Worker Statutes: An Unsatisfactory Answer to a Difficult, if not Impossible, Question*, 6 J. SMALL & EMERGING BUS. L. 559, 570-71 (2001).

agricultural labor or services of a temporary or seasonal nature.”⁹⁹ The program is run by the Immigration and Naturalization Service (INS) which approves an employer’s petition after the employer has filed an application alleging that there are not enough national workers who are able, willing, qualified, and available for work.¹⁰⁰ In addition, the employer has to certify that “the employment of foreign nationals will not adversely affect the wages and working conditions of similarly employed U.S. workers.”¹⁰¹

However, this program is widely unpopular with farmers and so it has been exceedingly unsuccessful.¹⁰² Farmers complain that the H-2A certification procedure is too bureaucratic. It is often uncertain whether the INS will approve an employer’s petition for foreign workers.¹⁰³ According to statistics the INS approved 41,827 H-2A applications in 1999 which is 3.3% of the 1.2 million farm workers. However, sixty-six percent of that 1.2 million are undocumented workers.¹⁰⁴ In addition to the farmers complaints that that the program is too onerous, farm labor supporters assert that it lacks adequate protection for U.S. workers.

Amendments to the H-2A program have been attempted to appease both the agricultural employers and the farm labor advocates. The first attempt was made by the 105th Congress, in 1998, when the Senate voted to supplement H-2A with a provision requiring that a nationwide system of registries be instituted.¹⁰⁵ The registries would have essentially been a database of currently available, legal U.S. workers and act as the gateway to the employment of foreign workers.¹⁰⁶ When an employer could not find an available domestic worker through the registries he could petition for an H-2A worker. H-2A workers could also apply for legal permanent residence after four consecutive years of employment for periods of six months in H-2A status.¹⁰⁷

Reform was also attempted in the form of the Agricultural Job Opportunity Benefits and Security Act of 1999 (AgJOBS).¹⁰⁸ While this

99. *Id.* at 571.

100. *Id.*

101. *Id.*

102. *Id.* (“Interestingly, the percentage of farm workers in the United States who are undocumented increased from seven percent just after the 1986 immigration amnesty law to thirty-seven percent during 1994-95.”)

103. See Ruth E. Wasem & Geoffrey K. Collver, CRS Report for Congress: Immigration of Agricultural Guest Workers Policy, Trends, and Legislative Issues (Feb. 15, 2001), available at <http://www.cnie.org/NLE/CRSreports/Agriculture/ag-102.crm>.

104. William Booth, *Migrants Wary of Guest Worker Plan*, WASH. POST, Sept. 2, 2001, at A6.

105. Wasem & Collver, *supra* note 103.

106. *Id.*

107. *Id.*

108. Agricultural Job Opportunity Benefits and Security Act of 1999, S. 1814, 106th Cong.

Act suggested worker registries as prior amendments had also endeavored, it also included a provision which sparked much debate. The controversy surrounded the bill's proposal for the legalization of undocumented workers.¹⁰⁹ Its supporters claimed that it was more important to have a legal system than to have illegal workers. Its critics argued that the program was nothing more than indentured servitude.¹¹⁰ A companion bill, the Agricultural Opportunities Act (AgOp) was introduced which ordered an agricultural worker program to accompany the H-2A program in existence. The program would consist of a system of registries containing a database of authorized U.S. workers and employers would have to apply for registry workers before being allowed to import H-2A workers.¹¹¹ The difference between AgOp and AgJOBS was that AgOP did not include any amnesty provision.¹¹²

Since we began our exploration of guest worker programs in September of 2005, the debate has raged on, with specific proposals coming and going and reappearing in new forms. Writing on the development and proposals of immigration reform is now like taking a picture of a professional baseball team in spring training and hoping no player retires, is traded, injured, demoted or cut so that the image can be used at season's end. However difficult it may be, the central theme of our paper remains unshaken: comprehensive immigration reform can be achieved and the proposals discussed below can provide guides for effectuating change.

In December, a House Republican Bill was approved that purported to make it a felony to "assist an illegal immigrant."¹¹³ This measure would make felony out of all illegal immigrants as well as those who aid and abet them.¹¹⁴ In mid-April the Senate had generated a bipartisan immigration-reform deal which involved more border security and the potential for illegal immigrants to secure citizenship after at least two years in the United States.¹¹⁵ Agreement and compromise on this bill,

(1999).

109. Wasem & Collver, *supra* note 103.

110. *Id.* (House Immigration Subcommittee Chairman Lamar Smith portrayed the program as "indentured servitude," while Senator Gordon Smith argued that "we should not have illegal workers. We should have a legal system.")

111. *See* Wasem & Collver, *supra* note 103.

112. *Id.*

113. The Bill was created by Congressman Jim Sensenbrenner. Marketwatch.com, *Democrats: Congress Must Return to Immigration Reform*, <http://www.marketwatch.com> (search "Democrats: Congress Must Return to Immigration Reform; then follow hyperlink), Apr. 19, 2006 (last visited Oct. 6, 2006).

114. Glenn Thrush, *Immigration Reform Faces Hurdles*, NEWSDAY (NEW YORK), March 30, 2006, at A26.

115. Massimo Calabresi, *Deal or No Deal?*, TIME MAGAZINE, Apr. 17, 2006, at 20, *available*

however, have been unsuccessful to date. In response to both bills Latino advocacy groups have taken to the streets to demand total immunity and American citizenship.¹¹⁶

The Latin Political Explosion

From late March through early April 2006 massive protests swept the country in response to a house measure that would make illegal aliens felons.¹¹⁷ The protests were successful and the felon portion of the house bill was removed from subsequent legislation.¹¹⁸ Thus, Latino voters have effectively decriminalized the behavior of a large segment of their fellow Latinos.

Thus, it is clear that a large reason for the softening of the border control and criminalization portions of the bill is the force shown by the Latino population. Democrats and Republicans are heavily courting the Latino vote, a block, which until now, has been hard to define by a specific issue. Both parties think if they can champion the immigration issue they can carry the Latino swing vote.

II. PROPOSED LEGISLATION

A. President Bush's Immigration Reform Plan

On May 15, 2006, President Bush addressed the nation on the subject of Immigration reform and laid out five "clear objectives."¹¹⁹

- 1) Secure the Borders
- 2) Create a Temporary Worker Program
- 3) Hold employers accountable for who they hire
- 4) Penalize those currently residing illegally
- 5) Honor the Melting Pot Tradition¹²⁰

The new program will arguably allow those who are currently employed in the U.S. to "come out of hiding and participate legally in America's economy while not encouraging further illegal behavior."¹²¹

at <http://www.time.com/time/magazine/article/0,9171,1181630,00.html> (last visited Oct. 6, 2006).

116. *Protests Go On In Several Cities as Panel Acts*, N.Y. TIMES, March 28, 2006, at A12.

117. *Id.*

118. Thrush, *supra* note 114.

119. President George W. Bush, Address to the Nation (May 15, 2006), available at <http://www.whitehouse.gov/news/releases/2006/05/20060515-8.html>

120. *Id.*

121. See Press Release, The White House, Fact Sheet: Fair and Secure Immigration Reform,

However, Secretary of Labor Ellen Chao stated that the President's proposal will not grant amnesty to those currently living in the country illegally, as that "unfairly rewards lawbreaking and because amnesty encourages further illegal immigration."¹²² Instead, the government will offer temporary worker status to those undocumented workers currently employed in the U.S. and to those who still reside in foreign countries but have secured employment here and intend to emigrate.¹²³ Workers who wish to partake in this program, including those already residing and holding jobs in the United States, "should undergo credentialing procedures and background checks, and at a minimum should have to meet the legal admissibility standards set by Congress."¹²⁴

Participants in the program would be given temporary worker cards allowing them to travel to their home country without fear of being denied the right to re-enter the U.S.¹²⁵ By issuing biometric tamper-resistant identification cards for temporary workers, the President believes the program will encourage workers to maintain ties with their home countries, making them more likely to return when their visas expire.¹²⁶ According to the plan, the participants are expected to pay a one-time registration fee, follow the rules of the program, and then return to their home countries once their period of work has expired. There would also be a renewal option.¹²⁷ Without giving any specifics, Secretary Chao made it clear that the program will include strong workplace enforcement provisions and incentives for foreign workers to return home once their time in the program is done. A White House press release articulated at least one of these incentives. "The U.S. will work with other countries to allow aliens working in the U.S. to receive credit in their nations' retirement systems and will support the creation of tax-preferred savings accounts they can collect when they return to their native countries."¹²⁸

In his latest push for comprehensive reform President Bush has retreated from clearly defining the scope of the temporary worker program. In 2005, Secretary Chao described employers' responsibilities under a developing temporary worker program. Under the system

available at <http://www.whitehouse.gov/news/releases/2004/01/20040107-1.html>.

122. *Immigration Overhaul: Hearing before the S. Committee on the Judiciary*, 109th Cong. (2005) (statement of Elaine Chao, Secretary of Labor) [hereinafter *Immigration Overhaul*].

123. Press Release, The White House, *supra* note 121.

124. *Immigration Overhaul*, *supra* note 122.

125. Press Release, The White House, *supra* note 121.

126. *Immigration Overhaul*, *supra* note 122.

127. Press Release, The White House, *supra* note 121.

128. *Id.*

advocated in 2005, before a job can be offered to a foreign temporary worker, the employer would be required to make the job available to American citizens.¹²⁹ Employers must make “every reasonable effort” to find Americans to fill the job before offering it to a foreign worker.¹³⁰ The Department of Labor would intervene after the employer’s efforts to hire U.S. citizens fail to verify that the employer has properly complied with the “labor market test.” This test simply ensures that jobs are made available to U.S. citizens before the employer solicits the help of the Department in placing a foreign worker.¹³¹ Companies that ignore legislation and carry on hiring illegal workers will continue to be targeted. Enforcement against these companies will increase as part of this program.¹³² Under this more defined system, the Department will also enforce “the labor standards associated with these temporary worker programs to prevent the exploitation of the temporary workers and guard against adverse employment effects on U.S. workers.”¹³³

Involvement of the Department of Homeland Security and Department of Justice to regulate the immigration aspects of the new proposal, including security checks, determinations of admissibility, and the adjudication of benefits, appears unchanged. The government will have no role in the placement of temporary employees. Rather, the President has stated his belief that “the private marketplace, rather than a vast government bureaucracy, is better suited to meet this challenge.”¹³⁴

This plan has the potential to correct some of the problems with current legislation and policy discussed above. It may make it easier for undocumented workers to legalize their immigration status even if it does not necessarily make it easier for them to become nationalized. They would be encouraged to come forward because doing so would bring “improved working conditions, the ability to travel to the home country, and the opportunity to negotiate salary and benefits, receive training, and move to another employer participating in the program.”¹³⁵ Temporarily legalizing status for the millions of undocumented workers may successfully lower the demand for undocumented workers. With a scarcity of illegal immigrants for hire, employers will be hard-pressed to

129. *Immigration Overhaul*, *supra* note 122.

130. Press Release, The White House, *supra* note 121.

131. *Immigration Overhaul*, *supra* note 122.

132. Press Release, The White House, *supra* note 121.

133. *Immigration Overhaul*, *supra* note 122.

134. *See id.*

135. Press Release, White House Answers Questions on Fair and Secure Immigration Reform, U.S. Dep’t of State (Jan. 7, 2004), available at <http://usinfo.state.gov/gi/Archive/2004/Jan/07-545562.html>.

find as many people willing to work for such low wages as they once did. The underclass of immigrant workers will vastly decrease since, as legalized workers, they will be able to demand more equitable wages.

Political Viability

In January 2006, the Republican Party formally endorsed the President's plan for a guest worker program.¹³⁶ This acceptance appears founded upon the Republican Party's recognition of the powerful Latin American voting block.¹³⁷ The pitch to Latinos will most likely be that the party is recognizing the importance of the American Dream. The pitch to the GOP's conservative base will emphasize the necessity of a guest worker program as a means for securing our borders. However the staunchest conservatives have refused to support guest worker programs or anything they view as "amnesty."

Because the vast majority of the immigrants affected by this bill are Latin Americans, additional care and sensitivity will be required. Nevertheless, the President has indicated a commitment to securing the southern border, while simultaneously recognizing the United States' need for a temporary worker program.¹³⁸ The lack of clamoring from the Democratic Party may facially indicate acceptance of the President's plan, but this may not be the case.

B. The Middle Ground

Introduced on May 12, 2005 to the 1st session of the 109th Congress, the "Secure America and Orderly Immigration Act" states its purpose "to improve border security and immigration" and it represents a centrist approach to immigration reform.¹³⁹ Keeping in mind the national values of "fairness, equal opportunity and respect for law,"¹⁴⁰ the bill purports to be "a comprehensive bill that doesn't try to solve the hemorrhaging immigration problem with a band-aid [because] this bill is major

136. See Peter Wallsten, *Amid Rifts, GOP Backs Guest-Worker Plan*, L.A. TIMES, Jan. 21, 2006, available at <http://www.smfws.com/art1212006c.htm>.

137. See *id.*

138. See generally Press Release, The White House, *supra* note 121 (pointing out that while the hard work of immigrants has "made our Nation prosperous," reform is necessary to avoid exploitation and inefficiency).

139. Secure America and Orderly Immigration Act, S. 1033, 109th Cong. pmb1 (2005).

140. Press Release, Members of Congress Introduce Comprehensive Border Security & Immigration Reform Bill (May 12, 2005), <http://kennedy.senate.gov/~kennedy/statements/05/05/2005512A04.html>.

surgery.”¹⁴¹

This plan purports to solve the current immigration policy’s problems by attacking the “root causes” of undocumented immigration.¹⁴² It enables undocumented workers already holding jobs in the U.S. to become legalized and creates “legal channels for future immigrant workers.”¹⁴³ The plan establishes an H-5B visa for the undocumented workers already in the U.S., which would provide the undocumented immigrant with the opportunity to legalize his status for six years at the cost of one thousand dollars.¹⁴⁴ After six years he could apply for permanent resident status. To be considered for this visa, one must satisfy certain prerequisites in addition to the monetary fee.¹⁴⁵

The initial period of authorized admission would be three years with a one time renewal option for an additional three years.¹⁴⁶ If the alien is unemployed for a period of forty-five consecutive days, the alien will be required to return to his home country.¹⁴⁷ The visa will be portable to different employers,¹⁴⁸ and the alien may not be required to waive his rights under the Act.¹⁴⁹ A willful violation of the act will preclude the alien from renewing his visa.¹⁵⁰

Protection of the worker is central to the McCain plan. Special attention is paid not only to the visa holder, but also to the blue-collar working American citizen. The bill expressly places this class of worker under the coverage of the Fair Labor Standards Act of 1938¹⁵¹ and all other laws pertaining to migrant and seasonal workers.¹⁵² Furthermore, by precluding classification of visa holders as “independent contractors,” the bill seeks to further prevent abuse by employers.¹⁵³ On the other hand, the bill prohibits the visa holder from acting as a replacement

141. *Id.*

142. National Council of La Raza, Questions and Answers: The Secure America and Orderly Immigration Act of 2005, http://www.nclr.org/files/32492_file_QandA_on_Secure_America_Act_of_2005_NCLR.pdf (last visited April 11, 2006).

143. *Id.*

144. *Id.*

145. *Id.* (pre-requisites include undergoing criminal and security background checks, submitting fingerprints, demonstrating an understanding of English and U.S. civics, and establishing a work history in the U.S.).

146. Secure America and Orderly Immigration Act, S. 1033, 109th Cong. § 302(a) (2005).

147. *Id.* § 302(a).

148. *Id.*

149. *Id.*

150. *Id.*

151. *Id.* § 304; 29 U.S.C. §§ 203(d)-(e), (g) (2000).

152. Siskin Susser Bland, Immigration Lawyers, Summary of the Secure America and Orderly Immigration Act, <http://www.visalaw.com/05may4/3may405.html> (last visited Sept. 29, 2006).

153. S. 1033, § 304.

worker.¹⁵⁴

The plan for border security involves the Department of Homeland Security developing a National Strategy for Border Security in conjunction with all levels of government. The Department of Homeland Security will also be charged with establishing a Border Security Advisory Committee that will provide advice on border security and enforcement.¹⁵⁵ Additionally, the Department is required to create a program that will use aerial surveillance technology as a means of enhancing border security.¹⁵⁶

Worker Protection

The cornerstone of this bill, and the concern of most moderates in both the House and the Senate, is the protection of the worker. The H5-A Visa is portable between employers, so a worker need not be bound to an undesirable work environment. H5-A workers may not be classified as “Independent Contractors”¹⁵⁷ and are therefore entitled to the protections afforded by the National Labor Relations Act. “If employers know that undocumented workers can initiate a lawsuit under the same laws as legal workers, the incentive to hire these workers as a cheap labor source will disappear.”¹⁵⁸ Additionally, H5-A workers are expressly included under the Fair Labor Standards Act of 1938,¹⁵⁹ making much of the criticism over *Hoffman Plastic Compounds, Inc. v. NLRB*¹⁶⁰ moot if the worker enters the country in accordance with the Visa procedures.¹⁶¹

As with any viable immigration reform amendment, this bill would immediately make it easier for immigrants to protect themselves and

154. *Id.* § 304.

155. *Id.* § 122(a). The committee will be comprised of representatives from border states as well as local and tribal officials from border states. *Id.* § 122(b).

156. *Id.* § 123(a)(1).

157. *Id.* § 304.

158. Dunne, *supra* note 1 at 649. “If employers no longer find it more cost effective to hire undocumented workers, and if their demand for labor can not be filled within the U.S. workforce, then employers will make better use of temporary work visa programs under which workers, assuming the law is properly enforced, are afforded explicit protections.” *Id.*

159. S. 1033, § 303 (stating that H5-A employees are guaranteed all protections afforded to ordinary workers under all Federal and State laws, which would inherently include the Fair Labor Standards Act of 1938).

160. *See Hoffman Plastic Compounds, Inc. v. NLRB*, 535 U.S. 137, 138 (2002); *see also* Christopher Ho & Jennifer C. Chang, *Drawing the Line After Hoffman Compounds, Inc. v. NLRB: Strategies for Protecting Undocumented Workers in the Title VII Context and Beyond*, 22 HOFSTRA LAB. & EMP. L.J. 473 (2005).

161. S. 1033, § 401.

their families. Illegal immigrants are far less likely to report unfair labor practices and crimes committed against them or their community. By virtue of attaining legal status, these immigrants will no longer have to fear deportation for affirmatively protecting their rights.

Greater Government Bureaucracy

Section 308 describes the Willing Worker-Willing Employer Electronic Job Registry.¹⁶² The “America’s Job Bank” would be administered by the Secretary of Labor and will “provide information on essential worker employment opportunities available to United States Workers and non-immigrant workers.”¹⁶³ However, as one reads section 308, the program appears almost unworkable, as it would turn the Department of Labor into administrators of low-wage “Help Wanted” classified ads.

It is clear that the goal of this registry is to protect the American worker. By requiring that an open position be made available to domestic workers for thirty days before an H5-A worker is allowed to fill the position employers are inhibited from importing cheap labor at the expense of American citizens. However this protection is duplicative and will only slow the hiring process.

If an employer cannot pay the migrant worker below market rates, then that employer has no special incentive to hire a migrant over a citizen. Faced with this reality, the rational employer will always advertise to citizens before looking abroad for help regardless of the thirty-day requirement and procedural checks of the database system. If it is contended that this bill does not go far enough to protect the domestic labor market, then such a goal is better reached by providing the migrant worker with a greater ability to protect his rights. This is a better alternative to creating a mass bureaucracy to guarantee the domestic laborer a window of opportunity before expanding that window to the migrant worker.

This job bank will be available on the internet. Though this is clearly the most cost effective distribution channel for the “want ads,” it does not appear reasonably calculated to reach its target audience outside our borders. Relatively few working class Latin American citizens currently access the internet; therefore, substantial assistance from specific foreign governments would be essential to the success of the

162. *Id.* § 308(a).

163. *Id.*

database.¹⁶⁴

All other issues aside, the primary problem with the database system is that employers have no incentive not to hire illegal aliens that are already living in the United States. Unless the jobsite enforcement is strong, an employer may opt to skip over the newly created channels and go straight to the street corner to find labor. There is little incentive for the employer of low-skill workers to use this system when there is currently a plentiful supply of cheap labor readily available.

The Road to Citizenship

Perhaps the most politically charged element of immigration reform is reflected in Section 306: Adjustment to Permanent Lawful Resident Status.¹⁶⁵ Here, an H5-A visa holder who has resided in the United States for four years may apply for “adjustment of status” and eventually, the visa holder “may be considered to have satisfied the requirements of [Section 312] for purposes of becoming naturalized as a citizen of the United States.”¹⁶⁶

A large percentage of the migrant workers in the United States are not actually “migrant” in the literal sense of the word. Many of the undocumented workers who are living in the United States do not have any plans to leave. These people are bringing or starting families in this country and they are becoming members of their local communities. For an immigration reform plan to be successful, it must recognize that many of the workers coming from Latin America are not just seeking gainful temporary employment, but a new and better way of life.

The irony is that this bill’s many references to “nonimmigrant” workers could probably be more aptly described as, “nonimmigrant—*yet*.” Indeed the “temporary” element of the temporary worker program falls into doubt when procedures are in place to make the “nonimmigrant” a “permanent lawful resident.” Given the plethora of rights and opportunities available to American citizens, once a “nonimmigrant” arrives, it is foreseeable that they will do all they can to become full citizens.

164. Recent studies suggest that in 2005 only 10.3% of Latin Americans are Internet users, compared to 67.4% of North Americans. Though the trend is upward, it is no stretch to assume that the locus of this growth is not in the labor class. See Global Fluency, Regional Insight: Latin America, http://www.globalfluency.com/regional/s_america.htm.

165. See S. 1033, § 306.

166. *Id.*

An Incidental Protectionist Side-Effect

One of the advantages American businesses reap from hiring the undocumented worker is the ability to pay cash “off the books.” By creating the employee confirmation system described in Section 402 of the act, this advantage of hiring foreign labor over domestic labor will disappear.¹⁶⁷ If the government knows an employer has a certain number of H5-A workers, then an audit of the employer’s records can be performed to ensure these workers are being paid the prevailing wages. It would be foolish for an employer to hire H5-A workers and pay them “off the books”. This creates an implicit, albeit unscrupulous, incentive for the rational unethical employer to hire disenfranchised American citizens rather than H5-A workers.

It is certainly easier to fly under the radar of the Internal Revenue Service if the employer does not have to routinely report to an additional federal government agency on the status of its employees. The employer who wishes to illegally lower his tax liability by hiring “off the book” workers will have to turn to American citizens for such labor. It seems to follow that if there is a large body of American citizens who are willing to work off the books, they will supplant the H5-A worker in certain job markets.¹⁶⁸

Whether or not this is a desirable outcome is debatable. On one hand, the argument can be made that this will lead to greater employment among poor American citizens, which itself is not undesirable. Further, because imported labor will be more expensive, the result may be a rise in market wages for many of the jobs Americans tend to avoid. Conversely, the system does little to eradicate the “Shadow Economy” of the migrant worker; it only alters the compensation of this underclass. Additionally, because many illegal immigrants will remain in this country after immigration reform is effectuated, the unscrupulous employer will probably continue to use them to fill their labor needs at lower cost than H5-A workers or citizens. This further proves that only comprehensive legislation including stronger immigration and labor market enforcement can adequately address the problem of the undocumented worker.

167. *Id.* § 402.

168. This analysis takes as a given that there are no undocumented workers available to fill the position. While this is certainly not the situation in today’s labor market, the analysis underscores the importance of incorporating border control and employer enforcement into any immigration reform scheme.

C. The Conservative Block

Just one month after the McCain Plan was introduced into the Senate, Senator John Cornyn (R-TX) and Senator Jon Kyl (R-AZ) brought forth their own immigration reform bill, “The Comprehensive Enforcement and Immigration Reform Act of 2005” (CEIRA).¹⁶⁹ Taking first priority in the Cornyn Plan is Border Patrol.¹⁷⁰ Security is addressed on a number of levels from increasing detention space capacity¹⁷¹ to the issuance of biometric identification cards.¹⁷² Title V – Nonimmigrant Temporary Worker Program describes the new class of “guest worker” under the CEIRA.¹⁷³ Though this piece of legislation has not been enacted, it still represents the conservative approach to immigration reform.

The CEIRA creates a new class of workers who seek temporary employment through the issuance of a temporary visa. An alien who is capable of working,¹⁷⁴ has an employment opportunity,¹⁷⁵ pays a visa issuance fee,¹⁷⁶ and passes a medical examination,¹⁷⁷ will be eligible for the temporary work program.¹⁷⁸ In addition to these requirements, the Secretary of Homeland Security will request certain background information designed to gauge whether or not the alien presents a security risk to the United States.¹⁷⁹ The Secretary will also conduct background checks and the Department of State will conduct personal interviews with prospective temporary workers.¹⁸⁰

Authorization will last for a maximum of two years after which the alien will be required to leave the United States for a period of at least one year.¹⁸¹ There are exceptions provided for seasonal¹⁸² and

169. Comprehensive Enforcement and Immigration Reform Act of 2005, S.1438, 109th Cong. (2005).

170. *See generally* 151 Cong. Rec. S8923-26 (2005) (responding to the United State’s “national security vulnerability” through a reform proposal that “encourage[s] aliens to...live within the law”).

171. *See* S.1438, 109th Cong. § 201. However, much of the border patrol provisions seem duplicative since the signing of the Intelligence Reform and Terrorism Prevention Act of 2004 Pub. L. No. 108-458, 118 Stat. 3638, Title V (2004).

172. S. 1438, § 106.

173. *Id.* § 501.

174. *Id.* § 502.

175. *Id.*

176. *Id.*

177. *Id.*

178. *Id.*

179. *Id.*

180. *Id.*

181. *Id.*

182. *Id.*

commuting¹⁸³ alien workers. Illegal aliens may also be granted a deferral to allow them time to leave the country in order to obtain a legal status.¹⁸⁴ For the grant of a deferral, the alien must prove actual and continued presence and employment in the United States prior to the enactment of CEIRA.¹⁸⁵ Additionally, the alien must be generally admissible under the statute and must establish he has not participated in the persecution of any of the protected people on account of their class.¹⁸⁶

While it may be misleading to call the CEIRA's measures "excessive and . . . counterproductive,"¹⁸⁷ the authors make it clear that their first priorities are to secure the border and punish violators.¹⁸⁸ This position reflects the popular view among representatives and citizens of southern border states that immigration reform is meaningless if aliens can cross over the nation's borders at will.¹⁸⁹ In the months following its introduction and subsequent rejection, conservative lawmakers made clear that guest worker proposals were no longer on the agenda, regardless of the stances of the GOP and the President.¹⁹⁰

First Things First?

The southern border of the United States is quite a contentious strip of land. It is undeniable that drugs and people are regularly smuggled across the border to feed Americans' insatiable appetite for chemical utopia and cheap labor.¹⁹¹ When viewed from this perspective, the first

183. *Id.*

184. *Id.* If the alien remains for 2 years, she may not file under 101(a)(15)(W) for more than a total of 5 years. If the alien remains for 3 years, she may not file under said provision for more than a total of 4 years. If the alien remains for 4 years she may not file for more than a total of 3 years. If the alien remains for 5 years, she may not file for more than a total of 2 years. *Id.* § 218B(a).

185. *Id.* §§ 218B(b)(1)-(2).

186. *Id.* §§ 218B(3)(A)(i)-(ii). Protected classes include race, religion, nationality, particular social group membership, or political opinion. *Id.* § 601.

187. This was a characterization made by the American Immigration Lawyers Association. AMERICAN IMMIGRATION LAWYERS ASS'N, COMPREHENSIVE IMMIGRATION REFORM ISSUE PACKET at 7 (2005), available at <http://www.aila.org/Content/default.aspx?docid=10146> (last visited Sept. 28, 2006).

188. 151 CONG. REC. S8923-24 (2005). Senator Cornyn describes the problems his bill intends to address. The temporary worker program is the last element of the legislation Sen. Cornyn described during his floor comments. *Id.*

189. See Jonathan Weisman, *Senators Back Guest Workers*, WASH. POST, Mar. 17, 2006 at A01.

190. See *id.*

191. See generally DEA News Release, DEA/ICE Uncover "Massive" Cross-Border Drug Tunnel, <http://www.dea.gov/pubs/pressrel/pr012606.html> (Jan. 26, 2006) (discussing cross-border drug and human trafficking).

step in fixing the problem is probably not building a wall, but rather softening the demand for drugs and illegal labor.¹⁹² However, it is far easier to physically obstruct the travel route in an attempt to intercept the supply. This is what the Comprehensive Enforcement and Immigration Reform Act of 2005 and subsequent conservative proposals attempt to do.

The most immediate concerns of the southern border states are reflected in this bill. Many perceive the flux of aliens and drugs from Mexico as a threat not only to public services and labor markets, but to the classic American way of life as well.¹⁹³ By dealing first with securing the border and punishing those who attempt to cross it illegally, the bill attempts to deter border-crossers and streamline the process by which detainees are arrested, held and deported.¹⁹⁴

Secure borders are also viewed as essential to national security.¹⁹⁵ Taking a strong enforcement approach addresses the concern that terrorists may enter the United States by crossing the southern border. Lest we forget that we are currently a nation at war with an enemy unconstrained by strict national affiliation. Terrorists or unfriendly foreign sovereigns may quietly and gradually invade our country from the south. Certainly, the growing illegal alien population in the United States evidences the feasibility of this strategy.¹⁹⁶ Although it is outside the scope of this analysis, it almost goes without saying that a state at war has a significant interest in feverishly protecting its borders to prevent infiltration by enemy hostiles. While militarily, we are past the days of castle moats and great walls, the interest in protecting the homeland is no less important. Thus, it may not be correct to call border patrol the “starting point.” It is a logical place to start as it is probably the easiest element of immigration reform to address. The border will probably never be impervious, but if the flow of insidious traffic can be trammled it will serve many goals of immigration reform. However, such tactics are designed to solve only part of the problem.

192. *Id.* (suggesting that high walls are not enough as burrowing across the border is becoming more sophisticated).

193. For some, concerned patriotism has risen to the level of frightening xenophobia. US Border Patrol, <http://www.usborderpatrol.com> (last visited Oct. 4, 2006) (a site maintained by “supporters of the United States Border Patrol” with no connection to any government agency claiming that if criminals like Jeffrey Dahmer and Charles Manson had not been U.S. citizens they would have been able to cross the border from Mexico with “absolute certainty”).

194. *See* Comprehensive Enforcement and Immigration Reform Act of 2005, S.1438, 109th Cong. § 209 (2005), 109 CONG. REC. S8923-24 (daily ed. July 26, 2005) (statement of Sen. Cornyn)

195. 109 CONG. REC. S8923-24 (2005) (statement of Sen. Cornyn).

196. *Id.* at S8923 (“[W]e know that Border Patrol has apprehended at least 400 aliens from countries with direct ties to terrorism.”).

The Perils of Success

Let us examine what may occur if the southern border of the United States is made more secure. One might expect increased border patrol to slow the flow of illegal immigrants but, as previously pointed out, the prospect of detention and deportation is not enough to stop many desperate workers from attempting the feat. It is likely that these workers will enlist the services of human smugglers.¹⁹⁷ These smugglers will adjust to the market demands and charge more for their services. With human smuggling more lucrative, one could expect a greater number of people who are both rational and morally challenged to join the profession. This spiral could continue into the oblivion and cause border crossing to become more dangerous and expensive. The result would be the enrichment of the most evil players in the border-crossing game at the expense of the most vulnerable.

This analysis assumes border patrol on the U.S. side of the border will be unmatched by border patrol on the Mexican side. Increased border patrol by Mexican agents would greatly increase the likelihood of stopping smugglers. It seems that prevention would be more readily attainable by cutting off the source as opposed to attempting to capture smugglers when they enter the U.S. or relying on unreliable foreign enforcement agencies to act.¹⁹⁸

Emphasis on Temporary

The CEIRA makes no attempt to be a pathway to citizenship and its advocates are particularly proud that their system is less apt to be finagled into amnesty.¹⁹⁹ Section 503 of the CEIRA would allow nonimmigrant workers work authorization for a period of two years, not to be extended.²⁰⁰ Taken alone, this provision seems impracticable. After all, why get a visa and be forced to leave when one can try their luck by coming over illegally and staying until they get caught? Here

197. See *Busted: U.S. cracks down on people smuggling ring*, Jan. 25, 2002, available at http://www.findarticles.com/p/articles/mi_m0EPF/is_16_101/ai_82510663 ("The vast majority of people who cross the U.S.-Mexico border illegally must pay smugglers, or 'coyotes' as they are called in Mexico, fees as high as \$10,000 to get them to the United States.").

198. See Olga R. Rodriguez, *Mexican Border Town Remains Troublesome*, FORBES, (Feb. 17, 2006) available at <http://www.forbes.com/technology/feeds/ap/2006/02/17/ap2536188.html> (explaining that even when corruption is found and addressed, it is difficult to stop on a more permanent basis).

199. See 151 CONG. REC. S8923-24 (2005) (statements of Sen. Cornyn).

200. Comprehensive Enforcement and Immigration Reform Act of 2005, S. 1438, 109th Cong. § 218(f)(1).

we see just how crucial a strong border is to the CEIRA. Assuming a locked-down border, we can further explore this facet of the CEIRA. However we must remind ourselves of the discussion above on just how difficult that task will be. The impracticability of this proposal is reflected in the conservative discontent with guest worker legislation. Subsequently, threats to split the party before mid-term elections have led conservatives to fight against such programs.

III. A SYNTHESIS OF PROPOSALS

As stated in the introduction this paper seeks to pull together elements of all three proposals in a manner that will serve all interests concerned. We will break down the concerns involved into certain groups. All legislation needs to address certain issues: the security function, the protection of fair wages, and respect of small business labor pools. We will look to the legislation for guidance and where the approach is appropriate we will adopt their findings. Where the legislation falls short, we will propose our own solutions to expand the debate on what is possible and what is untenable.

The Employer

Though the border walls and law enforcement political haggling have grabbed most of the headlines, what is possibly the most important plane of conflict has garnered far less attention. This conflict is the interaction between the employer and the labor market. We believe this can be fairly attributed to the supply side focus of the debate. If we are to address demand first, immigration reform should start with employers.

Penalties have always been in place to discourage the hiring of undocumented workers; however, the now commonly spouted phrase “jobs American Citizens will not do” indirectly reflects just how seriously the United States government takes these measures. President Bush’s plan required the Department of Labor to confirm that jobs offered to immigrant workers were first offered to American workers.²⁰¹ However, unlike Sen. McCain’s initiative, this bill does not promote any government involvement in actually placing the workers. President Bush would not implement a registry system consisting of names of willing employees collected by the government. Conversely, Kennedy and McCain’s Secure America and Orderly Immigration Act would

201. *Immigration Overhaul*, *supra* note 122.

establish such a registry and require employers to search for an American employee for thirty days before filling the position with a temporary immigrant worker.²⁰² Lastly, Sen. Kyl and Sen. Cornyn's CIERA completely ignored this issue altogether. It is our opinion that while there isn't as stringent a government check inherent in Sen. Kennedy and Sen. McCain's plan to ensure Americans are given placement priority, the registry would still be a helpful tactic for ensuring that immigrant labor does not displace American labor, and the employee protections built into the proposal would serve as incentives to the same end.

Reform plans that require reporting of employee social security numbers into a government database appear to be an extremely effective way of insuring compliance with employment laws so long as the system is actually checked. The database would need to be spot-checked regularly and on-site inspections should follow or precede the database inspection. It is ironic, though not surprising, that Republicans are advocating this increase in government power and responsibility. If this system can be made workable, and modern technology gives reason to believe it can, this would be an effective way to keep employers honest.

When employers decide to be dishonest they must be dealt with harshly. All of the proposals discussed mentioned strengthening enforcement of employment laws that prohibit employers from hiring undocumented workers.²⁰³ However, further criminalization of this behavior should be considered. While the latest immigration reform debated in Congress involved criminalization the focus was partially misplaced and too extreme.

The basis of any business owner's decision is the cost-benefit analysis. Accordingly, the punishments for hiring illegal aliens must be severe in order to effectuate a change in the hiring practices of profit-maximizing businesses. First, the establishment of prison sentences and large fines should deter businesses and their agents from hiring such workers. Second, revocation of specific licenses necessary to carry on a business, such as a restaurant's liquor license, should also be an immediately attainable punishment. Finally, companies who bid on government contracts should be required to verify the legal working status of all their employees. Further, if no proof exists to support such a verification, the company should lose the contract it is bidding on, be suspended from bidding on future government contracts, and face criminal liability.

202. Secure America and Orderly Immigration Act, S. 1033, 109th Cong. § 308(b) (2005).

203. See *supra* Part II. A-C.

Although such proposals will go a long way in lowering the demand for illegal workers, they may arguably chill the national economy. Without cheap immigrant labor, many argue that small businesses will struggle to keep afloat and large corporations profits will be marginalized triggering a nation ripple effect.²⁰⁴ None of these concerns, however, should sway the legislature in its mission to find a fair and workable compromise to the immigration debate.

First, the benefits of hiring illegal workers belong solely to the employer. Their employment establishes an underclass within our society. Additionally, arguing for unabated capitalism to trump immigration reform parallels the argument proffered in support of sweatshop labor. Consequently, if we allow our capitalistic drive to curtail our respect for human rights we fail our deepest held values of personal liberty. Additionally, the capitalist argument fails on its own grounds because the costs of government and social services, including education, emergency room care, and sanitation, outweighs the contributions made by undocumented workers' cheap labor.

If the employer is no longer willing or able to hire undocumented workers, one would expect the pay for jobs dominated by illegal aliens to increase. Consequently, as wages rise, perhaps the jobs people claim "Americans will not do" will become more attractive to citizens. As established, the interaction between the employer and the job market is crucial to effective immigration reform. That is, only by diminishing the demand for undocumented workers through aggressive law enforcement can we channel those coming to the United States, seeking a better life, through a legitimate system.

Another Brick in the Wall

In agreement with CIERA, we believe that building a type of "wall" across our southern border coupled with an increase in border patrol would effectively reduce insidious traffic into the United States. In addition to hiring more border patrol agents, motion detectors, cameras, unmanned drones and aerial surveillance suggested by the "Secure" Act could focus a watchful eye on border crossings. In addition to the problems discussed in Section II, a serious concern with walling in our country would be the expense.

Cost estimates conservatively range from \$2.2 billion to nearly twice that when analyzing comparable projects.²⁰⁵ However proponents

204. See *supra* Part I. B. 1.

205. Tyche Hendricks, *Border Security or Boondoggle? A Plan for 700 Miles of Mexican*

tout the multiplier effect that the wall would create. With at least a portion of the border impenetrable, then less border patrol agents will be needed to watch the remaining land. Additionally, if it is part of a more comprehensive plan, it is believed that in the long run the government, and in turn the citizens, will save money by no longer subsidizing the cost of services to illegal aliens. Those who look at national borders from a national security point of view will point out that regardless of the cost it is a tiny fraction of the overall national security budget of \$474 billion in 2005.²⁰⁶ We believe a wall would be an effective tool to combat illegal immigration and encourage migration through legitimate channels.

Worker Protection Revisited

We find great value in the worker protections put forward by Senators Kennedy and McCain. Only by making legal passage more attractive can we reasonably expect a prospective migrant to arrive through a sanctioned channel. The worker protections afforded by the Kennedy/McCain bill provide incentives for legal immigration and adhere to our nation's respect for civil rights as well as the pursuit of a better life. From a political standpoint, such measures go a long way to soften the appearance of a reform package with overtones of national security and silence the racist murmurs inherent in the debate. By specifying that temporary nonimmigrant workers may not be classified as "independent contractors,"²⁰⁷ they would be guaranteed the protections of the National Labor Relations Act of 1947.²⁰⁸ Additionally, they would also be protected under the Fair Labor Standards Act of 1938.²⁰⁹

Though organized labor has been losing political weight,²¹⁰ no political party wants to alienate the American blue collar worker; indeed, they are the group with the most at stake in the guest worker

Border Wall Heads for Senate—its Future is not Assured, THE SAN FRANCISCO CHRONICLE, Feb. 26, 2006, at A1.

206. The White House Office of Management and Budget, <http://www.whitehouse.gov/omb/budget/fy2007/defense.html>.

207. S. 1033, § 304(2).

208. 29 U.S.C. § 152(3) (2000). This assumes the worker does not fall into one of the other exceptions. *Id.*

209. 29 U.S.C. § 203(E)(1) (2000).

210. James A. Gross, *The Broken Promises of the National Labor Relations Act and the Occupational Safety and Health Act: Conflicting Values and Conceptions of Right and Justice*, 73 CHL-KENT L. REV. 351, 365 (1998) ("Organized labor is in decline [U]nion membership has been on a downward trend since the mid-1950s.").

conversation. Any portion of immigration reform that affords additional rights to the migrant worker increases the economic cost of hiring such workers and takes away a portion of employer incentive to choose imported labor over domestic. Therefore, we also suggest adopting the provisions of the Kennedy/McCain bill that create additional safeguards against substandard pay as they serve to protect both the migrant worker as well as the domestic worker.

Get Out of Jail Free?

One of the hottest buttons in this debate is the prospect of awarding “amnesty” to illegal aliens whose presence within our borders is a direct result of their violating one or more laws. This concern for justice and order is met head on by the fact that deporting over eleven million residents²¹¹ is infeasible at best and economically crippling at worst. Conflicting accounts of the desired status of the undocumented worker further cloud this debate. No one is sure how many of these undocumented workers want to become permanent citizens and how many wish to migrate to and from the United States. It is also difficult to predict what effect immigration reform would have on this decision. If blanket “amnesty” was offered to all undocumented residents, it is reasonable to suspect that those who entered this country expecting to stay temporarily will decide to hop on the path to citizenship.

President Bush’s plan would not award amnesty but grant temporary legal status to the many undocumented workers currently living and working in the U.S. While this may seem analogous to granting amnesty, conversion of status from undocumented worker, to guest worker, and on to citizen, is not automatic. There are various prerequisites necessary to gain this temporary status.²¹² Furthermore, the amount of time spent in this country pursuant to this bill would not facilitate an immigrant in their quest for citizenship because the time spent in the United States as a temporary worker would not be applied toward the time requirement for a green card.²¹³ Under the

211. This is an estimate of immigrants in the country illegally, published by the Office of Immigration Statistics at the Dep’t of Homeland Security, calculated using the “residual method” where an estimate of legal foreign-born residents (using data from the Dep’t of Homeland Security) is subtracted from the total number of foreign-born residents (using data from the U.S. Census Bureau). See MICHAEL HOEFER ET AL., DEP’T OF HOMELAND SECURITY OFFICE OF IMMIGRATION STATISTICS, ESTIMATES OF THE UNAUTHORIZED IMMIGRANT POPULATION RESIDING IN THE UNITED STATES: JANUARY 2005 at 1 (2006) (estimating that as of January 2006 there would be near 11 million unauthorized immigrants with a growth rate of 408,000 per year).

212. Press Release, The White House, *supra* note 121.

213. *Id.*

Kennedy/McCain bill the temporary immigrant worker could adjust his status and become a citizen after a certain number of years. Right-wing republicans find these ideas offensive to American citizens.

A plan that offers a track to citizenship will be necessary to effectuating realistic immigration reform. The current alien should have the option of registering to become a legal resident or a migrant worker. There must be a process in place by which the current illegal alien can eventually gain citizenship if they desire. Allowing undocumented workers to come out of the shadows voluntarily by providing an effective system through which they can repay their debt to society would be more prudent than incarceration.

CONCLUSION

A comprehensive solution is essential to effective and fair immigration reform. While a southern border fence is an important component of comprehensive reform with obvious positive effects, it is not the true starting point for immigration reform. It is vital to address the realities of the labor marketplace first. Though it takes more time and effort to address the demand instead of the supply, we feel such focus is essential for immigration reform to take root. Therefore real employer sanctions, increased worker protection and realistic methods of coping with migrant and undocumented workers are concurrently the most important and most vexing components of immigration reform. We believe the solutions we discuss provide a realistic and workable model for our lawmakers to follow.

*By Dennis J. Loiacono and Jillian Maloff**

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