

Background

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Alternatives to Amnesty: Proposals for Fair and Effective Immigration Reform

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For the sake of national security, the rule of law, and responsible immigration policy, Congress and the President must take credible steps to reduce the number of individuals who are unlawfully present in the United States. Immigration reform must not encourage or exacerbate this problem.

In particular, any new initiative must not grant permission, as a matter of principle or policy, for unlawfully present persons to remain legally in the country. Such a program would undermine the credibility of efforts not only to control America's borders, but also to advance reasonable legal immigration reform.

A better alternative would be for policymakers to establish a comprehensive solution that fosters better national security, a growing economy, and a strong civil society. Part of this solution should be a realistic and reasonable program to assist unlawfully present individuals in returning to their countries of origin before applying for legal reentry to the United States.

Why We Care

Estimates of the number of undocumented foreign workers in the United States vary widely.

- In March 2005, a Pew Hispanic Center report estimated the number of currently undocumented U.S. residents at nearly 11 million, based on extrapolations of data from the U.S. Census Bureau's 2004 Current Population Survey and estimates that annual net growth of unauthorized migrants has averaged about 500,000 since 1990.

Talking Points

- For the sake of national security, the rule of law, and responsible immigration policy, Congress and the President must take credible steps to reduce the number of individuals who are unlawfully present in the United States.
- Any new initiative must not grant permission, as a matter of principle or policy, for unlawfully present persons to remain legally in the country. Such a program would undermine the credibility of efforts not only to control America's borders, but also to advance reasonable legal immigration reform.
- Congress must establish a comprehensive solution that fosters better national security, a growing economy, and a strong civil society. Part of this solution should be a realistic and reasonable program to assist unlawfully present individuals in returning to their countries of origin before applying for legal reentry to the United States.

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Of the 11 million total, over 7 million were undocumented workers.¹

- The Federation for American Immigration Reform estimates that 13 million illegal immigrants live in the United States, which translates into approximately 9 million unlawful foreign workers.²
- A widely cited (and challenged) estimate by a senior managing director at Bear Stearns calculates that as many as 20 million illegal immigrants could now reside in the United States. If correct, this figure implies that as many as 15 million undocumented workers could be employed here.³

There are no signs that the overall trends of illegal entry and unlawful presence in the United States will change any time soon. As long as the economies of nations on or near our borders do not provide sufficient jobs to keep up with their population growth, their citizens will look elsewhere and seek to cross our border in search of work.

According to a Pew Hispanic Center study in 2003, individuals working in the United States sent almost \$30 billion to their families in Latin America and the Caribbean.⁴ As the single largest form of direct foreign investment in the region, in many cases providing families with essential goods and services such as food and rent, remittances have become the economic engine of Latin America. Figures do not make distinctions between the sources of remittances, but contributions from undocumented workers are undoubtedly significant.⁵ As long as the unprecedented economic importance of remittances remains, individuals

will seek access to the United States labor market by legal or illegal means.

Opportunities for undocumented workers in the United States encourage thousands to enter the United States illegally each month. At legal points of entry, such as seaports, airports, and established border crossings, the Department of Homeland Security (DHS) has implemented and is improving mechanisms for screening people and cargo to identify legitimate security threats, including terrorists, transnational criminals, and illicit cargo. However, many cross into the country at places other than the established points of entry, and the DHS cannot easily distinguish national security threats from other criminal activities along the territory and coastline between the legal points of entry.

The wave of illegal entry along this vast expanse significantly exacerbates the challenge of border security. Additionally, illegal border crossings put lives and property at risk for the individuals crossing, for those enforcing the law, and for local communities. In some areas, crime, property damage, and the risk of death from austere environmental conditions or reckless acts are becoming endemic. All of these factors force the DHS to deploy ever-greater resources to the point at which they are arguably less effective in achieving the department's primary purpose—safeguarding the nation against terrorists.

From a national security perspective, reducing illegal entry and unlawful presence in the United States is an imperative. Although border security efforts ought to be strengthened and expanded, it is doubtful that even dramatic additional investment

1. Jeffrey S. Passel, "Estimates of the Size and Characteristics of the Undocumented Population," Pew Hispanic Center, March 21, 2005, pp. 2–4, at pewhispanic.org/files/reports/44.pdf (May 19, 2005).
2. Warren Strugatch, "The Changing Face of the Island's Labor Force," *The New York Times*, November 14, 2004. For additional estimates and a discussion of the difficulties in estimating the number of unlawful immigrants residing or working in the United States, see Federation for American Immigration Reform, "How Many Illegal Aliens?" updated February 2005, at www.fairus.org/ImmigrationIssueCenters/ImmigrationIssueCenters.cfm?ID=1183&c=13 (May 19, 2005).
3. John O'Sullivan, "Bush's Unwelcome Welcome Mat—Divorced from Reality on Immigration," *National Review*, January 31, 2005.
4. Roberto Suro, "Remittances, Senders and Receivers: Tracking the Transnational Channels," Pew Hispanic Center, November 24, 2003, at pewhispanic.org/files/reports/23.pdf (May 24, 2005).
5. Deborah Waller Meyers, "Migrant Remittances to Latin America: Reviewing the Literature," Inter-American Dialogue and Tomás Rivera Policy Institute Working Paper, May 1998, at www.iadialog.org/publications/meyers.html (May 24, 2005).

in border security by itself will stem the tide of undocumented workers.

Rather than diverting exorbitant resources to the task of attempting to guard every mile of the border, why not make it in the interest of those seeking legitimate employment to enter this country through lawful means? This would make the task of policing borders and coastline more manageable. When the only individuals seeking to enter the United States illicitly are terrorists and transnational criminals, meeting the challenge of securing our borders will be more realistic. Under these conditions, everyone benefits—except the lawbreakers.

What We Need

What is required is a comprehensive strategy that reverses decades of ignoring, indeed encouraging, the disregard of requirements for legally entering and lawfully residing in this country. An appropriate strategy would:

- **Require** and provide resources to enforce laws within the United States, including prosecuting benefits fraud, identity theft, tax evasion, and immigration violations.⁶
- **Engage** the cooperation of federal, state, and local governments and non-governmental organizations.
- **Work** with other nations to enforce laws, to educate their citizens, and to develop more desirable legal alternatives for undocumented workers, such as allowing temporary workers to receive credit in their home countries' retirement systems.⁷
- **Encourage** other nations to adopt sound governance and economic policies that will promote growth in their economies and negate the need for citizens to take low-paying jobs in the United States.⁸
- **Enable** the private sector by allowing employers to identify lawful workers quickly and easily at a reasonable cost and in a manner that respects individuals' rights and privacy.⁹
- **Create** alternatives to cumbersome, bureaucratic, government-run programs by leveraging the capacity of the private sector to develop innovative and effective solutions for bringing temporary workers to the United States and managing them.

6. For example, Immigration and Customs Enforcement (ICE) needs additional personnel and other resources to undertake effective interior migration enforcement. ICE should make finding and removing criminal illegal immigrants and those who have fled after having been ordered deported a priority. Approximately 85 percent of illegal immigrants who receive final removal orders abscond. James Jay Carafano, "Border Security: Setting the Right Federal Priorities," Heritage Foundation *Executive Memorandum* No. 964, March 18, 2005, at www.heritage.org/research/homelanddefense/em964.cfm. For a comprehensive discussion of these unmet needs, as well as some other problems affecting the bureau, see hearings, *Fiscal Year 2006 Immigration and Customs Enforcement Appropriations*, Subcommittee on Homeland Security, Committee on Appropriations, U.S. House of Representatives, 109th Cong., 1st Sess., March 10, 2005.
7. For example, see the discussion of a program to engage state and local law enforcement in immigration law enforcement in James Jay Carafano, "No Need for CLEAR Act: Building Capacity for Counterterrorism Investigations," Heritage Foundation *Executive Memorandum* No. 925, April 21, 2004, at www.heritage.org/Research/HomelandDefense/em925.cfm.
8. For example, see 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.
9. Since November 1997, the federal government has funded a voluntary Basic Pilot program to test a document verification system. In November 2003, Congress reauthorized the project for an additional five years and increased the number of states in which employers are eligible to use it. The Administration and Congress should study the lessons learned from this experiment and, provided the number of false hits continue to fall, change soon to a more comprehensive system that would facilitate both document verification and job placement. For an example of the potential effectiveness of the "no-match" letters sent by the Social Security Administration (SSA) to employers who filed W-2s with information that was inconsistent with SSA records, see Mark Krikorian, "Flawed Assumptions Underlying Guestworker Programs," testimony before the Subcommittee on Immigration, Border Security, and Claims, Committee on the Judiciary, U.S. House of Representatives, March 24, 2004, at www.cis.org/articles/2004/marktestimony032404.html (May 24, 2005).

- **Improve** the infrastructure at the points of entry and vastly enhance customer service for immigration and non-immigration support programs—such as visa issuance and monitoring and screening people and cargo—so that they speed rather than inhibit the legitimate flow of goods, people, and services across America’s borders.¹⁰

When the legal means of entry into the United States are perceived as more safe and advantageous for them, workers will have every incentive to respect the rule of law.

The Amnesty Problem

A comprehensive system to encourage legal entry has little prospect for success unless the United States can reduce a thriving and prospering population of undocumented workers and benefit recipients. To address this issue, several policymakers have discussed the idea of a new “temporary worker program” that, among other things, would grant potentially millions of individuals who currently are unlawfully present in the United States the right to work legally in this country provided that U.S. employers could not find suitable American workers for the positions.¹¹

In recent months, proposals to this effect have been introduced in Congress.¹² At issue in all of these proposals is the question of “amnesty.” While most discussions oppose amnesty in general, con-

sistent with long-standing principles of law and recent immigrant reform experience, there is no consensus on the exact meaning of the term.

Some define “amnesty” as the granting of American citizenship and stress that the reform proposals would not affect existing nationalization procedures. President Bush, for instance, has said: “I oppose amnesty, placing undocumented workers on the automatic path to citizenship.”¹³

This use of the term is atypical. With respect to immigration, amnesty is most commonly defined as granting legal status to individuals unlawfully present in the United States, which all of the proposals certainly would do.¹⁴ It does not get around the amnesty problem to assert that an undocumented worker would not gain an unfair advantage in applications for citizenship or permanent worker (green card) status over those foreigners who followed the law and applied for such status without working illegally in the United States.

While each of these proposals may have some merits, they are still fatally flawed in this respect: Regardless of the penalties imposed, any program that grants individuals who are unlawfully present legal permission to remain here rewards illegal behavior and will only encourage others to emulate them. As President Bush has also said, “Granting amnesty encourages violation of our laws, and perpetuates illegal immigration.”

10. See Carafano, “Border Security: Setting the Right Federal Priorities.”

11. For descriptions of the Administration’s proposal, see The White House, “President Bush Proposes New Temporary Worker Program: Remarks by the President on Immigration Policy,” January 7, 2004, at www.whitehouse.gov/news/releases/2004/01/print/20040107-3.html (May 24, 2005), and “Fact Sheet: Fair and Secure Immigration Reform,” January 7, 2004, at www.whitehouse.gov/news/releases/2004/01/print/20040107-1.html (May 24, 2005). In his remarks, the President asserted that “The citizenship line, however, is too long, and our current limits on legal immigration are too low.”

12. Senator John McCain (R–AZ) and other Members of Congress have submitted legislation (S. 1033 and H.R. 1033) that would incorporate many of the Administration’s recommendations into law. House Democratic Leader Nancy Pelosi (D–CA), Senate Democratic Leader Harry Reid (D–NV), and leaders of the Congressional Hispanic Caucus have called for “earned access to legalization” (giving permanent residence and eventually U.S. citizenship to long-term undocumented workers who had no criminal records and could pass a background check) and an “enhanced temporary worker program” as a means to earn permanent resident status. Press release, “Democratic Leaders Urge Presidents Bush and Fox to Act on Long Overdue Immigration Reform,” March 21, 2005.

13. The White House, “President Bush Proposes New Temporary Worker Program.”

14. Mark Krikorian, “Amnesty, Again: This Country Should Have Learned—Apparently, It Has Not,” *National Review*, January 26, 2004.

Any reform of U.S. immigration policies must adhere to the core set of principles that have governed laws in this area for decades.¹⁵ Programs that allow unlawfully present persons to remain in the country legally fail on at least three counts.

- Considerations of national security require the federal government to control entry and exit across U.S. borders. Any measure that would increase illegal entry would violate this principle. These programs would likely increase rather than ameliorate the problem and are thus unacceptable.
- Any changes in immigration policies should respect the sentiments of the American people. The fact that most Americans would not consent to special considerations for those who have willfully violated U.S. immigration laws should weigh heavily in congressional deliberations.
- The rule of law requires the fair, firm, and equitable enforcement of immigration policies. Rewarding unlawful behavior while disadvantaging those who have chosen to “play by the rules” violates the principal of fairness.

In short, any program that does not require law-breakers to leave the United States and reenter through legal means if they wish to reside here will never satisfy the tenets of good immigration law and sound security practices.

Past Experience

There is, in fact, already ample evidence to suggest that these approaches will not work. In 1986, Congress enacted the Immigration Reform and Control Act,¹⁶ which contained an extensive if complex amnesty program that provided for temporary legal

status in the United States, with few impediments against obtaining green card status for illegal aliens involved in agricultural work or who could show that they had been living in the United States for four years since 1982. Its drafters vastly underestimated the number of aliens who would seek to legalize their status. The overwhelmed authorities could justify denying only a small percentage of the claimants despite the widespread submission of fraudulent applications. Enforcement of the new provisions sanctioning employers who continued to hire undocumented workers was minimal.¹⁷

In the three months following the announcement of the Administration’s willingness to permit foreigners already working inside the United States to participate in its temporary worker program, the number of illegal aliens apprehended along the southwestern border soared 25 percent over the same period during the previous year.¹⁸ More generally, immigration generally promotes further immigration since new arrivals bring with them a network of familial and other ties. These connections in turn weigh favorably in nonresidents’ decisions about whether or not to take up residence in the new country.¹⁹

Nor is the American experience unique. For instance, Malaysian officials have concluded that, despite extensive enforcement measures, their recent amnesty program for undocumented foreign workers has not helped to reduce the number of illegal immigrants in their country.²⁰

Another case in point is a recent initiative in Spain. Aware of the problems that typically plague such amnesty programs, members of the European Union (EU) roundly denounced the Spanish government when it decided earlier this year to offer

15. For an elaboration of these principles, see Edwin Meese III and Matthew Spalding, “The Principles of Immigration,” Heritage Foundation *Backgrounder* No. 1807, October 19, 2004, at www.heritage.org/research/governmentreform/bg1807.cfm.

16. Public Law 99–603.

17. David S. North, “Lessons Learned from the Legalization Programs of the 1980s,” Center for Immigration Studies *Backgrounder*, January 2005, at www.cis.org/articles/2005/back105.html (May 24, 2005).

18. Stephen Dinan, “Bush ‘Amnesty’ Blamed for Rise in Illegals,” *The Washington Times*, April 16, 2004. One source cited in the article said that foreigners were approaching Border Patrol agents and asking, “Where do we sign up for that guest-worker program, or that amnesty?”

19. Mark Krikorian, “Borderline Insanity,” *The National Interest*, Spring 2005, p. 72.

20. Malaysia General News, “No More Amnesty for Illegal Immigrants, Says Azmi,” February 14, 2005.

amnesty and one-year residence and work permits to illegal immigrants who could prove that they had lived in Spain for at least six months, had no criminal record, and had a firm offer of employment in Spain for at least six months. EU members fear that the Spanish program, which ended in early May 2005, will encourage foreigners seeking work in Europe to enter Spain first and then, exploiting the right of residents of one European state to live and work anywhere in the EU, to settle in other European countries.²¹

An Alternative Proposal

For any package of immigration reforms to be considered credible, it must address the significant population of persons unlawfully present in the United States. As an encouragement for illegal residents to gain legal status and as a deterrent to potential future lawbreakers, U.S. law must insist that individuals currently in the country who have violated immigration statutes must leave and apply for admission through legal means. Combined with the consistent enforcement of immigration laws within the United States and the enhancement of the legal alternatives for entering and residing in the country, this requirement will serve as a powerful disincentive to most, other than perhaps terrorists and transnational criminals, from attempting to cross America's borders illicitly.

The challenge is to create policies that can be fairly and practically implemented. It is unrealistic to assume that millions of undocumented workers will simply leave, just as it would be practically impossible to force each of them to return to their countries of origin.

The responsible course of action is to establish return programs that, except for repeat offenders and felony-criminal offenses, are voluntary in nature. These must be supported by humanitarian initiatives that protect the safety and legal rights of individuals, regardless of immigration status. At a minimum, reforms should:

- **Require** the Administration to enter into compacts with key nations to facilitate the return of their citizens and reward nations that develop robust programs that assist in significantly reducing the unlawful population in the United States.
- **Engage** non-governmental organizations and stakeholders in establishing humanitarian support programs to assist undocumented workers in returning to their host countries.
- **Establish** that unlawfully present individuals who voluntarily leave the United States, have no criminal record, and register with authorities before leaving through the US-VISIT program can apply for legal entry to the United States without prejudice.
- **Create** a national trust fund based on voluntary contributions to assist in covering the expenses of returning undocumented workers to their host countries.

Conclusion

Immigration reform should be a matter of national priority. To be successful, reforms must include a comprehensive package of measures to reduce illegal entry into the United States as well as to reduce the current population of unlawfully present persons. The cornerstone of any such initiative must be a fair and practical program for repatriating foreign persons who are illegally present in the United States.

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21. Bertrand Benoit and Leslie Crawford, "Spain's Amnesty for Illegal Immigrants Alarms Europe," *The Financial Times*, February 4, 2005, and Renwick Mclean, "Spain Allows Immigrants to Seek Residency Papers," *The International Herald Tribune*, February 8, 2005.