

Background

No. 2385
March 18, 2010



Published by The Heritage Foundation

Time to Stop the Rush for “Amnesty” Immigration Reform

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Abstract: *The Obama Administration is pushing amnesty for illegal immigrants. The Administration has also reversed a number of policies that had improved enforcement. These changes have included ending workplace raids and a shift toward “catch and release” of illegal immigrants, instead of detaining them and deporting them. Rather than pursue comprehensive immigration reform, the Administration and Congress should ensure that the existing policies on border security, interior enforcement, and non-immigrant visas are working.*

The Obama Administration has put comprehensive immigration reform, including some form of amnesty for the 10.8 million illegal immigrants in America, on the fast track for legislative action. This move comes at a time when the effectiveness of America’s current border security, interior enforcement, and visa policies remains uncertain at best.

Given these uncertainties, the Obama Administration should not push amnesty, but instead focus on fixing the problems along the border, in the cities, and in the U.S. visa system. An incremental approach should be used to solve these problems, focusing first on securing the border and enforcing immigration laws within the United States, while making visa services more effective and bringing them in line with the real-time demands of the U.S. economy.

Talking Points

- The Administration should not pursue amnesty for illegal immigrants, but focus on improving border security, interior enforcement, and legal immigration processes.
- It is premature to state that the U.S. border is secure. The U.S. has made progress on border security, but more work remains to be done.
- In recent years, the U.S. has reversed course on interior immigration enforcement efforts. U.S. visa and naturalization programs remain inefficient, and the country still has not explored a vibrant temporary worker program for employers and illegal immigrants to use to come to work in the United States.
- Congress should look for a phased approach to immigration reform, instead of trying to pass a comprehensive bill that is destined to fail and will push current immigration woes onto another generation.

This paper, in its entirety, can be found at:
<http://report.heritage.org/bg2385>

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Published by The Heritage Foundation
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Washington, DC 20002-4999
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The Three-Legged Stool of Immigration Policy

In a speech at the Center for American Progress in November 2009, U.S. Secretary of Homeland Security Janet Napolitano referred to the “three-legged stool” of immigration reform, describing the legs as “serious and effective enforcement, improved legal flows for families and workers, and a firm but fair way to deal with those who are already here.”¹ However, the stool as Secretary Napolitano describes it is inherently unstable. It combines the border security and interior enforcement into one leg and includes a *consequence* of ineffective immigration policy—a large population of illegal immigrants—as another leg.

The three-legged stool of immigration policy would be more stable if it used the following three legs:

- Border security,
- Effective interior enforcement, and
- An efficient and dynamic visa and naturalization system.²

The State of the Three-Legged Stool

The three-legged stool analogy is a useful tool for analyzing current immigration and border security policy and for learning from past mistakes.

Leg #1: Border Security. The U.S. has made progress on border security, but much work remains to be done. Secretary Napolitano’s three-legged stool assumes that this piece has already been accomplished. Furthermore, the U.S. cannot be certain how much of this progress is the result of improved U.S. border security and how much is the result of the recession, which has reduced economic incentives to enter the U.S. illegally.

Moreover, no one really knows how many illegal border crossings occur each year. Officials use bor-

der apprehensions to determine whether the number of crossings is increasing or decreasing. The number of apprehensions has dropped significantly over the past two years from 1,206,457 in 2006 to 791,568 in 2008.³ Presumably, the number of border crossings has also dropped. The challenge is identifying the right cause or causes of this significant decline.

During 2005–2008, the Bush Administration and Congress ramped up efforts to secure the border. The Custom and Border Protection (CBP) agency completed “more than 700 miles of physical fence” and “doubl[ed] the number of border patrol agents to roughly 18,000.”⁴ The Bush Administration also started the SBI-net program to integrate manpower and technology along the border.

The Obama Administration’s challenge is that the drug cartels, smugglers, and “coyotes” are constantly adapting their border-crossing tactics to operational needs and impediments. Thus, to truly control the border, the CBP must be similarly able to adapt its approach to keep up with or stay ahead of the bad actors. This flexibility at the border needs to become the focus of the Obama Administration.

For example, between May 1990 and April 2009, authorities detected 104 tunnels used to smuggle contraband items and people from Mexico to the United States. Of these 104 tunnels, roughly 92 were detected after the terrorist attack on September 11, 2001. As the CBP has secured more and more of the border, smugglers have moved to water routes or tunnels dug under the border. Of the 92 tunnels detected after 9/11, 69 (66 percent) were detected in the past four years.⁵ Hence, the CBP needs to exercise operational flexibility to enhance tunnel detection capabilities as more of the illegal activities literally go underground.

1. Janet Napolitano, prepared remarks on immigration reform at the Center for American Progress, November 13, 2009, at http://www.dhs.gov/ynews/speeches/sp_1258123461050.shtm (January 5, 2010).
2. Matt A. Mayer, *Homeland Security and Federalism: Protecting America from Outside the Beltway* (Santa Barbara, Calif.: Praeger Security International, 2009), p. 114.
3. U.S. Department of Homeland Security, Office of Immigration Statistics, “Immigration Enforcement Actions: 2008,” July 2009, at http://www.dhs.gov/xlibrary/assets/statistics/publications/enforcement_ar_08.pdf (January 5, 2010).
4. Mayer, *Homeland Security and Federalism*, p. 115.
5. U.S. Department of Homeland Security, “Master List of Border Tunnels,” May 15, 2009.

With construction payrolls declining by more than 20 percent since the beginning of the recession and similar declines in other trades heavily populated by illegal immigrant workers, the slowing flow of illegal immigrants into the United States should come as no surprise. However, the Obama Administration's declaration by omission that the border is secure is a bit premature.⁶

One of the worst moves the U.S. could make would be to grant amnesty to the 10.8 million illegal immigrants already in the U.S. illegally because this would spur further illegal immigration just like the 1986 amnesty helped to triple the number of illegal immigrants from 1986 to 2006. Once the U.S. economy improves, the U.S. will have a more accurate picture of whether the border is actually secure.

Leg #2: Interior Enforcement. Instead of building on past progress, over the past year the Obama Administration has reversed a number of effective interior enforcement efforts begun under the Bush Administration. Secretary Napolitano has argued, "We have replaced old policies that merely looked tough with policies that are designed to

The number of worksite arrests is down "by more than 50 percent from fiscal year 2008 to fiscal 2009."

actually be effective."⁷ However, the numbers suggest otherwise. The number of worksite arrests is down "by more than 50 percent from fiscal year 2008 to fiscal 2009." Specifically, "administrative arrests of violators of immigration laws fell 68 percent from 2008 to 2009, criminal arrests fell 60 percent, criminal indictments fell 58 percent and

In effect, the Obama Administration has resumed the catch and release policy by deciding to provide work permits to illegal immigrants apprehended during worksite enforcement raids.

convictions fell 63 percent."⁸ Secretary Napolitano has pointed to increased efforts to target criminal illegal aliens as proof of her tougher policies, but in 2009, the number of criminal arrests of foreign nationals is up only slightly from the numbers of arrests in 2008 and 2007.⁹

In contrast, when the Bush Administration began enforcing immigration laws, the number of worksite arrests jumped from 845 in fiscal year (FY) 2004 to 6,287 in FY 2008,¹⁰ and 1,210,772 illegal immigrants were deported in FY 2007.¹¹ Pro-illegal immigration groups did not like those actions, but these figures are not "merely looking tough."

De facto Catch and Release. Until the second term of the Bush Administration, illegal immigrants caught inside the United States were given an order to appear in court and then released back into society until their court dates. Predictably, most never appeared in court. The Bush Administration replaced this failed "catch and release" policy with a "detention and removal" construct that focused on detaining apprehended illegal immigrants until they were processed for removal.

In effect, the Obama Administration has resumed the catch and release policy by deciding to provide work permits to illegal immigrants apprehended during worksite enforcement raids for the duration of the case against their employers.¹²

6. Napolitano, prepared remarks.

7. *Ibid.*

8. Stephan Dinan, "Work Site Arrests of Illegals Fall Dramatically," *The Washington Times*, November 19, 2009, at <http://www.washingtontimes.com/news/2009/nov/19/work-site-arrests-of-illegals-fall-dramatically> (January 5, 2010).

9. Miriam Jordan, "Feds Target Illegal Immigrants with Criminal Pasts," *The Wall Street Journal*, December 12, 2009, at <http://online.wsj.com/article/SB126057757414188199.html> (January 5, 2010).

10. Press release, "Worksite Enforcement," U.S. Immigration and Customs Enforcement, November 25, 2008, at <http://www.ice.gov/pi/news/factsheets/worksite.htm> (February 4, 2009).

11. Diem Nguyen, Matt A. Mayer, and James Jay Carafano, "Next Steps for Immigration Reform and Workplace Enforcement," Heritage Foundation *Background* No. 2241, February 13, 2008, at <http://www.heritage.org/Research/Immigration/bg2241.cfm>.

This policy reversal will likely have two consequences. First, as the legal case against the employer winds its way through the courts, the illegal immigrants with temporary work permits will likely disappear and move to another part of the country to avoid deportation.

Second, the policy change will likely increase the number of border crossings, although this effect will be difficult to discern. Illegal immigration tends to follow a supply and demand curve. Any action that reduces transaction costs (e.g., the risk of being caught and deported) will increase the incentive to enter the U.S. illegally. In this case, as the new policy of providing temporary work permits to illegal immigrants apprehended during worksite raids reduces the risk of being deported, those weighing the costs and benefits of illegally crossing the border will be more likely to attempt to cross the border illegally.

In Bellingham, Washington, where this policy was first implemented, the unemployment rate was 8.1 percent, and more than 150 U.S. citizens had applied for the 28 positions filled by the illegal immigrants that were arrested, refuting the specious arguments that Americans will not do the work.¹³

The Obama Administration should reconsider this shortsighted policy change and reinstate the policy of detaining and removing illegal immigrants who are apprehended during worksite raids. If the Administration fails to reverse itself, Congress should prohibit the distribution of work permits to illegal immigrants arrested during worksite raids.

Payroll Audits Instead of Worksite Raids. In addition, the Administration has also apparently discontinued worksite raids and replaced them with soft payroll audits. The payroll audits have resulted in employer fines, which are good as far as they

go, but the illegal immigrants identified during these audits have merely been fired from their jobs, not deported. As a result, they remain in the U.S. and merely find new jobs in the same city or another city, which continues to undermine the job market for U.S. citizens during one of America's worst recessions.

The case of American Apparel, a clothing company in Los Angeles, illustrates this problem. Upon receiving word of a payroll audit by the Department of Homeland Security (DHS), American Apparel laid off roughly 1,800 illegal immigrants—almost one-third of its workforce.¹⁴ American Apparel had paid them \$10 to \$12 per hour—“well above the minimum wage and industry standards, plus health benefits.”¹⁵ In August 2009, the unemployment rate in Los Angeles County was 12.4 percent. American Apparel would need to fill those 1,800 jobs that had been held by illegal immigrants. At a time of such high unemployment, many citizens would be eager to get a job that pays so well and comes with health benefits.

Although the investigation was begun under the Bush Administration, the Obama Administration pointed out that it had “not followed the Bush pattern of concluding such investigations with a mass roundup of workers.”¹⁶

Weakening the Section 287(g) Program. Under Section 287(g) of the Illegal Immigration Reform and Immigrant Responsibility Act, law enforcement entities can enter into agreements with Immigration and Customs Enforcement (ICE) to “act in the stead of ICE agents by processing illegal aliens for removal.”¹⁷ Before the officers of a state or local law enforcement agency can participate, the agency must sign a memorandum of agreement (MOA) with ICE, and the officers must undergo a five-week

12. Press release, “Worksite Enforcement,” and Dan Springer, “Homeland Security Frees 27 Illegal Immigrants, Sends Them Back to Work,” Fox News, April 1, 2009, at <http://www.foxnews.com/story/0,2933,512098,00.html> (March 9, 2010).

13. Matt A. Mayer, “One Step Forward, Two Steps Back,” Heritage Foundation *Foundry*, April 2, 2009, at <http://blog.heritage.org/2009/04/02/one-step-forward-two-steps-back>.

14. Julia Preston, “Immigration Crackdown with Firings, Not Raids,” *The New York Times*, September 29, 2009, at <http://www.nytimes.com/2009/09/30/us/30factory.html> (January 5, 2010).

15. Editorial, “Broken in the U.S.A.,” *The New York Times*, September 30, 2009, at <http://www.nytimes.com/2009/10/01/opinion/01thu2.html> (March 10, 2010).

16. *Ibid.*

training course, a background check, and mandatory certifications.

Section 287(g) was a solid improvement in immigration law enforcement. Before Section 287(g) was created, if state and local law enforcement officers apprehended an individual who could not demonstrate legal presence in the U.S., they would simply notify ICE and wait for ICE to take custody of the individual. In practice, this meant that most illegal immigrants went free and immigration laws were not enforced.

In the seven years since ICE started using Section 287(g), roughly 66 state and local agencies have entered into MOAs and roughly 1,000 law enforcement officers have been “deputized” to enforce federal immigration law. Even more importantly, more than 120,000 individuals have been identified as illegal immigrants under the program.

Section 287(g) has been a great success. This program and other ICE ACCESS programs help to fight crime by removing gang leaders and other serious criminals from the streets and deporting any who are illegally in the United States.

Yet in the past year, the ACLU, other pro-illegal immigration groups, and a U.S. Government Accountability Office report have claimed that Section 287(g) programs encourage racial profiling and have other undesirable consequences.¹⁸ For instance, the report cited “29 state and local law enforcement agencies” that have received “concerns [from] members of their communities... about the 287(g) program, including concerns that law enforcement officers in the 287(g) program would be deporting removable aliens pursuant to minor traffic violations (e.g. speeding) and concerns about racial profiling.” However, the report cited no data indicating that this profiling was actually occurring. Using minor traffic violations to identify illegal immigrants was completely within the scope of the program at the time and should be part of the program today if a jurisdiction wishes to do so.

On July 9, 2009, the Obama Administration caved in to these demands and announced plans to make the MOAs “more uniform.” However, the announced changes go to the heart of the program and will disrupt any real attempt to enforce the law. The changes include:

- **Forcing local law enforcement agencies to pursue all criminal charges.** The new MOAs would require law enforcement to prosecute illegal immigrants taken into custody for all initial offenses. In practice, if law enforcement discovers that a person in custody is illegally in the U.S., the agency will often start removal proceedings instead of going through a costly and lengthy criminal process that would produce the same result. Requiring criminal prosecution would deplete the resources of local jurisdictions for no legitimate reason. In accordance with America’s long-standing commitment to federalism, the Obama Administration should respect the decisions and discretion of state and local governments and stop trying to micromanage them.
- **Limiting the use of immigration checks to those arrested for major offenses.** The new MOAs attempt to limit the use of immigration checks to those arrested for major offenses. However, most illegal immigrants who have been identified under the program commit misdemeanors, not felonies. Mohammad Atta, one of the 9/11 hijackers, was pulled over in a traffic stop two days before the 9/11 attacks. If the officer had inquired about Atta, he might have discovered that Atta was in the country illegally and might have prevented his participation in the attacks.
- **Questioning the credibility and professionalism of state and local law enforcement.** The announced changes insinuate that ICE should do more to prescribe how Section 287(g) participants use their authority. However, Americans have traditionally trusted law enforcement officers to enforce U.S. criminal laws. In contrast, the Obama Administration’s changes would question the

17. Jena Baker McNeill, “Section 287(g): State and Local Immigration Enforcement Efforts Are Working,” Heritage Foundation WebMemo No. 2405, April 22, 2009, at <http://www.heritage.org/Research/HomelandSecurity/wm2405.cfm>.

18. U.S. Government Accountability Office, *Immigration Enforcement: Better Controls Needed over Program Authorizing State and Local Enforcement of Federal Immigration Laws*, January 2009, at <http://www.gao.gov/new.items/d09109.pdf> (March 10, 2010).

decisions of law enforcement to a degree that would dissuade them from participating in the program. The pattern emerging from the new MOAs suggests the Obama Administration does not trust the professionalism and legitimacy of state and local law enforcement agencies.¹⁹

America simply cannot afford to lose Section 287(g). Although not a panacea to America's illegal immigration problem, it is one of the most useful and efficient tools in curtailing illegal immigration. Any workable Section 287(g) program must be flexible and implemented in a way that respects the Constitution and existing laws; recognizes the professionalism, experience, and know-how of state and local law enforcement; and preserves this highly valuable program.

The Obama Administration should rethink its decision to revise the MOAs and ensure that state and local law enforcement retain the flexibility to make decisions without federal mandates and second-guessing. If the Obama Administration is permitted to keep the changes that it has made to the program, it will require a couple of years to evaluate the effectiveness of the newly formed program.

The Expansion of the E-Verify Program. The Obama Administration deserves credit for moving forward with E-Verify. The E-Verify system enables employers to verify through a Web-based portal that their newly hired employees are eligible to work in the United States. E-Verify is a tremendous success. More than 134,000 employers voluntarily use the program.

Recognizing this success and the need for workplace enforcement throughout the federal government, the Bush Administration proposed a rule that would require federal contractors and subcontractors to use E-Verify. The rule was amended in November 2008 to require verification of both new hires and current employees working on federal contracts and went into effect on September 8, 2009.

Contraction of the "No Match" Rule. Regrettably, on November 6, 2009, the Obama Administration

rescinded a proposed regulation that would have allowed DHS to use the Social Security Administration's "no match" data to enforce immigration laws. The Bush Administration had begun to issue no match letters, which informed employers that a cer-

Constitutionally, other than in the areas of border security and visa policy, the Tenth Amendment ensures that states retain their traditional police powers to control their jurisdictions.

tain percentage of their workers were working under false Social Security numbers. Upon notification, the employer would have been required by law to take certain corrective actions to be protected from prosecution.

Rescinding this rule was a mistake. Despite early legal challenges, the revised rule would have made significant inroads in stopping off-the-books employment.

Increased State and Local Enforcement. Starting in 2004, state legislatures began to assert themselves in immigration enforcement as large numbers of illegal immigrants contributed to busted budgets and increased societal burdens. By 2008, at least 1,305 bills had been introduced in state legislatures, and 209 were passed. The primary areas of action were:

- Driver's licenses and identification,
- Public benefits,
- Higher-education benefits,
- Voting security,
- Criminal sanctions, and
- Employment.

Constitutionally, other than in the areas of border security and visa policy, the Tenth Amendment ensures that states retain their traditional police powers to control their jurisdictions. Recent court decisions have affirmed that state and local governments have wide latitude to enact laws on traditional issues within their jurisdictions.

19. Jena Baker McNeill and Matt A. Mayer, "Section 287(g) Revisions: Tearing Down State and Local Immigration Enforcement One Change at a Time," Heritage Foundation *WebMemo* No. 2543, July 14, 2009, at <http://www.heritage.org/Research/HomelandSecurity/wm2543.cfm>.

Yet as states began to reclaim their historical roles and authorities under the Constitution, interest groups supportive of illegal immigration began their assaults in the courtrooms.

In February 2007, the City of Valley Park, Missouri, enacted an ordinance that prohibited the employment of illegal immigrants.²⁰ Any business found violating the ordinance would have its license suspended.²¹ In January 2008, the U.S. District Court for the Eastern District of Missouri (Eastern Division) found that “the Ordinance is a regulation on business licenses, an area historically occupied by the states.”²²

In May, the U.S. Court of Appeals for the Eighth Circuit issued a decision upholding the district court’s decision, noting that just because “Appellants do not have a business license does not exempt them from this ordinance. Appellants fall within the ordinance provisions and must, as law-abiding citizens, comply and conform their conduct according to its directive.”²³ The Eighth Circuit further concluded: “[A]s a business entity covered by the ordinance, Appellants may not knowingly recruit, hire for employment, or continue to employ, an unlawful worker to perform work within the City.”²⁴

In 2007, the Arizona State Legislature passed a law aimed at employers who hire illegal aliens. The Legal Arizona Workers Act (LAWA) gave “the Superior Court of Arizona...the power to suspend or revoke the business licenses of employers who intentionally or knowingly employ unauthorized aliens.”²⁵ In February 2008, the U.S. District Court

for the District of Arizona concluded that the initiative and the requirement to use the online E-Verify system were constitutional.²⁶

On September 17, 2008, the U.S. Court of Appeals for the Ninth Circuit—America’s most liberal appellate court—affirmed the district court’s decision that LAWA is constitutional. The Ninth Circuit also concluded that Arizona could require businesses to use the E-Verify system and that the Supreme Court’s holdings in *De Canas v. Bica* were not superseded by the Immigration Reform and Control Act of 1986.²⁷

Finally, on April 3, 2009, a Rhode Island Superior Court judge upheld Governor Donald Carcieri’s executive order requiring the state government to use the E-Verify system, concluding that “[t]he executive order and the final regulation are a proper exercise of executive authority and do not violate any constitutional authority of the General Assembly.”²⁸

In April 2008, the U.S. Supreme Court ruled that an Indiana law requiring voters to present a government photo identification card before voting passed constitutional muster because the “state interest identified as justifications for [the law] are both neutral and sufficiently strong to require us to reject” the legal challenge.²⁹ The U.S. Court of Appeals for the Eleventh Circuit made a similar finding in upholding Georgia’s voter law.³⁰

With this 5–0 record in federal appellate courts, states and localities should quickly enact laws to control illegal immigration, and Congress and the Obama Administration should give them the space

20. *Gray v. City of Valley Park, Missouri*, 2008 WL 294294, 9 (E.D. Mo. Jan. 31, 2008).

21. *Ibid.*, pp. 16–17.

22. *Ibid.*, p. 15.

23. *Gray v. City of Valley Park, Missouri*, Case No. 08-1681, Memorandum and Order (8th Cir. 2009).

24. *Ibid.*

25. *Arizona Contractors Association, Inc. et al. v. Napolitano et al.*, Case No. CV07-02496-PHX-NVW, Findings of Fact, Conclusions of Law and Order by Judge Neil V. Wake 2–3 (February 7, 2008).

26. *Ibid.*, pp. 26–29.

27. *Chicanos Por La Causa, Inc. v. Napolitano*, 558 F.3d 856 (9th Cir. 2008).

28. *Rhode Island Coalition Against Domestic Violence et al. v. Carcieri et al.*, Case No. PC 08-5696, Memorandum and Order (Prov. Sup. Ct. Apr. 3, 2009).

29. *Crawford et al. v. Marion County Election Board et al.*, Case No. 07-21, Memorandum and Order (S.Ct. 2008).

30. *Common Cause et al. v. Billups et al.*, Case No. 07-14664, Memorandum and Order (11th Cir. 2009).

to be the “laboratories of democracy” envisioned by the Founding Fathers.

Leg #3: The Naturalization System. U.S. visa and naturalization programs remain inefficient and the country still lacks a vibrant temporary worker program that legal immigrants can use to come to work in the United States.

In her speech, Secretary Napolitano explicitly admitted that the current visa and naturalization programs were not working. The system’s failure to stop Umar Farouk Abdulmutallab, the Christmas Day airplane terrorist, confirms her statement. Specifically, she noted:

Today, we have a system where America educates many of the brightest individuals from around the world, and then tells them to leave the country when many of them would rather start their own ventures or strengthen businesses right here in America. This hurts the economy for all of us, and it has to change.

...To address this economic need, we need carefully crafted programs that allow American businesses to hire needed foreign workers while protecting the labor and health-and-safety rights of all workers. We need to revise our current provisions for legal migration to help assure a legal workforce in cases where businesses can’t find Americans to fill their jobs.³¹

Napolitano is correct that the U.S. needs visa programs that work for the economy. Yet the current immigration system is incapable of handling the workload because of its faulty budget model. Its fee-for-service system rendered the U.S. Bureau of Citizenship and Immigration Services (USCIS) incapable of making the technology and infrastructure enhancements needed to process visas efficiently. USCIS needs a revenue structure that is more responsive to immigration demands. For example, creation of a national trust fund would enable USCIS to pay for programs for which it cannot charge a fee.

Furthermore, several visa categories—including H-1Bs, H-2As, and H-2Bs—are run in ways that do not adequately serve the needs of business. Work visas are often underused because of cumbersome bureaucratic requirements or illogical caps on the number of applicants for specific types of visas. These visas need to be market-oriented and processed more efficiently so that American businesses can hire the workers they need in a timely manner.

Piloting a market-oriented temporary worker program could also help to bring these workers into the country in a way that does not perpetuate the illegal immigration problem. This system should be designed to be truly temporary, meaning that workers are not encouraged to set up residence, but instead encouraged to return to their home countries at the end of their employment. However, robust internal enforcement and border security must be prerequisites before implementing such a temporary worker program. They would help to ensure that it will not become another avenue for illegal immigration.

Amnesty: The Faulty Leg

In her speech, Secretary Napolitano acknowledged that the economic “progress is fragile, and we can’t let up until all the millions who are looking for work today can find it.”³² Despite this, the Obama Administration apparently believes that the U.S. should add another 10.8 million legal workers to stand in unemployment lines or to compete with the millions of Americans looking for work.

Overhill Farms in Vernon, California, demonstrates why amnesty is a terrible idea.³³ In June 2009, an Internal Revenue Service audit discovered that 260 employees at Overhill Farms had provided fraudulent Social Security numbers. Yet the federal government neither detained them nor required Overhill Farms to fire them.

Against the demands of the union representing the illegal aliens, Overhill Farms “gave the workers

31. Napolitano, prepared remarks.

32. *Ibid.*

33. Patrick J. McDonnell, “Computer ‘Raid’ in Vernon Leaves Factory Workers Devastated,” *Los Angeles Times*, June 12, 2009, at <http://articles.latimes.com/2009/jun/12/local/me-desktp-raid12> (August 5, 2009).

30 days to correct the problem with the IRS and provide the company with verification, but none did so.”³⁴ Not one of the 260 employees came forward with any proof of legal residence in the United States. Overhill Farms filled all of the positions, which pay \$10 per hour, with American citizens, disproving the fallacy that “Americans won’t do that kind of work” at a time when California’s unemployment rate was nearly 11 percent.

In one of the oddest and most revealing statements in her speech, Secretary Napolitano explained that the Obama Administration wants to give amnesty to the 11.9 million illegal immigrants in the United States to bolster unions when she stated: “Think about it: unions will never achieve the best terms for workers when a large part of the workforce is illegal and operates in a shadow economy.”³⁵

A Better Approach

Secretary Napolitano’s three-legged stool approach to immigration is wobbly at best. Instead, Congress should take a phased approach to immigration reform, instead of writing another comprehensive bill that is destined to fail and push current immigration woes onto another generation. Specifically, the Administration and Congress should:

- **Enforce immigration and workplace laws to reduce the economic incentives for illegal immigration.** Effective immigration reform must begin with internal enforcement and enforcement at the U.S. border. The executive branch is responsible for implementing laws passed by Congress, but immigration reform is only possible if the government enforces existing immigration law.
- **Safeguard the southern border to make illegal entry into the United States less attractive than legal avenues.** The porous southern border makes illegal entry into the United States easier and more attractive than the legal avenues. The
- **Promote economic development and good governance in Latin America to provide potential illegal immigrants with economic opportunities at home.** The lack of job opportunities in Latin America drives many desperate for work to enter the U.S. illegally. Meanwhile, employers readily offer work to those who are in the U.S. illegally. This push-pull effect can best be addressed by engaging both sides. Assisting and encouraging Latin American countries in implementing free-market economic reforms³⁶ will greatly reduce the incentives for their citizens to enter the United States illegally. In Mexico, it is vital that the U.S. help the Mexican government to combat the drug cartels that are trying to destabilize it.
- **Reform the U.S. Bureau of Citizenship and Immigration Services (USCIS) to handle legal immigration more effectively and efficiently.** USCIS needs to improve in providing the immigration services and enforcement that the nation needs. These reforms should include an entirely new funding model, a comprehensive overhaul of the agency’s service support enterprise, and better integration of USCIS programs with immigration enforcement and border control efforts. USCIS also needs to streamline the existing visa programs, such as those for temporary or seasonal agricultural workers.
- **Strengthen citizenship.** Each nation has the responsibility and obligation to set its legal requirements for immigration, naturalization, and citizenship. In the United States, the Constitution and laws passed by Congress have already

34. *Ibid.*

35. Napolitano, prepared remarks.

36. For a more detailed discussion, see Terry Miller, “Economic Freedom in Uncertain Times,” Chap. 1 in Terry Miller and Kim R. Holmes, *2010 Index of Economic Freedom* (Washington, D.C.: The Heritage Foundation and Dow Jones & Company, Inc., 2010), esp. pp. 16–20, at <http://www.heritage.org/index> (March 8, 2010).

established these requirements. To help immigrants integrate politically and to strengthen their commitment to common American principles, the U.S. government should support programs that promote civics and history education among immigrants and encourage English-language proficiency.

- **Enhance the legal worker programs to provide legal avenues of immigration that meet the needs of employers and immigrants.** For instance, America needs to pilot a market-based temporary worker program that gives U.S. businesses access to a reliable, dynamic, and rotating temporary workforce. Such a program would reduce the demand for illegal immigrants by allowing those who want to work to enter the country legally, earn money, and then return home. It would also serve the needs of the American economy.

Conclusion

America's three-legged immigration stool is wobbly. Rather than trying to ram yet another con-

troversial bill through Congress, the Obama Administration and Congress should ensure that the existing policies on border security, interior enforcement, and immigrant visas are working. Attempting to rush another piece of legislation through Congress without truly understanding the strengths and weaknesses of existing policies and programs will likely have unforeseen and unfavorable effects on the U.S. immigration system.

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