



JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
RICE UNIVERSITY

IMMIGRATION REFORM:
COMPROMISE OR STALEMATE

BY

DAGOBERT L. BRITO, PH.D.

RICE SCHOLAR, JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY
PETERKIN PROFESSOR OF POLITICAL ECONOMY, RICE UNIVERSITY

SEPTEMBER 20, 2010

Immigration Reform: Compromise or Stalemate

THESE PAPERS WERE WRITTEN BY A RESEARCHER (OR RESEARCHERS) WHO PARTICIPATED IN A BAKER INSTITUTE RESEARCH PROJECT. WHEREVER FEASIBLE, THESE PAPERS ARE REVIEWED BY OUTSIDE EXPERTS BEFORE THEY ARE RELEASED. HOWEVER, THE RESEARCH AND VIEWS EXPRESSED IN THESE PAPERS ARE THOSE OF THE INDIVIDUAL RESEARCHER(S), AND DO NOT NECESSARILY REPRESENT THE VIEWS OF THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY.

© 2010 BY THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY OF RICE UNIVERSITY

THIS MATERIAL MAY BE QUOTED OR REPRODUCED WITHOUT PRIOR PERMISSION,
PROVIDED APPROPRIATE CREDIT IS GIVEN TO THE AUTHOR AND
THE JAMES A. BAKER III INSTITUTE FOR PUBLIC POLICY.

Immigration Reform: Compromise or Stalemate

Since the passage of the Immigration Reform Act in 1986, the number of illegal immigrant workers in the United States has reached 11 million. Some estimates are as high as 20 million. This is one of the largest movements of people in the history of mankind. It exceeds in size the population movements that occurred after World War II, during the partition of India, or because the fall of the Western Roman Empire. This influx of people illegally crossing the borders of the United States, the most powerful country on Earth, has caused great concern and division. It has happened, for the most part, because such immigrants were seeking economic opportunity. It could happen only because there are interests in the United States that welcome such immigrants and supply them jobs.

The number of people in the United States illegally is so large that there are not sufficient resources available to enforce immigration laws. Consequently, the federal government's enforcement efforts are focused principally on certain limited priorities: intercepting illegal immigrants at the border and at the border checkpoints; deporting felons who are in the United States illegally; and enforcing worker verification laws against large employers who hire large numbers of illegal aliens. One of the Obama administration's objections to the Arizona immigration law was that it would conflict with the priorities of federal government in allocating resources.¹ Non-felons who are eligible to be deported are often released on their own recognizance pending their deportation date. Even so, the courts are overwhelmed by the number of cases. According to *The New York Times*, there is currently a backlog of 247,922 cases in immigration courts in the United States. The waiting time is 459 days and Immigration and Customs Enforcement has dropped 17,000 pending deportation cases where "they determine that the immigrants have no criminal records and stand a strong chance of having their residence applications approved."²

Enforcement of immigration laws is especially difficult once illegal immigrants are past the border and in the interior of the United States. People of Hispanic or Asian origin are a substantial minority of the population in some parts of the country and many are citizens or legal residents. Some are from families that have been in the United States for generations.

¹ *United States v. State of Arizona*, CV 10-1413-PHX-SRP, at 14 (D. Ariz July 28, 2010).

² Julia Preston, "Immigration Agency Ends Some Deportations," *New York Times*, August 26, 2010.

Immigration Reform: Compromise or Stalemate

Distinguishing probable illegal immigrants from persons of the same ethnic groups who are here legally is difficult; the clues are subtle and they are difficult to specify. Attempts to more broadly enforce immigration laws could lead to profiling, harassment, and the possible violation of the civil rights of citizens, legal residents, and tourists simply because of ethnicity. As a result, efforts to enforce immigration laws in the interior of the United States are largely limited to the deportation of felons and enforcement against employers who fail to verify the legal status of workers.

There have been proposals for immigration reform that would create a path to citizenship for illegal immigrants. For many Americans, granting permanent resident status to illegal immigrants is a moral question or a question of human rights. For these people, granting permanent legal status to hardworking, law abiding individuals and families who are productive members of our society is simple justice. These illegal immigrants have paid sales and possibly property taxes to local and state governments. Many have paid wage and salary taxes for benefits they can never claim. Some have been in the United States for many years and have strong ties to this country. Deportation of persons brought into the United States at an early age, who have little memory of their native country and limited ability to speak the language, seems harsh. It is not hard to find other examples where deportation would seem inhumane.

In addition to the ethical considerations, there is the pragmatic question of our ability to deport 11 million people in a short time. Immediate deportation, even if it were possible, would be extremely expensive. Even more important, such a mass deportation would be extremely destabilizing to the economy. Also, if illegal immigrants simply are allowed to remain here without some legalization of their status and are always subject to deportation, they may justifiably be reluctant to report crimes or to seek medical care at public hospitals. They are subject to exploitation by their employers.

Nevertheless, there are also valid reasons to oppose an immigration policy that would grant permanent status to such a large population of illegal immigrants. Granting legal status to illegal immigrants may increase the growing income inequality in the United States. Further, the educational and social service needs of currently undocumented immigrant families may place a

Immigration Reform: Compromise or Stalemate

burden on many communities. Because these services are largely financed by local and state taxes, a substantial part of the cost of immigration reform will be borne by local and state governments. There is fear that granting amnesty in any form to illegal immigrants would only encourage more illegal immigration. Many people against granting legal status to illegal immigrants feel that they are defending what they perceive as the culture and traditions of the United States.³

Apart from the issue of granting a legal status to illegal immigrants, there is the question of family reunification. This is already a contentious issue. Certainly there are humanitarian reasons for family reunification. Still, we must consider what will be the effect on future immigration if a large number of illegal immigrants gain citizenship and can sponsor parents and siblings. Should the laws on family reunification be amended? What are the implications of immigration because of family reunification on the costs of social services? At present, the data we need to address such questions is not available. With the relevant data, these are issues we should be able to address.

Obviously, there is not a consensus in the United States on the issue of granting permanent residential status to undocumented immigrants. Polls show that almost 70 percent of Americans support the Arizona bill, which requires police who stop a person on any suspected violation to ask for proof that a person is here legally if the policeman has any “reasonable suspicion” that the person is in the United States illegally. Polls also show that Americans are about evenly divided as to whether immigrants illegally in the United States should be granted legal status. Further, polls show that about 70 percent of Americans believe that illegal immigrants are a burden on the taxpayers.⁴ The latter point is debatable, but given the current state of public opinion and the current political climate, it is unlikely that legislation that would give permanent residence status to 11 million people would pass.

If the immigration debate is framed as a conflict between two competing ethical points of view, then a compromise solution will be difficult, if not impossible, to achieve. This is an issue that

³ See Huntington 2004.

⁴ For example, see CBS News/New York Times Poll, “Illegal Immigration and the New Arizona State Law,” news release, May 3, 2010.

Immigration Reform: Compromise or Stalemate

can be exploited by demagogues on both sides of the question. An alternative is to try to reach an immigration policy based on pragmatic grounds, concentrating on the question of what is good for the country but is also fair to our current immigrant population. A pragmatic immigration policy should accomplish four goals. First, it should make possible the enforcement of immigration laws at a reasonable cost. Second, it should not create incentives for future illegal immigration. Third, it should bring the existing illegal population under the protection of the law. Fourth, it should create the mechanism to acquire the information necessary to formulate rational long-run immigration policy.

Democrats in the U.S. Senate have proposed a plan for immigration reform that includes replacing the current Social Security card with a Social Security identification card embedded with biometric information. Americans already accept the necessity of Social Security cards. However, at the present time Social Security cards are easily forged and the number of people working with false or stolen identification may be in the millions. Unlike the current Social Security card, the proposed new card with biometric information would be extremely difficult to forge. Issuing such a secure card and strictly enforcing its use by employers would enable the government to largely bar illegal immigrants from the formal labor market. Since all individuals in the workplace would need a card, the new cards would be a mechanism to enforce immigration laws without profiling. A substantial majority of illegal immigrants come to the United States for economic reasons. Denying illegal immigrants access to formal labor markets would be an effective tool in deterring illegal immigration.⁵

The adoption of a biometric Social Security card may make possible a compromise that creates a legal structure that discourages immigration by denying illegal immigrants access to the formal labor market; it could also mitigate the economic destabilization of a sudden mass deportation by making such deportations more gradual. A more measured rate of deportation could be achieved by using a biometric Social Security card that registers illegal immigrants but grants them only a temporary residential status. A grace period would be created so that those individuals currently using illegal documents could obtain and submit a valid Social Security card to their employer. During this grace period, individuals with a claim for political asylum or other causes that would

⁵ The Pew report (2010) suggests that illegal immigration responds to the availability of jobs in the United States.

Immigration Reform: Compromise or Stalemate

block their deportation would be required to file their claims. After the grace period expires, only the new biometric Social Security cards could be accepted by employers and a fast-track system of deportation could be implemented for those individuals who did not register. The choice faced by illegal immigrants would be to register and receive temporary legal status with the opportunity to participate in a lottery that offers the possibility of repatriation at a later date, as discussed below. Failure to register during the amnesty period would be a violation that carried the penalty of immediate deportation. The only burden of proof on the government would be to prove failure to register. A careful drafting of the legislation could minimize the burden on the immigration courts without violating constitutional rights.

Once illegal immigrants are registered, permanent repatriation dates could be assigned by a lottery. These repatriation dates could be spaced over a period of two to 10 years. Spacing the repatriation over a period of years does three important things. First, it mitigates the hardship on immigrants by giving them a set date for departure; second, it minimizes disruption in the labor market; and third, the number of people being repatriated in any one year is small enough so there should be sufficient resources to enforce the law. Employers would know the date on which an employee would no longer be eligible to work legally in the United States. As a backup, the Social Security Administration could send a notification letter by registered mail to the employer. To mitigate hardship, the workers being repatriated could receive a payment equal to some fraction their and their employers' contribution to the Social Security system.

Once all illegal workers are registered and have a repatriation date, there is room for flexibility and time to refine and amend the program. The data collected in the registration process will better equip us to do this. For example, there will be hardship cases and many may fit into well-defined categories. The registration process can be used to collect demographic data on the illegal immigrant population and such data could be used to define these categories. Special courts could be set up to consider these cases. Such a procedure should be crafted to reduce the overload of the immigration courts.

This data can also aid the United States in fashioning a rational long-term immigration policy. There is now very limited information about the number and demographic characteristics of

Immigration Reform: Compromise or Stalemate

illegal immigrants currently in the United States. There is very little information about their age distribution, education, and language skills. It is possible that we may wish to admit more immigrants, who tend to be younger than the current U.S. population, to balance our aging baby-boomer population. This and other considerations may also suggest some of the registered should be offered permanent residency. If so, a selection process must be put into place. The data will allow us to determine the qualifications of the persons who would be offered permanent residence. Holders of the temporary work permits who have the qualifications could be allowed to participate in a second lottery for permanent residence. Relevant qualifications could be proficiency in English, absence of a criminal record, or specific job skills. These lotteries could be weighted to consider education, language proficiency, or other factors that reflect the needs of the U.S. labor market. These subsequent lotteries could serve two purposes: they would be a way of augmenting the permanent labor force, and they would provide incentives for holders of temporary permits to learn English and avoid criminal behavior.

If the current illegal population were registered under this proposed program, many problems related to undocumented immigration would be solved. The existing population of illegal workers would be brought under the umbrella of law and would be protected from criminal and economic exploitation. There would be sufficient resources to enforce immigration laws. Denying illegal immigrants access to the legitimate labor market reduces the incentives for future illegal immigration. It would be possible to collect the necessary data to formulate a rational and well-informed immigration policy.

Immigration Reform: Compromise or Stalemate

References

- Preston, Julia. 2010. Immigration Agency Ends Some Deportations. *New York Times*, August 26.
- Huntington, Samuel P. 2004. *Who Are We?: The Challenges to America's National Identity*, New York, Simon & Schuster.
- Passel, Jeffrey S. and D'Vera Cohn. 2010. *U.S. Unauthorized Immigration Flows Are Down Sharply Since Mid-Decade*. Pew Hispanic Center.