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IMMIGRATION REFORM: COMPROMISE OR STALEMATE

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Abstract

The status of the approximately 11 million undocumented individuals currently in the United States is one of the more difficult problems in immigration reform. This is a proposal for a pragmatic solution to this problem that accomplishes four goals. First, it makes possible the enforcement of immigration laws at a reasonable cost. Second, it does not create incentives for future illegal immigration. Third, it brings the existing undocumented population under the protection of the law. Fourth, it collects the necessary data so that the selection of who is granted permanent residence is in the best interest of the United States.

The solution involves the registration of undocumented residents and then a multi-staged lottery to first allocate repatriation dates and subsequently to grant permanent residence status based on the demographic information collected in the registration.

Introduction¹

Immigration reform is once again on the political agenda of the United States. There is almost a consensus on two essential elements of immigration reform: control of the border and control of access to the labor market. The difficult question remaining is the status of the approximately 11 million undocumented individuals currently in the United States. Immigration reform requires that the question of undocumented immigrants be addressed. Polls show that Americans are divided as to whether immigrants illegally in the United States should be granted legal status. The division is ideological and political. At the same time, the United States does not have the resources to deport 11 million undocumented individuals within the existing legal system. Courts would not be able to handle the caseload resulting from appeals of deportation orders. The deep

¹ This paper is an update of “Immigration Reform: Compromise or Stalemate,” originally published by the Baker Institute on September 20, 2010.

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division over the fate of undocumented residents may be sufficient to block any immigration reform proposal unless there is pragmatic compromise. This is a proposal for such a compromise.

One polar solution to the problem is to simply deny access to the labor market for undocumented individuals. Such strict enforcement is certainly feasible. Undocumented individuals, unable to find work, will probably eventually return to their countries of origin. This may be an effective policy. However, this policy, which can be viewed as starving people until they leave, will be viewed by many as too harsh. Further, vigorous enforcement of the immigration laws would be disruptive for many industries and is not likely to be politically viable. An alternative to the policy of self-deportation is to create a path to citizenship for all documented individuals in the United States. This is a more humane policy. However, such a policy may not be politically viable given the amount of public opposition to granting permanent legal status to a large number of undocumented immigrants. Further, we do not have enough information about the undocumented population to understand the full consequences of such policy. For example, what would be the consequences of current family reunification policies if 11 million undocumented immigrants were granted citizenship?

If the immigration debate is framed as a conflict between two competing polar points of view, then a compromise solution will be difficult, if not impossible, to achieve. An alternative is to try to reach an intermediate immigration policy based on pragmatic grounds, concentrating on the question of what is good for the country, but also what is fair to our current undocumented 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, although the welfare of the undocumented population is important, the primary consideration in the selection of who is granted permanent residence should be the best interest of the United States. What follows is a suggestion for a pragmatic solution to address the question of undocumented immigrants.

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A Pragmatic Solution

The first step is to declare a grace period during which undocumented individuals who are currently in the United States could register and obtain valid temporary work and residence permits. These permits would be valid for a defined period of time and would allow the holders of these permits to participate in a lottery for repatriation dates after the initial period registration. They would also be allowed to participate in subsequent lotteries for permanent status. During this grace period, individuals with a claim for political asylum or other causes that would block their deportation would be required to file their claims. After the grace period has expired, a fast system of deportation could be implemented for those individuals who did not register. Failure to register during the amnesty period would be a violation that carried the penalty of immediate deportation. A careful drafting of the legislation could minimize the burden on the immigration courts without violating constitutional rights. The only burden of proof on the government would be to prove failure to register. The choice faced by undocumented immigrants would be to register and receive a temporary legal status (with the opportunity to participate in lotteries) that has the possibility of granting them a later repatriation date and possible permanent status, or face the possibility of immediate deportation for failure to register.

Would undocumented individuals register? Many readers will recognize that this proposal has the same incentive structure as the game of Prisoner's Dilemma. Prisoner's Dilemma is probably the most studied game in game theory, and the solution is "confess" or in this case, "register." The incentive to register would be reinforced if the government announced that the subsequent lotteries for permanent resident status would be weighed in favor of early registrants.

Once undocumented immigrants are registered, repatriation dates could be assigned by a lottery. These repatriation dates would be spaced over the defined period of time. Spacing the repatriation over a period of time does three important things. First, it mitigates the hardship on immigrants by giving them a temporary work permit and a set date for departure. Second, it minimizes disruption in the labor market. Third, the number of people being repatriated in any one year would be small enough so there should be sufficient resources to enforce the law. To

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further mitigate hardship, the workers being repatriated could receive a payment equal to some fraction their and their employers' contribution to the Social Security system.

This registration process can be used to collect demographic data on the undocumented population, such as their age distribution, education, and language skills. Once individuals are registered and have a repatriation date, the question of who in the undocumented population should be granted permanent status can be addressed.

There will be classes that require special treatment. Examples of such classes could be the so-called "DREAMers" or older people with adult children who are United States citizens. These and other classes that involve hardship can be categorized and standard procedures to handle them can be developed. Another group that can be addressed is the special case of agricultural workers. They could be given work permits rather than permanent resident status. The granting of permanent resident status to the balance of the newly documented population could be based on the economic and demographic needs of the United States.

The data will allow us to determine the qualifications of the persons who would be offered permanent resident status. Holders of the temporary residence permits could be allowed to participate in subsequent lotteries for permanent resident status. The obvious question is why use a lottery. The reason for using a lottery is that the demographics of the undocumented population are unlikely to match the demographics of the population to whom you want to grant permanent status. A lottery whose weights are properly selected allows you to use statistical techniques to achieve that goal without having to select between two apparently similar individuals. All participants would have a chance of winning, but the probability of winning could be weighted to consider education, language proficiency, or other factors that reflect the needs of the U.S. labor market and demographics. These subsequent lotteries could serve two purposes: first, they would be a way of augmenting the U.S. population with individuals with the potential to contribute in an orderly fashion, and they would provide incentives for holders of temporary permits to avoid criminal behavior, as they would not want to compromise their eligibility to participate in the subsequent lotteries.

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If the current undocumented population were registered under this proposed program, many of the problems would be solved. The existing undocumented population 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 undocumented immigrants who do not register access to the legitimate labor market reduces the incentives for future illegal immigration.

This policy accomplishes the four stated 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 brings the existing undocumented population under the protection of the law. Fourth, the data collected in the registration process makes it possible to balance the welfare of the undocumented population with the best interests of the United States.