

Background

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The Principles of Immigration

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More than any other nation in history, our country and its system of equal justice and economic freedom beckons not only the downtrodden and the persecuted—indeed, all those “yearning to breathe free”—but also those who seek opportunity and a better future for themselves and their posterity.

The very nature of the principles upon which the United States is established encourages immigration and promotes the transformation of those immigrants into Americans—welcoming newcomers while insisting that they learn and embrace America’s civic culture and political institutions, thereby forming one nation from many peoples. The result has been a strengthening of our social capital, a deepening of our national patriotism, and a continuing expansion of our general economy. America has been good for immigrants, and immigrants have been good for America.

Over the past several decades, though, immigration policy has become increasingly confused and unfocused. Today, immigration policy is mostly debated at the extremes, between those who want no immigrants and those who want no borders, implying that immigration is an all-or-nothing proposition.

A better approach is for policymakers to step back from the politics and policies of the moment and take the time to deliberate and develop a clear, comprehensive, meaningful, and long-term policy concerning immigration, naturalization, and citizenship that is consistent with the core principles, best traditions, and highest ideals of the United States.

Talking Points

- The principles upon which this nation is established encourage immigration and promote the transformation of immigrants into Americans.
- Over the last few decades, immigration policy has become increasingly confused and unfocused.
- Policymakers should step back from the politics and policies of the moment and develop a clear policy concerning immigration that is consistent with the principles, traditions, and ideals of the United States.
- Four guiding principles of immigration reform are the consent of the governed, patriotic assimilation, national security, and the rule of law.
- In developing a comprehensive policy, policymakers must also consider practical concerns related to national and homeland security, illegal immigration, the welfare state, financial responsibility, and law enforcement.

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Admittedly, this is no easy task. The purpose of this paper is to provide a few guiding principles, suggest some policy considerations, and propose several first steps for developing such a policy.

Guiding Principles

As policymakers begin a new round of discussions about immigration policy proposals, four general principles ought to guide this discussion and be used to evaluate and judge any specific proposals.

The Consent of the Governed. The United States is a sovereign nation. The very idea of sovereignty implies that each nation has the responsibility—and obligation—to determine its own conditions for immigration, naturalization, and citizenship.

Individuals who are not citizens do not have a *right* to American citizenship without the consent of the American people, as expressed through the laws of the United States. Through those laws, the people of the United States invite individuals from other countries, under certain conditions, to join them as residents and as fellow citizens. Congress has the constitutional responsibility “[t]o establish an uniform Rule of Naturalization”¹ that sets the conditions of immigration and citizenship and to ensure the fairness and integrity of the legal process by which immigrants enter the country legally and, in many cases, become American citizens.

Patriotic Assimilation. The United States has always welcomed immigrants who come to this country honestly, with their work ethic and appreciation of freedom, seeking the promises and opportunities of the American Dream. This is because the founding principles of this nation imply that an individual of any ethnic heritage or racial background could become an American.

However, those same principles also call for—and a successful immigration policy is only possible by means of—a deliberate and self-confident policy to assimilate immigrants and educate them about this country’s political principles, history,

institutions, and civic culture. This may be a nation of immigrants, but it is more accurate to say that this is a nation where immigrants are Americanized, sharing the benefits, responsibilities, and attachments of American citizenship. While the larger formative influence occurs through the social interactions and private institutions of civil society and through public and private education, the federal government has a significant but limited role in ensuring the success of this crucial process.

National Security. Every nation has the right, recognized by both international and domestic law, to secure its borders and ports of entry and thereby control the goods and persons coming into its territory. Americans have always been and remain a generous people, but that does not mitigate the duty imposed on the United States government to know who is entering, to set the terms and conditions of entry and exit, and to control that entry and exit through fair and just means.

This task is all the more important after the events of September 11, 2001. A disorganized and chaotic immigration system encourages the circumvention of immigration laws and is a clear invitation to those who wish to take advantage of our openness to harm this nation. Secure borders, especially in a time of terrorist threat, are crucial to American national security.

The Rule of Law. Immigration is no exception to the principle that the rule of law requires the fair, firm, and equitable enforcement of the law. Failure to enforce immigration laws is unfair to those who obey the law and go through the regulatory and administrative requirements to enter the country legally.

Those who enter and remain in the country illegally are violating the law, and condoning or encouraging such violations causes a general disrespect for the law and encourages further illegal conduct. Forgiving the intentional violation of the law in one context because it serves policy objectives in another undermines the rule of law.

1. U.S. Constitution, Article 1, Section 8, Clause 4.

Amnesty is appropriate only when the law unintentionally causes great injustice or when particular cases serve the larger purposes of the law. Those who break immigration laws should not be rewarded with legal status or other benefits, and they should be penalized in any road to citizenship.

Policy Considerations

The application of principles in practice is not easy. Principles must be applied in ways that take account of previous experiences, particular circumstances, and practical outcomes. Policy decisions should advance principles as much as possible under prevailing conditions. In most cases, policymakers are starting not with a clean slate but with the results of previous policies. They cannot ignore the practical and political realities in which reform must occur.

At this time, Congress is considering several proposals to reform immigration law. Among these proposals is the creation of a temporary worker program that would be open to new foreign workers and to illegal immigrants currently in the United States. Before implementing this or any other such proposal, policymakers must address several practical considerations—in addition to referring back to guiding principles—that raise serious challenges for immigration reform. We are especially concerned about six policy considerations.

National and Homeland Security. Now more than ever, Congress must take steps to ensure that immigration policy—or the lack of immigration policy enforcement—does not undermine national security. Among other things, the new Department of Homeland Security was established to consolidate the previously fragmented functions of immigration and border security and to document non-citizens entering, exiting, and residing in the United States.

A critical element of any reform proposal must be to secure our national borders—addressing the issue from the point of origin, in transit, at the border, and within the United States—and to support ongoing efforts to strengthen the activities, assets, and programs necessary to enhance homeland security. America's immigration system

must be a national strength and not a strategic vulnerability.

Illegal Immigration. The issue of legal immigration is greatly exacerbated by the reality of illegal immigration. The major source of illegal immigration is from illegal border crossings, and most of these illegal immigrants are from Mexico. The other source of illegal immigration is from those individuals who stay in the United States after their non-immigrant visas expire. These are serious problems that policymakers and law enforcement must address.

While recognizing the difficulty and challenge of finding and removing every illegal immigrant in the United States, Congress and the President must take credible steps to reduce illegal immigration in both annual and absolute terms. New reforms should not encourage or exacerbate the problem of illegal immigration. In considering new programs, policymakers must recognize that any program that is vague or unenforceable or that allows temporary visitors or workers to disappear when their legal status expires could mean a larger illegal immigrant community—and a larger public policy problem.

The Welfare State. The United States has a generous welfare, education, and health system, with generous eligibility. Low-skill and elderly immigrants may impose costs on government that exceed taxes paid. The costs of providing welfare assistance to immigrants and education for the children of immigrants are potential concerns.

Unlike previous generations, the perverse incentives of the modern social welfare system—through policies that discourage self-reliance, family cohesiveness, and financial independence—invite poor and low-skill immigrants to enter the ranks of the underclass rather than encourage them to seek the opportunities heretofore associated with achieving the American Dream. Although these troubling incentives in the welfare system are likely to remain for the foreseeable future, policymakers must ensure that the interaction of welfare and immigration policy does not expand the welfare-dependent population, thereby hindering rather than helping immi-

grants and potentially imposing large costs on American society.

Financial Responsibility. Part of the problem of immigration—and part of the solution to that problem—has to do with economic incentives. Getting those incentives right is good for immigrants, good for employers that wish to hire immigrants legally, and good for the larger community. Currently, there is an unbalanced incentive in which an employer of a temporary worker gains the economic benefits but does not bear the potential costs of that person's failure to return to his or her home country (enforcement costs, social services, etc.).

The full potential cost of a legal worker's becoming an illegal immigrant should be carried by the employer. For instance, sponsors of immigrants could be required to demonstrate sufficient financial ability to support the sponsored immigrants, both to prevent them from becoming dependent on welfare and to create an incentive for employers not to hire immigrants who might violate the terms of their immigration status. An experience-rated bond or insurance system for employers of temporary workers would encourage them to uphold the law and to weigh the full costs against the benefits. Congress should consider whether a market solution that enforces liability might ease the problem of illegal immigration more effectively than more regulation of business can.

Enforcement. The federal government has a poor track record in consistently enforcing national immigration laws. For its part, Congress has been unwilling to devote the resources necessary to carry out its own policies. At the same time, recent Administrations seem to be unsure about when to enforce which laws. There are employers and others outside the immigrant community that simply do not want enforcement. The result is a system that is porous, arbitrary, and unpredictable. This weakens the current immigration regime and encourages its circumvention.

What immigration policy needs—as any new program requires—is a clear and determined strategy to enforce all the rules. Immigration reform in

general and any new program in particular must go hand-in-hand with a much stronger approach to violations of our immigration laws. Before proceeding, policymakers must have the political will to insist on the rule of law.

Burden on State and Local Governments. Although immigration policy is primarily a federal responsibility, it is the state and local governments that mostly deal with the practical implications of that policy. On the one hand, as the federal government neglects its obligation to secure America's borders, the states pick up the tab for illegal immigrants who receive various local services and impose local costs. This is a financial and practical burden—and an unfunded mandate—placed on states by a federal government that is unwilling to enforce its own laws.

On the other hand, state and local law enforcement needs to play a larger role in investigating, detaining, and arresting illegal immigrants on civil and criminal grounds. The primacy of the law ultimately depends on officers of the law—at every level of government—being bound to its support and implementation. In considering various proposals to reform immigration policy, Congress must address these and other issues of cooperative federalism.

Recommendations

It will take time and effort to design a comprehensive program of immigration reform and build the political consensus to support and carry out that reform. The principles and policy considerations outlined here—especially those concerning national and homeland security—must govern this reform.

In the meantime, there are several initial steps that can and should be taken now to stabilize immigration policy and begin to reorient it toward its guiding principles. Specifically, the Administration and Congress should:

1. **Better regulate entry and exit.** The vast majority of individuals entering the United States legally are travelers holding nonimmigrant visas of various lengths. In order to keep visas out of the hands of terrorists, the Bush

Administration and Congress have made their issuance and monitoring a leading concern.

There has been much progress in this effort. Nevertheless, many of the deadlines of the Enhanced Border Security and Visa Entry Reform Act—such as the implementation of an integrated entry-exit system—have been missed. These measures and the enforcement of existing visa laws should be a priority for Congress and the Administration. Because of the security aspects of the visa process, Congress should transfer the Office of Visa Services in the State Department to the Department of Homeland Security.²

2. **Strengthen citizenship.** Several things could be done to revive and strengthen the process by which American principles are inculcated in those who seek to become U.S. citizens. The Immigration and Nationality Act (INA) requires that candidates for citizenship demonstrate both an understanding of the English language and “a knowledge and understanding of the fundamentals of the history, and the principles and form of government, of the United States.”

When Congress formed U.S. Citizenship and Immigration Services within the Department of Homeland Security, it created a new Office of Citizenship to promote instruction and develop educational materials on citizenship. These activities ought to be encouraged, reinforced, and expanded. The test taken by candidates for citizenship should be strengthened to focus on core history and civic principles rather than trivia or process. The requirement that applicants understand the English language must be enforced, and English language instruction should be strongly promoted. The

oath of citizenship—the contents of which are described, not specified, in the INA—should be codified in law.³

3. **Step up criminal enforcement.** While there are legitimate enforcement and other concerns about a proactive policy to remove all illegal immigrants, it makes sense at least to take firm action against those who engage in serious crime or blatantly ignore deportation orders.

Interior immigration enforcement is the responsibility of the U.S. Bureau of Immigration and Customs Enforcement (ICE). Currently, that program does not have sufficient manpower and resources to carry out an extensive enforcement program. Until this situation changes, ICE should direct its efforts to be more efficient and effective. In addition to various targeted enforcement efforts, it should focus intensely on finding and deporting criminal illegal immigrants and those who have fled after having been ordered to be deported.

4. **Improve local and state enforcement.** In the normal course of criminal investigations, state and local law enforcement—which is the practical and preferred level for most law enforcement policies—should neither ignore immigration law nor hesitate to cooperate with federal immigration officials as appropriate.

In the case of counterterrorism, more concerted effort is needed. For now, adequate authority for state and local enforcement exists in Section 287(g) of the Immigration and Nationality Act. A pilot program with the State of Florida could serve as a national model and ought to be encouraged.⁴

5. **Prevent document and identity fraud.** Document fraud exists throughout the immigration

2. James Jay Carafano and Ha Nguyen, “Better Intelligence Sharing for Visa Issuance and Monitoring: An Imperative for Homeland Security,” Heritage Foundation *Background* No. 1699, October 27, 2003, at www.heritage.org/Research/HomelandDefense/BG1699.cfm.
3. Matthew Spalding, “Strengthen Citizenship in INS Reform,” Heritage Foundation *Executive Memorandum* No. 809, April 8, 2002, at www.heritage.org/Research/GovernmentReform/EM809.cfm.
4. James Jay Carafano, Ph.D., “No Need for the CLEAR Act: Building Capacity for Immigration Counterterrorism Investigations,” Heritage Foundation *Executive Memorandum* No. 925, April 21, 2004, at www.heritage.org/Research/HomelandDefense/em925.cfm.

system and, if left uncorrected, will continue to be an exposed weakness in our homeland security system.

Congress should follow the recommendation of the 9/11 Commission and set nationwide standards for the issuance of key documents, such as driver's licenses, that are used to establish identity.⁵ These standards should require proof of citizenship or lawful presence in the United States as a prerequisite for such documents. Also, while recognizing legitimate concerns about creating a national identification card, Congress must ensure that Social Security cards are less susceptible to fraud.

6. **Encourage economic freedom abroad.** Most individuals and families that come to the United States legally (and illegally) are seeking economic opportunity. One way to reduce illegal immigration in the long run is to promote economic growth in the nations that these individuals forsake. As long as Mexico's economy does not provide sufficient opportunities to satisfy the country's growing population, many of its citizens will have an incentive to cross our common border illegally in search of work.

The United States should encourage Mexico to reform its economy by ending business monopolies and corrupt practices, allowing foreign investment, reducing regulation, and improving property rights. These are the necessary steps for Mexico to build a strong and stable entrepreneurial, free-market economic system.⁶ To this end, the United States recently initiated the Millennium Challenge Account, a new form of foreign assistance that encourages economic growth by focusing on positive

results rather than the amount of money given to individual countries.⁷

7. **Investigate existing programs.** The United States already has several programs for temporary non-immigrant workers. These programs allow individuals to stay in the country for various lengths of time with an employment-based visa for various occupational purposes.

Although these programs are rather bureaucratic and cumbersome, one option for Congress to consider for addressing the demand for temporary workers is streamlining and adapting existing procedures for granting non-immigrant work visas. There already exists an unrestricted visa classification for temporary or seasonal agricultural workers (H-2A), yet few agricultural employers or farm workers use this visa mechanism. The experience and feasibility of this option ought to be investigated before considering an entirely new program.

8. **Rebuild the Coast Guard.** Although long overlooked, the U.S. Coast Guard's many missions touch on virtually every aspect of maritime and border security. However, the Coast Guard's fleet is old, expensive to operate and maintain, and poorly suited for some homeland security missions.

As a result, underfunding of Coast Guard modernization is a significant problem for the national capacity to enforce immigration laws at sea, in coastal areas, and at many ports of entry. Congress should accelerate spending on Coast Guard modernization and make additional investments in assets that support this essential aspect of border security.⁸

5. National Commission on Terrorist Attacks Upon the United States, *The 9/11 Commission Report: Final Report of the National Commission on Terrorist Attacks Upon the United States* (Washington, D.C.: U.S. Government Printing Office, 2004), at www.9-11commission.gov/report/911Report.pdf (October 8, 2004).
6. Stephen Johnson and Sara J. Fitzgerald, "The United States and Mexico: Partners in Reform," Heritage Foundation *Background* No. 1715, December 18, 2003, at www.heritage.org/Research/LatinAmerica/BG1715.cfm.
7. James Jay Carafano and Ha Nguyen, "Homeland Security and Emerging Economies," Heritage Foundation *Background* No. 1795, September 14, 2004, at www.heritage.org/Research/HomelandDefense/bg1795.cfm. See also Marc A. Miles, ed., *The Road to Prosperity: The 21st Century Approach to Development* (Washington, D.C.: The Heritage Foundation, 2004).

Conclusion

Immigration will always be an important issue in the United States, not because the issue is a perennial problem, but because it is inextricably connected to the fundamental principles upon which this nation is founded. Because of that connection, it is imperative that policymakers take the time to think through and implement immigration policies that are consistent with these principles,

the necessities of national security, and the great traditions and compassionate practices of America's ongoing experiment in ordered liberty.

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8. See James Jay Carafano, statement before the Committee on Commerce, Science, and Transportation, U.S. Senate, March 24, 2004, at www.heritage.org/Research/HomelandDefense/tst032404a.cfm.