

Executive Summary Backgrounder

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Where We Stand: Essential Requirements for Immigration Reform

Edwin Meese III and Matthew Spalding, Ph.D.

At the beginning of the current national debate concerning immigration, The Heritage Foundation described the principles that should inform immigration policy, suggested some considerations for policymakers, and proposed several first steps in developing such a policy. These principles have guided and will continue to guide Heritage Foundation analysis of this question, and they should guide lawmakers and policymakers in evaluating particular proposals that come before them.

Congress and the President now have another opportunity to craft immigration reform legislation. Given the stakes involved, they should proceed carefully, fully cognizant of the immediate and long-term implications of their actions.

Lawmakers should support comprehensive reform if and when they are confident that the proposed immigration reforms fully and honestly comprehend these core principles. At the same time, they should oppose and, if necessary, the President should veto any reforms or reform packages that do not comport with these principles, are not in the best interests of the United States, and are inconsistent with the great traditions and compassionate practices of America's ongoing experiment in ordered liberty.

The First Priority: National Security

Principle: America's immigration system must be a national strength and not a strategic vulnerability.

The United States must have a complete security system—from the point of origin, in transit, at the border, and within the United States—that strengthens all of the activities, assets, and programs necessary to secure America's borders. Congress must provide for comprehensive security, allow for operational flexibility in securing the border, target federal support at the border, authenticate identification materials, implement US-VISIT, require security checks for entry, and insist on a national security trigger for any temporary worker program.

Uphold the Rule of Law

Principle: The rule of law requires the fair, firm, and consistent enforcement of the law, and immigration is no exception.

Congress and the President must take credible steps to reduce illegal immigration in both annual and absolute terms, and that requires enforcement. Congress must increase workplace enforcement, strengthen employment verification, maintain state and local enforcement authority, target criminal enforcement, and facilitate state and local law enforcement.

This paper, in its entirety, can be found at:
www.heritage.org/research/immigration/bg2034.cfm

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Center for American Studies

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214 Massachusetts Avenue, NE
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(202) 546-4400 • heritage.org

Nothing written here is to be construed as necessarily reflecting the views of The Heritage Foundation or as an attempt to aid or hinder the passage of any bill before Congress.

Amnesty Is Not the Answer

Principle: Those who enter, remain in, and work in the country illegally are in ongoing and extensive violation of our immigration laws.

Forgiving or condoning such violations by granting amnesty increases the likelihood of further illegal conduct, is deeply unfair, and undermines the rule of law. The just and reasonable requirement for correcting illegal immigration, in addition to other appropriate penalties, is repatriation, after which individuals may apply for legal entry to the United States without partiality or prejudice.

Strengthen Citizenship

Principle: Each nation has the responsibility—and obligation—to determine its own conditions for immigration, naturalization, and citizenship.

This requires clarifying the distinction between citizens and non-citizens and creating a deliberate and self-confident policy that assimilates immigrants and new American citizens. Congress must encourage immigrant education, provide for the common language, clarify birthright citizenship, revive expatriation, improve immigration services, and protect the integrity of the legal immigration process.

Benefit the American Economy

Principle: Immigration policy should be a fiscal and economic benefit not only for immigrants, but also for the nation as a whole.

Overall, immigration policy should support a growing economy and bring economic benefit to all

Americans. Policymakers must ensure that the interaction of social services and immigration policy does not expand the welfare state and impose significant costs on American society. Congress must consider fiscal costs and benefits, emphasize high-skill immigration, reduce the state fiscal burden, and encourage economic freedom.

A Real Temporary Worker Program

Principle: A temporary worker program must be temporary, market-oriented, and feasible.

A balanced and well-constructed temporary worker program should diminish the incentives for illegal immigration by providing an additional option for legal temporary labor and, in combination with other reforms, reduce over time the current population of illegal aliens. An ill-defined and poorly constructed temporary worker program would make the current problems of immigration policy even worse. In creating a temporary worker program, Congress must ensure that it remains temporary, create a dynamic workforce that includes sponsorship, resolve issues of family status for program participants, require bilateral agreements, include program triggers, provide economic incentives for employers and participants, insist on numerical caps, limit the status adjustment for temporary workers, and resist large, unwieldy programs.

—Edwin Meese III is Ronald Reagan Distinguished Fellow in Public Policy and Chairman of the Center for Legal and Judicial Studies, and Matthew Spalding, Ph.D., is Director of the B. Kenneth Simon Center for American Studies, at The Heritage Foundation.

Background

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Where We Stand: Essential Requirements for Immigration Reform

Edwin Meese III and Matthew Spalding, Ph.D.

America has been good for immigrants, and immigrants have been good for America. Our nation's principles and its system of equal justice and economic freedom invite all those seeking opportunity and the blessings of liberty. The immigrants that come to America have always played an important role in our history—strengthening our social capital, deepening our national patriotism, and expanding our general economy.

Over the past several decades, however, immigration policy has become confused and unfocused to the point that there is widespread and deepening concern that our current policies regarding immigration are not working. Poorly designed policies and weak enforcement of immigration laws have led to disturbing vulnerabilities in our security. Millions of illegal immigrants in our country belie the core principle of the rule of law and belittle the legal naturalization process. Continued large-scale immigration without effective assimilation threatens social cohesion and America's civic culture and common identity.

At the beginning of this national debate, The Heritage Foundation described the principles that should inform immigration policy, suggested some considerations for policymakers, and proposed several first steps in developing such a policy.¹ Since then, several papers have been published applying these principles to particular aspects of the policy debate.² These principles have guided and will continue to guide Heritage Foundation analysis of this question, and they should guide lawmakers and policymakers in evaluating particular proposals that come before them.

Talking Points

- Congress and the President now have another opportunity to craft immigration reform legislation. Given the stakes involved, they should proceed fully cognizant of the immediate and long-term implications of their actions.
- Lawmakers should support comprehensive reform if and when they are confident that the proposed immigration reforms fully and honestly comprehend core American principles.
- They should oppose and, if necessary, the President should veto any reforms or reform packages that do not comport with these principles, are not in the best interests of the United States, and are inconsistent with the great traditions and compassionate practices of America's ongoing experiment in ordered liberty.

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With Congress and the Administration set to consider once again a major immigration reform package, it is necessary to restate these principles and clarify how they should apply to the current debate. For the sake of immigrants and American citizens alike, any meaningful and long-term policy concerning immigration must be consistent with these principles and, thus, with the highest ideals and long-term good of the United States.

The First Priority: National Security

Principle: America's immigration system must be a national strength and not a strategic vulnerability.

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.

It is the responsibility of Congress and the President to ensure that immigration policy and immigration policy enforcement serve our national security. From a national security perspective, preventing illegal entry and reducing unlawful presence in the United States is an imperative. An uncontrolled immigration system encourages the circumvention of immigration laws and is a clear invitation to those who wish to take advantage of our openness to cause this nation harm.

- **Provide comprehensive security.** The United States must have a complete security system—

from the point of origin, in transit, at the border, and within the United States—that strengthens all of the activities, assets, and programs necessary to secure America's borders. Immigration legislation should create an integrated security system that addresses border infrastructure and links border management to all activities involved in cross-border travel and transport, from issuing visas and passports to internal investigations and the detention and removal of unlawful persons.³

- **Allow for operational flexibility.** Over the past ten years, the United States has tripled border spending and manpower as border incursions have skyrocketed. An immigration bill should direct the Department of Homeland Security (DHS) to secure the border and then give it the operational flexibility to achieve that objective. Appropriate new technologies—unmanned vehicles, cameras, sensors, and satellites—should be utilized for this purpose. Wiser investments would include funding cost-effective initiatives that would rapidly increase security at the border, such as using state defense forces and private-sector contractors.⁴
- **Target federal support at the border.** To secure the border, immigration reform legislation should allocate about \$400 million per year over the next three years out of the projected spending on homeland security grants. Congress must resist the temptation to turn these grants into earmarked pork-barrel programs and instead insist that federal support for border security policing be strategically employed as a short-term bridging program to secure the border immediately.⁵
- **Authenticate identification.** Immigration reform should include implementation of the Intelligence Reform and Terrorism Prevention Act of

1. Edwin Meese III and Matthew Spalding, "The Principles of Immigration," Heritage Foundation *Background* No. 1807, October 19, 2004.
2. See, for instance, 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, and Edwin Meese III and Matthew Spalding, Ph.D., "Permanent Principles and Temporary Workers," Heritage Foundation *Background* No. 1911, March 1, 2006.
3. 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.
4. James Jay Carafano, Ph.D., "Senate Immigration Plan Fails to Deliver Comprehensive Border Security," Heritage Foundation *WebMemo* No. 1080, May 16, 2006.

2004 and the REAL ID Act of 2005. These laws do not create a national identification card, but rather establish that when key identification materials, such as driver's licenses (and the documents used to obtain them like birth certificates), are issued at any level of government and used for a federal purpose (such as security checks before boarding commercial passenger planes), these documents must meet national standards of authenticity. Such documents should be issued only to persons living lawfully in the United States. To prevent tampering, counterfeiting, or fraud, and to enhance privacy protections, the laws also establish standard security features concerning identification cards. Congress should appropriate the money to help states establish systems to meet requirements under the REAL ID Act.⁶

- **Implement US-VISIT.** A system for recording entry and exit into and out of the United States is a necessary component of responsibly managing control of the nation's borders. The Administration should implement the congressionally mandated US-VISIT program as quickly and efficiently as possible.⁷
- **Require security checks.** No individual should be allowed to enter the United States unless that individual has passed health, criminal, and national security background checks prior to entry.
- **Insist on a national security trigger.** While recognizing that a temporary worker program would contribute to the task of policing borders and coastlines, a comprehensive plan for integrated border security must be implemented and operational control of the border must be achieved prior to initiating any new programs that substantially increase permanent or temporary workers in the United States. This determi-

nation should be made by the Administration, subject to legislative concurrence.

Uphold the Rule of Law

Principle: The rule of law requires the fair, firm, and consistent enforcement of the law, and immigration is no exception.

Congress and the President must take credible steps to reduce illegal immigration in both annual and absolute terms, and that requires enforcement. Indeed, recent efforts by the Bush Administration demonstrate how targeted enforcement could have a significant effect on illegal immigration into the United States. Federal, state, and local law enforcement must be allowed to enforce immigration law consistent with their legal authority. Federal and state governments must provide law enforcement with the necessary resources to enforce and prosecute these laws, and the federal government should expand programs to assist states and territories in their immigration law enforcement efforts.

- **Increase workplace compliance.** Credible workplace enforcement requires steep employer penalties that will serve as an effective deterrent against violating immigration laws. Without creating a new federal bureaucratic program, the largest employers of unlawful labor and the most egregious violators of immigration laws should be targeted for enforcement. To secure the cooperation of businesses, the tax code should be amended to remove the tax deductibility of wages paid to unauthorized aliens.⁸
- **Strengthen employment verification.** Employers currently verify an employee's right to work by submitting a Social Security number for payroll tax purposes, yet millions of the numbers submitted by employers on earnings reports do

5. James Jay Carafano, Ph.D., and David B. Muhlhausen, Ph.D., "State and Local Law Enforcement's Key Role in Better, Faster, Cheaper Border Security," Heritage Foundation *Executive Memorandum* No. 1015, November 22, 2006.

6. James Jay Carafano, Ph.D., "The Real Importance of REAL ID: A Strategy for Saving the Secure Driver's License Initiative," Heritage Foundation *Executive Memorandum* No. 1024, May 4, 2007.

7. James Jay Carafano, Ph.D., "A Visa Reform Plan for Congress," Heritage Foundation *Executive Memorandum* No. 1001, May 25, 2006; see also James Jay Carafano, Ph.D., Helle C. Dale, and James Dean, "Improve the Visa Waiver Program with Exit Checks for New Participants," Heritage Foundation *WebMemo* No. 1400, March 19, 2007.

8. James Jay Carafano, Ph.D., "Immigration Enforcement and Workplace Verification: Sensible Proposals for Congress," Heritage Foundation *Executive Memorandum* No. 999, April 4, 2006.

not match Social Security Administration master records. Immigration reform must allow sharing of Social Security no-match information in a way that will protect privacy rights while allowing the DHS to target employers who intentionally violate the law by hiring illegal workers and giving the government incorrect information.⁹

- **Maintain state and local enforcement authority.** Under current law, state and local police have the authority to arrest aliens for criminal and civil violations of law. A provision in the Comprehensive Immigration Reform Act of 2006 would have restricted state and local police to arresting aliens for criminal violations of immigration law only, not for civil violations. As a practical matter, such a provision would discourage police departments from playing any role in immigration enforcement. Most police officers (indeed, most lawyers) do not know which immigration violations are criminal and which violations are civil, and this lack of knowledge hinders the effectiveness of local law enforcement of federal immigration law.¹⁰
- **Target criminal enforcement.** Any targeted enforcement efforts should focus with special intensity on finding and deporting illegal immigrants who have committed crimes in the United States or who have fled after having been ordered to be deported. Immigration reform should establish strong penalties for absconding from the enforcement of United States law. Absconding after receiving an order to appear or a removal order should be a punishable crime, and the second such offense should be a felony. Under these reforms, such individuals would thereafter be ineligible for legal visa programs.
- **Facilitate state and local law enforcement.** Immigration reform should expand Section 287(g) of the Immigration Naturalization Act of 1996, which allows the Department of Homeland Security and state and local governments to

enter into assistance compacts. State and local law enforcement officers governed by a Section 287(g) agreement must receive adequate training and operate under the direction of federal authorities. In return, they receive full federal authority to enforce immigration law, thereby shifting liability to the federal government and providing the officers with additional immunity when enforcing federal laws.¹¹

- **Don't make the problem worse.** What immigration policy needs—as any new program requires—is a clear and determined strategy to enforce the rules. Any program that is vague or unenforceable or that allows temporary visitors or workers to disappear when their legal status expires would mean a larger illegal immigrant community—and a larger public policy problem. Immigration reform in general and a temporary worker program in particular must go hand-in-hand with a much stronger approach to violations of our immigration laws. And before proceeding, policymakers must have the political will to insist on the rule of law.

Amnesty Is Not the Answer

Principle: Those who enter, remain in, and work in the country illegally are in ongoing and extensive violation of our immigration laws.

Forgiving or condoning such violations by granting amnesty increases the likelihood of further illegal conduct. Failure to enforce immigration laws is deeply unfair to the millions who obey the law and abide by the administrative requirements to enter the country legally. Disregarding the intentional violation of the law in one context because it serves policy objectives in another undermines the rule of law. The just and reasonable requirement for correcting illegal immigration, in addition to other appropriate penalties, is repatriation, after which individuals may apply for legal entry to the United States without partiality or prejudice.

9. *Ibid.*

10. Kris W. Kobach, "Terrorist Loophole: Senate Bill Disarms Law Enforcement," Heritage Foundation *WebMemo* No. 1092, May 24, 2006.

11. James Jay Carafano, Ph.D., and Laura Keith, "The Solution for Immigration Enforcement at the State and Local Level," Heritage Foundation *WebMemo* No. 1096, May 25, 2006.

- **Defining Amnesty.** Amnesty is an act by which past acts are forgotten and expunged from the record for future purposes. In the context of immigration, amnesty is most commonly defined as granting legal status to a defined group of individuals who are unlawfully present in the United States; that is, overlooking or forgetting the ongoing illegal presence in the United States in favor of adjusting that presence to a legal status. The granting of legal status is still an amnesty even if it is conditional and not automatic or does not lead to citizenship.¹²
- **The 1986 Amnesty.** The Immigration Reform and Control Act of 1986—which legalized individuals who had resided illegally in the United States continuously for five years by granting temporary resident status adjustable to permanent residency—is the most prominent example of an immigration amnesty policy. Additional conditions included a criminal background check, payment of application fees, acquisition of English-language skills, a civics requirement, and signing up for military service. Although passed in good faith, that law failed to curb the influx of illegal immigration.¹³
- **The CIRA Amnesty.** Likewise, the Comprehensive Immigration and Reform Act of 2006 (CIRA) proposed an amnesty for almost all illegal immigrants.¹⁴ This is underscored by that legislation's fundamental similarity to the Immigration Reform and Control Act of 1986. CIRA would have placed those who have resided illegally in the United States for five years on a similar path to citizenship. As before, amnestied individuals would have to pay a fine, pass a background check, and meet admissibility criteria.
- **Repatriation.** The only fair and reasonable way to resolve this dilemma without granting amnesty is to insist that individuals who are unlawfully present in the country return to their countries of origin and then apply, in line and on par with other applicants, for legal entry to the United States. Any program that does not require unlawfully present individuals to leave the United States and reenter through legal means if they wish to work or reside here will never satisfy the tenets of good immigration law and would provide an incentive for future violation of the law.¹⁵
- **National Trust for Voluntary Return.** If the United States had operationally secure borders and reasonable legal opportunities for visas, green cards, and access to a true temporary worker program, many of those who are unlawfully present would leave willingly, return to their countries of origin, and take the steps that would enable them to come back to the United States to live and work legally. To assist them, immigration reform legislation should establish a National Trust for Voluntary Return—a program of financial assistance to help illegal aliens return to their home countries.¹⁶
- **A Pathway, Not a Shortcut.** Illegal aliens 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 the laws of the United States can then apply for legal entry to the United States as lawful visitors, temporary workers, or legal residents without partiality or prejudice. Individuals who are in the United States illegally should receive no such benefits or advantages while they remain in the United States.

Strengthen Citizenship

Principle: Each nation has the responsibility—and obligation—to determine its own conditions for immigration, naturalization, and citizenship.

12. Meese *et al.*, “Alternatives to Amnesty: Proposals for Fair and Effective Immigration Reform.”

13. Edwin Meese III, “An Amnesty by Any Other Name...,” *The New York Times*, May 25, 2006.

14. Kirk A. Johnson, Ph.D., “The Senate Compromise on Immigration: A Path to Amnesty for Up to 10 Million,” Heritage Foundation *WebMemo* No. 1030, April 6, 2006.

15. Meese *et al.*, “Alternatives to Amnesty: Proposals for Fair and Effective Immigration Reform.”

16. James Jay Carafano, Ph.D., “Immigration Enforcement: A Better Idea for Returning Illegal Aliens,” Heritage Foundation *Executive Memorandum* No. 1011, September 7, 2006.

Congress has the constitutional responsibility “[t]o establish an uniform Rule of Naturalization” 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 permanent residents and fellow citizens. The United States welcomes those who come here in accord with the law. 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. With that consent, however, any individual of any ethnic heritage or racial background could become an American.

That process is possible because, in addition to the generous principles of free government, this nation has always had a deliberate and self-confident policy that assimilates immigrants and new American citizens, teaching our common language and educating them about this country’s political principles and the responsibilities of self-government. Strengthening such a policy requires clarifying rather than blurring the distinction between citizens and non-citizens and strengthening rather than weakening the naturalization process and the conditions of patriotic assimilation.¹⁷

- **Encourage immigrant education.** In order to foster political integration and strengthen common principles, immigration reform should support programs to promote civics and history education among immigrants and encourage English language acquisition. An amendment to this effect was included in the Comprehensive Immigration Reform Act 2006, and it should be included as a baseline in any new reform package.¹⁸ That proposal amounted to a voucher for adult legal immigrants seeking citizenship to

take English courses from qualified institutions and provided grants for organizations to teach civics and history to immigrants. Immigration reform should also ensure that the citizenship test focuses on core civic knowledge and concepts and should both codify and teach the meaning of the Oath of Allegiance.

- **Provide for the common language.** Clear communication, mutual deliberation, public education, and common civic principles demand that citizens share one common language. Immigration reform legislation should therefore recognize English as the national language of the United States; clarify that, unless stated explicitly in law, there is no right to receive communications, documents, or services in a language other than English; and override Executive Order 13166, which was issued by President Clinton and has not yet been rescinded by the Bush Administration.¹⁹
- **Clarify birthright citizenship.** According to the Citizenship Clause of the Fourteenth Amendment, those who are born here must also be subject to the jurisdiction of the United States. The popular concept of “birthright citizenship”—that anyone born while in the United States is automatically a U.S. citizen—is historically and legally inaccurate. Only a complete jurisdiction of the kind that brings with it an exclusive allegiance is sufficient to qualify for the grant of citizenship. Immigration reform legislation, especially if it includes a temporary worker program, must correct this misunderstanding. In order to do so, Congress should reassert its constitutional authority to clarify this question.²⁰
- **Revive expatriation.** A renewed emphasis on the terms of citizenship also demands rethinking

17. Matthew Spalding, Ph.D., “Making Citizens: The Case for Patriotic Assimilation,” Heritage Foundation *First Principles* No. 3, March 16, 2006.

18. The Strengthening American Citizenship Act, proposed by Senator Lamar Alexander (R-TN) and Senator John Cornyn (R-TX).

19. English as the National Language Amendment (S.A. 4064), proposed by Senator James Inhofe (R-OK), was approved by a vote of 62 to 35 as part of CIRA.

20. John C. Eastman, Ph.D., “From Feudalism to Consent: Rethinking Birthright Citizenship,” Heritage Foundation *Legal Memorandum* No. 18, March 30, 2006. See also Edward Erler, “Citizenship,” in Edwin Meese III, Matthew Spalding, and David Forte, eds., *The Heritage Guide to the Constitution* (Washington: Regnery Publishing, 2005), pp. 384–386.

and clarifying, both in our political rhetoric and within the law, the limits of citizenship. That includes the extreme circumstances under which naturalized citizens and native-born citizens who violate those terms can lose their citizenship. These circumstances are described by existing law; immigration reform should expand the circumstances for relinquishing citizenship to include acts of terrorism or participating in a terrorist group or organization and should adjust the presumption of evidence concerning the intention of relinquishing citizenship under these circumstances.

- **Improve immigration services.** Immigration reform should insure that the U.S. Citizenship and Immigration Service (USCIS) has the capacity to handle current and future immigration to the United States effectively and efficiently, with a better model to pay for services and funding to transform USCIS to work as part of an inter-agency effort to control legal immigration.²¹
- **Protect the integrity of the legal immigration process.** Immigration reform must ensure that the vital process of naturalization and assimilation is not overwhelmed either by the sheer number of new immigrants or by the size and complexity of any new worker program. A temporary visa program must not be allowed to become a way to circumvent the rules and procedures of the naturalization process, thereby creating *de facto* permanent residents without equivalent legal status. To the extent that the need is for a larger permanent working population in the United States, the policy preference ought not to be workers who are temporary, but rather assimilated immigrants who understand and are willing to take on the long-term obligations of citizenship. In general, immigration policy should not be used to alter the political balance in the United States.

Benefit the American Economy

Principle: Immigration policy should be a fiscal and economic benefit not only for immigrants, but also for the nation as a whole.

Most individuals and families that immigrate to the United States come seeking economic opportunity. Unlike previous generations, however, a generous welfare, education, and health system with generous eligibility draws poor and low-skill immigrants into the ranks of the underclass rather than encouraging self-reliance and financial independence. Policymakers must ensure that the interaction of social services and immigration policy does not expand the welfare state and impose significant costs on American society. Overall, immigration policy should support a growing economy and bring economic benefit to all Americans.

- **Don't import poverty.** Government provides a generous system of benefits and services to both the working and the non-working poor. While government continues its massive efforts to reduce overall poverty, immigration policy in the United States tends to produce results in the opposite direction, increasing rather than decreasing the poverty problem. Immigrants with low skill levels have a high probability of poverty and of receiving benefits and services that drive up governmental welfare, health, social service, and education costs.²²
- **Consider fiscal costs and benefits.** The fiscal impact of immigration varies strongly according to immigrants' education levels. While highly educated immigrants, on average, make positive fiscal contributions, the overall fiscal impact of low-skill immigrants is negative. On average, low-skill immigrant households receive \$19,588 more in immediate benefits than they pay in taxes each year—nearly \$1.2 million in lifetime costs for each such household.²³ Immigration

21. James Jay Carafano, Ph.D., "Better, Faster, Cheaper Border Security Requires Better Immigration Services," Heritage Foundation *Background* No. 2011, February 28, 2007.

22. Robert Rector, "Importing Poverty: Immigration and Poverty in the United States: A Book of Charts," Heritage Foundation *Special Report* No. SR-9, October 25, 2006.

23. Robert Rector, "The Fiscal Cost of Low-Skill Immigrants to the U.S. Taxpayer," testimony before the Subcommittee on Immigration, Committee on the Judiciary, U.S. House of Representatives, May 1, 2007.

reform must take into account the large and foreseeable costs associated with importing millions of low-skill immigrants and the likelihood that such an immigration policy will vastly expand the welfare state. For the same reasons, a policy that grants amnesty to current illegal aliens would have a very significant fiscal cost.²⁴

- **Emphasize high-skill immigration.** The legal immigration system should be altered so that it substantially increases the proportion of new entrants with high levels of education and skills in demand by U.S. firms. Under current law, foreign-born parents and siblings of naturalized citizens are given preference for entry visas. The current visa allotments for family members (other than spouses and minor children) should be eliminated in lieu of increasing quotas for employment-based and skill-based entry, proportionately. In general, immigration policy should encourage high-skill immigration and avoid immigration that will increase poverty and impose significant new costs on taxpayers.
- **Reduce state fiscal burden.** 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. The fiscal tab picked up by the states for illegal immigrants who receive various local services and impose local costs amounts to an unfunded mandate placed on states by a federal government that is not enforcing its own laws. Immigration reform should decrease existing burdens and not impose any new such burdens on state and local governments.
- **Encourage economic freedom.** Beyond immediate reforms, our long-term national strategy should implement policies and measures to strengthen the governance and infrastructure of developing countries to slow migration into the

United States. We should encourage labor-exporting nations to reform their laws and economies to provide avenues of social mobility that are now absent in their societies. The U.S. government should encourage its hemispheric neighbors to liberalize their economies, reduce burdensome business regulations, ensure equal treatment of all citizens under the law, and thereby spread prosperity more broadly.²⁵

A Real Temporary Worker Program

Principle: A temporary worker program must be temporary, market-oriented, and feasible.

A balanced and well-constructed temporary worker program should diminish the incentives for illegal immigration by providing an additional option for legal temporary labor and, in combination with other reforms, reduce over time the current population of illegal aliens. This would foster better national security and serve a growing economy. Such a temporary worker program would be a valuable component of a comprehensive immigration reform proposal.

Nevertheless, enthusiasm for such a program in theory must be moderated by serious concerns not only about the failures of such programs in our past and in other countries, but also regarding how a new program would likely be implemented and operate in practice. An ill-defined and poorly constructed temporary worker program would make the current problems of immigration policy even worse.²⁶

- **Keep it temporary.** A temporary worker program should be temporary and of defined and limited duration. If participation is renewable, there should be a substantive period of time in the home country between renewals and a limit on the numbers of renewals.

24. Robert Rector, "Amnesty and Continued Low-Skill Immigration Will Substantially Raise Welfare Costs and Poverty," Heritage Foundation *Background* No. 1936, May 16, 2006; see also Meese and Spalding, "The Principles of Immigration."

25. Stephen Johnson, "Mexico's Economic Progress Can Ease Migration Woes," Heritage Foundation *WebMemo* No. 1022, March 31, 2006.

26. In general, see Meese and Spalding, "Permanent Principles and Temporary Workers." See also 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.

- **Create a dynamic workforce.** The objective should be to allow for a reliable and market-driven source of labor and for that labor to be provided by a dynamic and rotating temporary workforce. Facilitation of the program should not be micromanaged by government agencies. A private-sector approach to managing and facilitating workers would more efficiently integrate the workforce and allow the market to serve economic needs and provide economic benefits.²⁷
- **Require sponsorship.** An employment sponsorship system is a flexible alternative to government management of the supply of and demand for migrant labor. Existing undocumented workers should find it relatively easy to get sponsorship with current employers, so leaving the country, applying, and reentering would neither discourage their compliance nor come at the expense of other legal migrants.²⁸
- **Resolve family status.** 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, but they should not be allowed to bring spouses or families to the United States during the program. Consistent with the temporary nature of the program, the children born in the United States of non-U.S. citizen parents during their program participation should not automatically become U.S. citizens. If these questions are not resolved, and if the return period between renewals and departure after program completion is not enforced, a temporary worker program will create powerful conditions of permanency and lead to significant fiscal costs.
- **Require bilateral agreements.** Any temporary worker program requires bilateral agreements between the United States and the home nations of program participants. 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. 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.²⁹
- **Include program triggers.** Immigration reform must include measurable benchmarks and goals that must be met in order to proceed with the implementation of a temporary worker program. These program triggers must cover border security (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); internal enforcement (the vast majority of employers should be compliant with worker identification processes, and Social Security information must have been shared with DHS); and program infrastructure (a single integrated border services agency must be in place, working, and appropriately tested for reliability and accuracy). These various determinations should be made by the Administration and subject to legislative concurrence.³⁰
- **Provide economic incentives.** 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 permitted tenure. These incentives should affect both the participant (in the form of withheld income or investment accounts) and the employer (in the form of a bond to control the flow of workers and promote compliance). In

27. Tim Kane, Ph.D., "Immigration Reform or Central Planning?" Heritage Foundation *WebMemo* No. 1088, May 19, 2006.

28. Tim Kane, Ph.D., "Sponsorship: The Key to a Temporary Worker Program," Heritage Foundation *Executive Memorandum* No. 1022, February 27, 2007.

29. Meese and Spalding, "Permanent Principles and Temporary Workers."

30. *Ibid.*

both cases, the dollar value of the bond would be repaid after the migrant exited the U.S. but would be forfeited if the migrant went into the black market economy.³¹ Likewise, temporary workers should not be eligible for means-tested welfare, Social Security, or Medicare, and employers (in the form of a surety bond) should be required to cover medical costs of workers while they in the United States.

- **Insist on numerical caps.** Even allowing for relatively larger numbers of individuals to participate in the early years of any worker program on the assumption that some number currently here will leave and reenter with temporary legal status, there must be a hard numeric cap on overall program participation in each year. This numerical cap should include spouses and children; that is, the total number of individuals given temporary legal status under this program. In future years, the cap must also include temporary workers that violated the terms of the program and remained in the country illegally.
- **Limit status adjustment.** If the program is to be a truly temporary worker program, individuals should not be allowed to adjust legal status while on the program; that is, it should be a non-adjustable visa. Otherwise, this is not a temporary program, but a transitional program to permanent status. If participants wish to enter a separate track for permanent residency, the individual must apply separately for a pre-existing category of adjustable visas. Participation in the temporary worker program should not advantage such an application (except as evidence of law-abidingness, for instance) and should not fulfill residency requirements for citizenship. Indeed, violation of the terms of the worker visa should prevent the participant from being eligible for other visas, legal permanent residency, or citizenship.

- **Resist large programs.** Immigration legislation should not create a large, open-ended, or ill-defined program in order to meet a demand for temporary workers. 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 any significant magnitude. Likewise, the United States already has several programs (including an unrestricted visa classification for temporary or seasonal agricultural workers) that could be streamlined and adapted for granting other non-immigrant work visas. Immigration legislation should also restructure and increase existing programs for highly skilled foreign workers, such as the H-1B program.³²

Conclusion

In the mid-1980s, Congress advocated amnesty for long-settled illegal immigrants. President Reagan considered it reasonable to adjust the status of what was then a relatively small population. In exchange for allowing aliens to stay, border security and enforcement of immigration laws would be greatly strengthened—in particular, through sanctions against employers who hired illegal immigrants.

However, the Immigration Reform and Control Act of 1986 did not solve our illegal immigration problem. Indeed, the lessons of that policy experiment are clear. From the start, there was widespread document fraud by applicants. Unsurprisingly, the number of people applying for amnesty far exceeded projections, and there proved to be a failure of political will in enforcing new laws against employers.³³

After a six-month slowdown that followed passage of the legislation, illegal immigration returned to normal levels and continued unabated. Ultimately, some 2.7 million people were granted amnesty. Many who were not granted amnesty stayed anyway, forming the nucleus of today's illegal

31. Kane and Johnson, "The Real Problem with Immigration...and the Real Solution."

32. Kirk A. Johnson, Ph.D., "How Immigration Reform Could Help to Alleviate the Teacher Shortage," Heritage Foundation *Backgrounder* No. 1884, October 5, 2005, and Kirk A. Johnson, Ph.D., and Tim Kane, Ph.D., "'Recapturing' Visas: A Sensible Temporary Fix for America's Foreign Worker Problem," Heritage Foundation *WebMemo* No. 886, October 19, 2005.

33. Meese, "An Amnesty by Any Other Name..."

population. Twenty years later, the Comprehensive Immigration Reform Act, passed by the Senate in 2006, proposed another amnesty while giving short shrift to border security and failing to strengthen enforcement of immigration laws.

CIRA also had additional problems arising out of the sheer numbers involved. By themselves, the amnesty provisions would have covered some 10 million illegal immigrants, which would have created the largest expansion of the welfare state in 35 years.³⁴ This concern was outweighed by a quintupling of the rate of legal immigration into the United States that added up to more than 60 million immigrants over the next 20 years.³⁵ Numbers of this magnitude would be a dramatic policy change, with vast but largely unaddressed implications for social and economic stability and assimilation.

Congress and the President now have another opportunity to craft immigration reform legislation. Given the stakes involved, they should proceed carefully, fully cognizant of the immediate and long-

term implications of their actions. They must rise above the politics and policy debate of the moment and develop a clear, comprehensive, meaningful, and long-term policy concerning immigration, naturalization, and citizenship.

Lawmakers should support comprehensive reform if and when they are confident that the proposed immigration reforms fully and honestly comprehend these core principles. At the same time, they should oppose and, if necessary, the President should veto any reforms or reform packages that do not comport with these principles, are not in the best interests of the United States, and are inconsistent with the great traditions and compassionate practices of America's ongoing experiment in ordered liberty.

—Edwin Meese III is Ronald Reagan Distinguished Fellow in Public Policy and Chairman of the Center for Legal and Judicial Studies, and Matthew Spalding, Ph.D., is Director of the B. Kenneth Simon Center for American Studies, at The Heritage Foundation.

34. Rector, "Amnesty and Continued Low-Skill Immigration Will Substantially Raise Welfare Costs and Poverty."

35. Robert Rector, "Senate Immigration Bill Would Allow 100 Million New Legal Immigrants over the Next Twenty Years," Heritage Foundation *WebMemo* No. 1076, May 15, 2006, and "Immigration Numbers: Setting the Record Straight," Heritage Foundation *WebMemo* No. 1097, May 26, 2006, which considers amendments to the original legislation that would reduce the 20-year estimate to 60 million individuals.