

Background

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Permanent Principles and Temporary Workers

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In the continuing debate over immigration policy, lawmakers would do well to step back from the politics of the moment 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.

As the United States Senate considers a temporary worker program as one aspect of that policy, it is important to review the principles that ought to guide this discussion and against which any proposed temporary worker program should be measured.

The Principles of Immigration

As previously established, four broad principles should guide United States immigration policy.¹

- **The Consent of the Governed.** The very idea of sovereignty implies that each nation has the responsibility—and obligation—to determine and defend its own conditions for immigration, naturalization, and citizenship. Individuals who are not citizens do not have a *right* to American residency or citizenship without the consent of the American people, as expressed through the laws of the United States.
- **National Security.** 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 bor-

Talking Points

- Like immigration policy generally, a temporary worker program must comport with the fundamental principles of the consent of the governed, national security, the rule of law, and patriotic assimilation.
- While a balanced and well-constructed temporary worker program would foster better national security and serve a growing economy, an ill-defined and poorly constructed temporary worker program would make matters worse.
- To be acceptable both in principle and in practice, and to contribute to the objectives of comprehensive immigration reform, a temporary worker program must be truly temporary, not encourage illegal immigration, and not be an amnesty program.
- It must also include serious enforcement mechanisms, be administratively feasible and fully implemented, and require bilateral agreements with participating countries.

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ders, 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. Congress should require and provide resources to enforce immigration laws within the United States, and individuals unlawfully present in the United States should not be rewarded with amnesty.
- **Patriotic Assimilation.** A successful immigration policy must include and emphasize a deliberate and self-confident policy that welcomes and assimilates permanent immigrants, with the goal being American citizenship. 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.

Guiding Principles for a Temporary Worker Program

The comprehensive reform of immigration policy has little prospect of success unless it seriously reduces the growing number of undocumented workers and benefit recipients in the United States. Among the proposals designed to accomplish this goal is the creation of a temporary worker program that would be open to new foreign workers as well as illegal immigrants currently in the United States.

A balanced and well-constructed temporary worker program, by replacing the incentives for illegal immigration with an option for legal temporary labor and (in combination with other reforms) reducing over time the current population of

unlawfully present persons, would foster better national security and serve a growing economy. Such a temporary worker program would be a valuable and perhaps even necessary component of a comprehensive immigration reform proposal.

Nevertheless, reasonable enthusiasm for such a program in theory must be moderated by serious and realistic concerns not only about the failures of such programs in the past and in other countries,² but also regarding how a new program would likely be implemented and operate in practice.³ That both the National Commission on Immigration and Refugee Policy and the U.S. Commission on Immigration Reform (chaired by the late Representative Barbara Jordan), after extensive study of the matter, rejected a temporary or guest worker program for just these reasons should counsel some trepidation.⁴ At the very least, policymakers must bear in mind during the lawmaking process that an ill-defined and poorly constructed temporary worker program would make the current problems of immigration policy much worse.

It is with great care and prudence, then, that lawmakers should address the many thorny questions raised by a temporary worker program. In that process, policymakers should be guided not only by general principles, but also by several principles particular to a temporary worker program. These principles should be used to evaluate and judge any such proposals.

- **The first priority is national security.** Congress must take steps to ensure that immigration policy, or the lack of immigration policy enforcement, does not undermine national security; and, from a national security perspec-

1. Edwin Meese III and Matthew Spalding, "The Principles of Immigration," Heritage Foundation *Background* No. 1807, October 19, 2004.
2. See, for instance, Dr. Vernon M. Briggs, "Guestworker Programs for Low-Skilled Workers: Lessons from the Past and Warnings for the Future," testimony before the Subcommittee on Immigration and Border Security, Committee on the Judiciary, U.S. Senate, February 5, 2004.
3. For analysis of the two leading proposals, see James Jay Carafano, Ph.D., Janice L. Kephart, and Paul Rosenzweig, "The McCain-Kennedy Immigration Reform Bill Falls Short," Heritage Foundation *Executive Memorandum* No. 975, July 26, 2005, and James Jay Carafano, Ph.D., Janice L. Kephart, and Alane Kochems, "The Cornyn-Kyl Immigration Reform Act: Flawed But Fixable," Heritage Foundation *Executive Memorandum* No. 982, September 23, 2005.
4. See National Commission on Immigration and Refugee Policy, *U.S. Immigration Policy and the National Interest: Final Report*, 1981, and U.S. Commission on Immigration Reform, *Becoming an American: Immigration and Immigration Policy*, 1997.

tive, preventing illegal entry and reducing unlawful presence in the United States is an imperative. A critical element of any reform proposal must be to build a “system of systems” that welds all of the nation’s border assets into a single coherent security strategy—addressing the issue from the point of origin, in transit, at the border, and within the United States—and strengthens all of the activities, assets, and programs necessary to enhance homeland security.⁵ While recognizing that a temporary worker program could potentially contribute to the task of policing borders and coastlines, a comprehensive plan for integrated border security must be implemented and operational prior to any temporary worker program.

- **There should be no amnesty program for illegal immigrants.** Regardless of the penalties imposed, any program that grants individuals who are unlawfully present legal permission to remain here rewards illegal behavior and is unfair to those who obey the law and go through the regulatory and administrative requirements to enter the country legally. Those who enter the United States illegally should not be rewarded with permanent legal status or other such benefits, and they should be penalized in any road to citizenship. The cost of changing one’s status from *illegal* to *legal* is a change of condition from a *permanent* to a *temporary* presence in the United States. Unlawfully present individuals who voluntarily leave the United States, register with authorities before leaving through the US–VISIT program, have no criminal record, and agree to abide by the terms and requirements of a temporary worker program and the laws of the United States can then apply for legal entry to the United States without partiality or prejudice.⁶
- **A temporary worker program must be a temporary program.** Participation in the program should be of defined and limited duration. If

participation is renewable, there should be a substantive period of time in the home country between renewals; to be temporary, the program must not be indefinitely renewable. Indeed, policymakers must be confident that the program will remain temporary and that, at the end of program tenure, participants will return to their home countries. For those individuals who are not present in the United States, applicants must demonstrate permanent foreign residence. For those that are currently here illegally, a temporary worker program should be seen as an attractive and legal avenue for them to reestablish permanent residence in their home country. In all cases, participants must show an intention to return to one’s home country (“nonimmigrant intent”). In order to encourage this outcome, Congress should engage non-governmental organizations and stakeholders in establishing humanitarian support programs to assist undocumented workers in returning to their home countries and could even create a national trust fund, based on voluntary contributions, to assist in covering the expenses of returning undocumented workers to their home countries.

- **A temporary worker program should not undermine the preferred process of naturalization.** Policymakers should be concerned if the sheer size or lack of “temporariness” in a temporary worker program threatens to overwhelm the immigration process and create *de facto* permanent residents without permanent legal status. A temporary worker program must not be allowed to become merely a legal way to circumvent the rules and procedures of the naturalization process. This process must be protected and should be strengthened, and the distinction between citizen and non-citizen (and between immigrant and non-immigrant)⁷ should be clarified rather than blurred. Indeed, to the extent that the need is for a larger

5. James Jay Carafano, Ph.D., “Safeguarding America’s Sovereignty: A ‘System of Systems’ Approach to Border Security,” Heritage Foundation *Background* No. 1898, November 28, 2005.

6. Edwin Meese III, James Jay Carafano, Ph.D., Matthew Spalding, Ph.D., and Paul Rosenzweig, “Alternatives to Amnesty: Proposals for Fair and Effective Immigration Reform,” Heritage Foundation *Background* No. 1858, June 2, 2005.

permanent working population in the United States, the policy preference ought not to be workers who are temporary, but assimilated immigrants who understand and are willing to take on the long-term responsibilities and obligations of citizenship.

- **A temporary worker program should be good for the American economy and as market-based as possible.** Immigration has always contributed to the expansion of the American economy, and the goal of this particular program should be no different. In general, the economic benefits of the program must be understood to outweigh its costs. The best way to do that is for the operations of a temporary worker program to be as flexible and market-based as possible, in accord with basic principles of free-market economic analysis.⁸ It should not be micromanaged by government agencies, but should leverage the capacity of the private sector to develop innovative and effective ways of matching sponsoring employers to eligible employees. As well, a temporary worker program should provide economic incentives for participants to abide by the rules of the program and return home at the end of their program tenure, for both the participant (perhaps in the form of withheld income or investment accounts) and the employer (perhaps in the form of a bond to control the flow of workers and promote compliance). The objective should be to allow for a reliable and stable source of labor, but for that labor to be provided by a dynamic and constantly changing temporary work force.
- **New programs should not encourage or exacerbate illegal immigration.** 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. If for no other reason, policymakers should reject amnesty for illegal immigrants because it would encourage others to emulate illegal behavior and thereby increase rather than ameliorate the problem.⁹

In considering new programs, policymakers must also recognize that any program that is vague or unenforceable, or that allows temporary visitors or workers to disappear when their legal status expires, would not only mean a larger illegal immigrant community, but also invite new illegal immigration—and thus create an even larger public policy problem.

- **Serious immigration reform requires serious enforcement.** 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 a temporary worker program in particular, must go hand-in-hand with a much stronger approach to dealing with violations of our immigration laws. This means credible workplace enforcement that imposes steep employer penalties for willfully violating immigration laws and, without requiring a new large federal bureaucratic program, targets the largest employers of unlawful labor and the most egregious violators of immigration laws. Secure documents, biometric identification, and mandatory workplace verification would certainly ease the burden on employees and employers to abide by the rules. Before proceeding, policymakers must have the political will to insist on the rule of law.
- **A temporary worker plan should be family-friendly.** Temporary workers in the United States should be encouraged to establish long-term residences, create stable households, and build families in the country of their permanent citizenship. Policymakers must recognize that

7. See Matthew Spalding, Ph.D., “Making Citizens: The Case for Patriotic Assimilation,” forthcoming from The Heritage Foundation.

8. Tim Kane, Ph.D., and Kirk A. Johnson, Ph.D., “The Real Problem with Immigration... and the Real Solution,” Heritage Foundation *Background* No. 1913, March 1, 2006.

9. See Meese *et al.*, “Alternatives to Amnesty.”

for temporary workers to do so in the United States creates powerful conditions of permanency, placing the temporary worker, his family, and those obliged to enforce the law in a difficult and untenable situation. A family-friendly policy that respects and encourages permanent households would break program participation into brief periods, with significant time between renewal for the temporary worker to reestablish ties to his or her permanent foreign residence. It would also permit brief family visits in the United States during periods of program participation while clarifying that, consistent with the temporary nature of the program, children born to temporary workers while in the United States are not automatically United States citizens.¹⁰

- **A temporary worker program must be administratively feasible and fully implemented.** The infrastructure necessary for such a program, including the creation of a single integrated border services agency, must be in place and working before a temporary worker program is implemented. This is especially the case with those elements of the program (such as a biometric identification registry, verification of identity and criminal security check with the participants' home country, mandatory workplace verification, and a system of secure documents) that contribute to the requirements of national security. Policymakers must have demonstrable confidence (based on system testing and pilot programs, for example) that the infrastructure and its system elements are able to manage a program of this size efficiently and accurately. A pilot program, perhaps based on the expansion and streamlining of existing non-immigrant work visa programs, is a reasonable and prudent policy prior to launching a new program of this magnitude.¹¹ Given the federal government's poor track record in consistently enforcing

national immigration laws and providing the resources necessary to carry out its own policies, there should be measurable border security, internal enforcement and program infrastructure timetables, benchmarks, and goals that must be met in order to proceed with the implementation of a temporary worker program.

- **International cooperation requires agreements with participating countries.** A temporary worker program must include bilateral agreements between the United States and the participants' home countries. Such agreements would strengthen cooperation concerning verification of identity and background security; establish clear agreement to abide by (and encourage participants to abide by) the rules of the program and United States immigration laws; facilitate the return of those nations' citizens at the end of program participation; and reward nations that develop robust programs that assist in significantly reducing the unlawful population in the United States. In lieu of congressional legislation on the matter, such agreements should also clarify the citizenship status of children of program participants. Such agreements are also an opportunity to develop additional incentives for temporary workers, such as allowing program participants to receive credit in their home countries' retirement systems, and generally encourage economic freedom and growth in the nations that these individuals have left for opportunities in the United States.¹²

Conclusion

It goes without saying that many aspects of immigration policy are divisive, splitting not only virtually every segment of political opinion, but also the American people generally. One of the most divisive and controversial aspects of the current immigration debate is the proposal for a tem-

10. See Edward Erlar, "Birthright Citizenship and the Constitution," Heritage Foundation *WebMemo* No. 925, December 1, 2005. This question can be clarified by legislation and/or bilateral agreement.

11. This was the position of the Reagan Administration when the idea was proposed in the early 1980s.

12. Stephen Johnson, "Immigration Plans Need a Foreign Policy Component," Heritage Foundation *WebMemo* No. 948, December 19, 2005; see also Stephen Johnson and Sara J. Fitzgerald, "The United States and Mexico: Partners in Reform," Heritage Foundation *Background* No. 1715, December 18, 2003.

porary worker program. Just as any immigration reform package must be informed by the proper guiding principles, thereby balancing national security, economic interests, and the rule of law, so a temporary worker program—to be acceptable both in principle and in practice, and to contribute to the objectives of comprehensive immigration reform—must be consistent with those principles

and thus with the best traditions and highest ideals of the United States.

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