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HALTING ILLEGAL IMMIGRATION: EMPLOYER SANCTIONS ARE NOT THE ANSWER

INTRODUCTION

Current U.S. immigration policy does not work. The proof of this is the 3 million to 5 million illegal aliens who reside and work in the U.S. Their continued presence mocks the claim that the U.S. is a nation of laws. As such, regardless of whether or not illegal immigrants contribute positively to the economy, Congress is right to address the matter of illegal aliens, seeking alternatives or ways to discourage it. The policy prescriptions receiving most attention in Congress, however, are seriously flawed; they are neither enforceable nor just.

Senator Alan Simpson (R-WY) recently introduced, for the third time, S. 1200, which would impose fines of up to \$10,000 on employers hiring illegal workers. Congressman Peter Rodino (D-NJ) has introduced similar legislation (H.R. 3080) in the House; his bill includes criminal sanctions against such employers. The premise of these "employer sanctions" bills is straightforward: by discouraging the employment of illegal immigrants, the inflow will be reduced substantially. A second premise is that the measure would impose almost no costs or hardships on any sector of the U.S. economy.

The trouble is, Congress has failed to consider that employer sanctions would cause significant economic disruption. First, employer sanctions would place an enormous burden on U.S. businesses--and not just those hiring illegal immigrants. Every business would be required to verify the citizenship of its employees and maintain burdensome records to prove to the Justice Department's Immigration and Naturalization Service (INS) that it has fully complied. Second, employer sanctions would encourage employers to discriminate in their hiring practices against the six million legal Hispanics working in the U.S., as well as against many of the 14 million foreign born Americans. To avoid risking stiff fines or even

imprisonment, cautious employers would find excuses not to hire workers who appeared foreign, whether or not the workers could verify their citizenship. Finally, the federal government's cost of enforcing employer sanctions could be substantial.

In return for these costs, according to empirical analysis, illegal immigration would be deterred only moderately. The civil rights of employers and legal alien workers, meanwhile, would be impaired significantly.

THE ILLEGAL IMMIGRATION PROBLEM

Time magazine recently wrote that "we are overwhelmed" with illegal immigrants.¹ Others have called the Mexicans crossing the border a "vast and silent invasion," a "hidden population bomb," and a problem that has reached "tidal wave proportions." Rep. Dan Burton (R-IN) complained recently that immigration reform is essential because there are "5 million to 20 million illegal aliens" in the U.S.² It is little wonder that in the light of such numbers the public is concerned about illegal immigration.

Yet the evidence suggests that the problem has been greatly exaggerated.³ Though considerable uncertainty exists regarding the number of illegal immigrants in the U.S., the most reliable estimates indicate that the number is far less than commonly presumed. In 1981, for instance, the U.S. Census Bureau conducted the most thorough investigation of the issue to date and concluded that there were 3.5 to 6.0 million illegal immigrants in the U.S.

A June 1985 study by the National Research Council (NRC), a research arm of the National Academy of Sciences, while describing the data on illegal immigration as "woefully inadequate," corroborated the earlier estimates of the Census Bureau.⁴ The NRC panel concluded that the number of illegal immigrants in the U.S. in 1980 was between

1. "We Are Overwhelmed," Time, June 25, 1984, p. 16.

2. Quoted in "Hazy Numbers Complicate the Debate over How to Slow Illegal Immigration," National Journal, June 8, 1985, p. 1343.

3. For a detailed analysis of all the estimates, see Julian L. Simon, "Nine Myths about Immigration," Heritage Foundation Background No. 326, February 1, 1984.

4. National Research Council News Release, June 24, 1985.

2 and 4 million. The study explained, moreover, that the number of illegal immigrants "has not been growing remarkably fast in recent years."⁵ This contradicts Senator Simpson's assertion that the influx of illegal immigration is an urgent problem warranting an immediate remedy.

Though the public has been badly misinformed concerning the magnitude of illegal immigration, the number of illegal immigrants is nonetheless large enough to warrant concern. Congress is right to be alarmed at the presence of so many aliens in the U.S. in violation of the law. The question is whether the number of illegals is great enough to justify a policy that could jeopardize the employment opportunities of minorities. The figures provided by the Census Bureau make such justification questionable.

THE ADVERSE IMPACT OF SANCTIONS ON BUSINESS

To comply with the proposed law, businesses would be required to take two steps when hiring new workers: (1) the law would force employers to examine each job applicant's documents to verify that he or she is a legal worker; (2) and far more burdensome, firms hiring more than three workers would need to maintain records and documents for up to five years on each employee hired. The law would apply equally to Wall Street banks hiring Harvard MBAs and to California hotels hiring bellboys and dishwashers. While Simpson's version (S.1200) technically would make this optional, in fact, failure to keep employee records would constitute a legal presumption of guilt for businesses discovered to have an illegal alien in their employment.

Proponents of employer sanctions seem unaware of the enormous size and rapid turnover rate of the U.S. labor force. Though there are no solid data on the number of new hires in a given year, the Social Security Administration found that 170 million W-2 forms were filled out by employees in 1984. Requiring businesses to check work permits and citizenship, and then maintain records, for such a large number of jobs would create an ocean of paperwork.

The key question then is: Just how great a burden would verification and paperwork requirements represent for employers? National Federation of Independent Business surveys consistently reveal that government regulation is one of the three or four largest problems facing small businesses. Identified as particularly onerous are federal paperwork requirements. Hence, if Congress were

5. Ibid.

intentionally trying to find ways to inhibit the growth of industry, it would seem difficult to find a better candidate than the employer sanctions law.⁶

The sanctions would cause other market distortions as well:

A Tax on Hiring New Workers

Economist Barry Chiswick of Stanford's Hoover Institution likens the verification requirements and paperwork burden created by the immigration bill to a turnover tax on businesses for hiring new workers. Businesses would respond to this "tax" in a number of ways. Chiswick suggests that some businesses would begin to avoid hiring low-skilled workers, who tend to have a high labor turnover rate, and replace them with machinery or higher-skilled workers.⁷ This would be ironic, since perhaps the primary intent of the immigration bill is to give low-skilled Americans jobs now held by illegal immigrants.

Illegal Payments

Some employers would simply circumvent the requirements by paying low-skilled workers, legal and illegal, in cash.⁸ This would keep the company's records clean, be difficult to detect, and render the public worse off by reducing tax revenues. It also, of course, would be illegal.

Damage to Small Businesses

The burden of employer sanctions would not fall evenly. Hardest hit would be manufacturers with high labor turnover rates. But more generally, it is the small business sector of the economy that would absorb the brunt of compliance costs. According to the Small Business Administration, the percentage of Hispanic workers is nearly twice as

6. This past year a number of business groups, for example, the Chamber of Commerce and the American Farm Bureau, have flip-flopped on the immigration bill and now endorse Senator Simpson's proposal. Proponents of the bill point to this as evidence that businesses would not be harmed by employer sanctions. But the endorsement of the Simpson bill by these associations is not very credible. Many of these groups simply believe that Congress is so wedded to the concept of employer sanctions as the solution to illegal immigration that the bill will surely pass eventually, despite their opposition to the concept, so their strategy is to minimize their losses by endorsing the bill in its least undesirable version.

7. Conversation with Barry Chiswick, July 1985.

8. A recent Wall Street Journal article termed illegal immigrants "the backbone of the economy in the southwest." The story contends that "some industries would collapse without them." The Wall Street Journal, June 7, 1985.

high in small businesses as in large businesses--6.5 percent versus 3.5 percent.⁹ Because Hispanics are more likely than other workers to arouse INS suspicion, small businesses would be subject to greater harassment. Thus even small businesses with impeccable hiring practices would need to devote a greater proportion of their resources than the typical large firm to protecting themselves against prosecution.

THE DISCRIMINATION ISSUE: FACT OR FOLLY?

To the extent that the penalties would deter hiring illegals, cautious firms would be wary of employing Hispanics, Asians, or any worker with a foreign appearance or accent, whether or not their papers seemed in order. The National Council of La Raza, an organization representing the interests of Hispanic Americans, reports, for instance, that past INS crackdowns on illegal aliens encouraged employers to go beyond "the law's minimum requirements to demonstrate their compliance with immigration related rules."¹⁰ The result: Hispanic citizens and legal immigrants were harassed.

Racial discrimination can be expected to increase in two ways if employer sanctions are passed by Congress:

1) Efforts to enforce existing antidiscrimination laws would be hindered by giving employers a first line of defense against accusations of discrimination. If a Mexican, for example, were to bring a case against a firm, the employer simply could state that he suspected the Mexican of being an illegal immigrant.

2) Even law-abiding employers would tend to discriminate unwittingly against the foreign born in their "good faith efforts" to comply with the law. Foreigners would be transformed into a suspect class of workers; employers would thus scrutinize their credentials more thoroughly than those of other workers and make summary judgments regarding their legality.

Already there is evidence of discrimination resulting from existing sanction laws on the books in eleven states. The Wall Street Journal recently reported that sanctions in California, although ineffective at reducing illegal immigration, led some

9. The State of Small Business, 1984, p. 245.

10. "Serious Thoughts on Employer Sanctions: A Brief Analysis," National Council of La Raza Issue Brief, March 1984, p. 6.

employers to "screen employees on the basis of the color of their skin...to avoid unwittingly hiring an illegal."¹¹ A Los Angeles Times investigation of employers response to the California law quoted a director of a large manufacturing plant: "If I have four applicants for a job, I would naturally incline toward the one that's not Latino....Most employers would rather play it safe."¹²

Employers are likely to respond even more strongly to federal legislation, especially if it imposes criminal penalties against employers, as the Rodino bill would do. In fact, Time magazine recently reported that merely the prospect of a sanctions bill has "excited something resembling panic among many employers. A few factories in the Los Angeles area are already laying off workers they suspect may be in the U.S. illegally."¹³

In an effort to counter such effects of employer sanctions, sponsors have added provisions to the immigration bill to require more rigorous enforcement of existing anti-discrimination labor laws. But the Civil Rights Commission notes that discrimination of this kind is nearly impossible to detect or eradicate.¹⁴

Even if an employer were simply to screen Hispanics and other workers of foreign appearance more rigorously, this disparate treatment probably violates existing law. And if the bills' sponsors relax the verification and record-keeping requirements to reduce compliance costs, employers simply will be encouraged further to use these stereotypes as a "test" of illegality.

THE FEDERAL COST OF ENFORCING EMPLOYER SANCTIONS

The immigration bill would require substantial new federal outlays. All parties to the debate acknowledge that employer sanctions would be enforceable only if the Justice Department introduced a secure identification system. The Congressional

11. "Illegal Immigrants in U.S. Are Problem Denying Easy Solution," The Wall Street Journal, May 30, 1985.

12. Los Angeles Times, June 19, 1985.

13. "But Can It Work?," Time Magazine, July 2, 1984, p. 13.

14. United States Commission on Civil Rights, The Tarnished Golden Door, September 1980, p. 64.

Budget Office estimated in 1983 that this would cost more than \$1.3 billion in the first three years.¹⁵ The annual price tag of all the provisions in the bill, which includes the legalization program, would, of course, be much greater.

EMPLOYER SANCTIONS AS A DETERRENT TO ILLEGAL IMMIGRATION

Proponents of employer sanctions argue that the penalties would deter businesses from hiring illegal immigrants. By eliminating the pull of job opportunities, the argument continues, illegal immigrants would no longer have today's powerful incentive to enter the U.S. illegally. This conclusion, however, is refuted by the preponderance of the evidence.

Employer sanctions have failed in other countries. A study by the General Accounting Office (commissioned by Senator Simpson) of 19 countries with employer sanctions laws concludes that on balance illegal immigration was not curtailed.¹⁶ Nor have employer sanctions worked on the state level. Example: California has had an employer sanction law for twelve years, yet California appears to have the nation's largest illegal immigrant population. Ten other states have imposed civil penalties against employers for hiring illegals--with no observable effect.

While a concerted federal effort no doubt would improve enforcement, the widespread failure of employer sanctions casts serious doubt on how much would be achieved. For one thing, sanctions would do nothing directly to discourage foreigners from entering the U.S. illegally. Mexicans can earn as much in an hour in the U.S. as they do for a full day's labor at home. Notes a Wall Street Journal series on illegal immigration, For many Mexicans "the only choice is between starvation and migration."¹⁷ Employer sanctions are likely to deter only slightly when such powerful incentives to migrate prevail.

For another thing, even if every American employer were to comply fully with the Simpson bill's verification requirements, most illegals would still have little problem finding work. Documentation is easy to obtain in the U.S. A quality forgery of a Social Security card

15. Congressional Budget Office Cost Estimate, Immigration, "Immigration Reform and Control Act of 1983," p. 3.

16. General Accounting Office, "Information on the Enforcement of Laws Regarding Employment of Aliens in Selected Countries," August 31, 1982.

17. "Heading North," The Wall Street Journal, May 1, 1985, p. 28.

costs only about \$25 in the underground economy, and a driver's license and birth certificate cost only slightly more.¹⁸ Many illegal immigrants, in fact, already have counterfeit forms of identification.

In sum, employer sanctions can work only if stringently enforced and if tough penalties are levied against offending employers. Yet stringent enforcement and stiff penalties would merely exacerbate the harmful discrimination effects on Hispanic Americans and legal aliens.

On the other hand, some of the bill's proponents argue that just having the law on the books would deter at least some employers from hiring illegals. But one of the main purposes of the legislation is to prevent people from gaining by breaking the law; few things breed lawlessness more than passing laws that are only halfheartedly enforced.

ALTERNATIVES TO EMPLOYER SANCTIONS

While employer sanctions are unlikely to work, it is clear that the public wants something done to halt illegal immigration. Congress understandably feels that it must act. But rather than embarking on a course that could encourage new discrimination without solving the old immigration problem, lawmakers should consider alternative reforms. Among them:

1) Greatly increase the border patrol and other INS enforcement measures.

Since the responsibility for enforcing immigration laws should rest on the shoulders of the Immigration and Naturalization Service, not on private industry, the INS must be given the resources to make more than today's token effort to prevent illegal border crossings. The INS enforcement budget of \$370 million for 1985 is entirely inadequate; its staff of 3,900 is less than one-third that of the New York City police department. Doubling the INS enforcement budget would surely increase detection and would cost Washington about one-third the cost to business of employer sanctions. This would allow business to stick to business, rather than taking on the role of both policeman and immigration judge.

18. Michael S. Teitelbaum, Immigration, Refugees and American Business, paper prepared for The National Chamber Foundation, April 1984, p. 53.

2) Amend the immigration laws to allow more Mexicans to enter the U.S. legally.

Last year, 57,000 of the legal U.S. immigrants, about one in ten, were Mexican. At the same time, however, about half of all illegal immigrants came from Mexico. If the U.S. were to admit 50,000 more Mexicans legally, there would be little impact on the American labor force, since many of that number otherwise would enter illegally. Such a step would relieve some pressure on the border, thus allowing the INS to concentrate its efforts on keeping out undesirable immigrants.

3) Strengthen the economies of selected countries to reduce the "push" factor contributing to illegal immigration.

Almost every immigration expert agrees that, without ample job opportunities in those Third World countries near the U.S., the American job market will remain a powerful magnet attracting illegal immigrants. The U.S. could do much to aid the economies of nearby developing countries by promoting free trade and encouraging a stronger private sector in these countries.¹⁹ The Caribbean Basin Initiative, for instance, has created substantial employment in countries in the region and likely has helped to reduce illegal immigration from these countries. Such agreements should be continued and expanded.

On the other hand, U.S. textile quotas destroy jobs in the textile industry in Mexico and entice Mexicans to come illegally to the U.S. to fill low-paid, low-skilled jobs in the textile firms in the U.S. Other protectionist measures being promoted in Congress will likely have similar consequences.

4) Establish a legal "guestworker" program.

A controversial aspect of the current immigration debate is the possibility of creating a temporary "guestworker" program similar to those in Western Europe. A guestworker program would enable temporary workers to enter the U.S. in a controlled way. This would be particularly beneficial to U.S. agriculture whose efficient functioning depends heavily on temporary workers. As it is, U.S. farmers rely heavily on alien labor for planting and harvesting. Thus a major burden of requiring employers to ensure that their workers have legal status will fall on U.S. farmers. The potential cost to them is estimated at \$1 to \$2 billion annually. If guestworkers were afforded the same labor law protections that all U.S. workers now

19. Doug Bandow, ed., U.S. Aid to the Developing World (Washington, D.C.: The Heritage Foundation, 1985).

enjoy, the potential for exploiting them would be largely eliminated. Some critics contend that many guestworkers simply would remain in the U.S. and go underground once their visas expired. But a portion of these guestworkers' wages could be held in escrow by the government, to be refunded when they return home, thereby creating a form of insurance against workers who overstay their visas.

CONCLUSION

There is no easy solution to illegal immigration. Congress is understandably anxious to pass some type of enforcement bill to demonstrate that it is willing to take action. The trouble is that employer sanctions are not the answer.

Employer sanctions will make two groups big losers: (1) businesses, forced to shoulder the burden of this new obligation, would be transformed into policemen for the INS; (2) Hispanics and other foreign looking or speaking minorities would face the required intense scrutiny of their documents by inexperienced businessmen, who probably would be tempted to avoid hiring anyone from this labor pool.

Employer sanctions, moreover, will be costly. To start, there will be the more than \$1 billion federal enforcement tab to be picked up by the taxpayer. Added to this will be a couple of billion dollars in extra business expenses. Then there are the intangible, but heavy, costs of the threat to the rights and dignity of millions of America's legal immigrants. These costs must be balanced against the very uncertain probability that employer sanctions will in fact curb illegal immigration. As such, Congress must find a better way to meet the public's legitimate concern about illegal immigration.

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